

Legal treatment of crypto-assets in Dutch law

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Abstract: This article describes the state of Dutch law following the Markets in Crypto-assets Regulation (MiCAR) in terms of regulatory aspects and the private-law status of crypto-assets. The regulatory framework is quite elaborate, with a few intentional exceptions. Crypto-assets are currently in a legal limbo in Dutch law, which complicates the requirement of segregating client assets from service provider assets. In practice, Dutch private law can mostly deal with crypto-assets despite the lack of explicit regulation by allowing damages and actions that amount to liens. Nonetheless, further legislative action might be advisable.

Keywords: *asset segregation, crypto-assets, Dutch law, lien, MiCAR, property*

1. Introduction

The advent of so-called cryptocurrency and other blockchain-related assets has led to a substantial amount of legal activity. In this article, we present the current state of affairs in the Netherlands, taking into account relevant European regulations.¹

Following a brief historical overview in Section 2, we present the current regulatory landscape, where the Markets in Crypto-assets Regulation

¹ The literature mostly discusses bitcoin; however, the debate generally applies to other crypto-assets as well.

(MiCAR) looms large, but other rules, such as the Markets in Financial Instruments Directive (MiFID), are also relevant (see Section 3). Subsequently, we address the doctrinal view of crypto-assets, since the qualification as property, obligation or money is relevant for the practical execution of MiCAR (Section 4). We also discuss the more general issue of tokenisation, as it is inextricably linked to the theoretical discussion on crypto-assets (Section 5). Finally, we sketch the treatment of crypto-assets in courts and dispute resolution, including the possibility of seizing cryptos (Section 6).

We concentrate on regulatory law and private law; we do not discuss criminal or fiscal law. We presume that the reader is already familiar with the technical aspects of crypto-assets as well as the contemporary business practices of crypto exchanges and wallets.

2. The history of crypto in Dutch law

After the introduction of bitcoin in 2009, it took several years before Dutch lawyers started to take notice of this new phenomenon. The first articles appeared around 2014 (Baukema, 2013; van der Geld, 2014; Bierens, 2014; Tempelaar, 2014; Wolf, 2015),² steadily leading to a more fundamental discussion of the legal aspects. The doctrinal literature presented introductions of the operation of blockchain and bitcoin, and focused on various aspects, such as the legal status (on which see further Section 4), applications such as smart contracts, and practical aspects such as obtaining a lien on bitcoin (e.g., Linneman, 2016; Tjong Tjin Tai, 2017; de Graaf, 2018; 2019a). In 2019, a government-sponsored research report discussed the possible regulatory needs and concluded that, on the whole, Dutch law could handle bitcoin and other cryptocurrencies without modification, but explicit rules could clarify specific areas of legal uncertainty (Schellekens *et al.*, 2019). We return to this below (see Section 4). In subsequent years, many articles have discussed the practical aspects of crypto-assets and other applications of blockchain technology (Goossens, Verslype and Tjong Tjin Tai, 2020). The legislator has refrained from legal activity until the adoption of MiCAR.

² Also, about the first decision on bitcoin, see District Court of Overijssel, ECLI:NL:RBOVE:2014:2667, 14 May 2014, where the court decided that bitcoin is not a legal currency.

3. The Dutch regulatory landscape

The Dutch regulatory landscape for crypto-assets has been profoundly shaped by MiCAR ('Council regulation (EU) 2023/1114', 2023). Many crypto activities have become subject to licensing requirements. Licensed parties must comply with prudential, organisational and conduct-of-business rules, such as preparing a white paper and marketing communication rules, as well as governance requirements. The ongoing requirement of asset segregation has prompted considerable debate in Dutch legal writing and will be discussed below.

3.1 The scope of MiCAR

The scope of MiCAR is determined by the concepts of 'crypto-assets' and 'crypto-asset services'. MiCAR applies where parties within the European Union (EU) engage in the issuance, public offering or admission to trading of crypto-assets (Titles II, III and IV of MiCAR), or offer crypto-asset services (Title V of MiCAR).

Crypto-assets covered by other EU financial legislation remain outside the scope of MiCAR (Article 2(4) and Recital 3). For example, if financial instruments, as defined in the Markets in Financial Instruments Directive (MiFID), are tokenised, the process of tokenisation should not affect the *regulatory* qualification of such assets. Consequently, in such an event, MiFID remains applicable, whereas MiCAR does not (ESMA, 2025, para. 11).

Crypto-assets are defined as "a digital representation of a value or a right that may be transferred and stored electronically, using distributed ledger technology or similar technology" (MiCAR, Article 3(1)(5)). MiCAR distinguishes between three types of crypto-assets: electronic money tokens (EMTs), asset-referenced tokens (ARTs) and other crypto-assets.

3.2 Stablecoins

EMTs and ARTs are commonly referred to as stablecoins. EMTs are crypto-assets that track the value of a single currency, such as the euro or the US dollar (MiCAR, Article 3(1)(6)). An ART is a crypto-asset that is not an EMT and that tracks another value or right, such as commodities (gold, oil, etc.) or cryptocurrencies, or a combination thereof, including one or more fiat currencies (MiCAR, Article 3(1)(7)).

Stablecoins seek to maintain a stable value. Under MiCAR, issuers of ARTs are required to maintain an asset reserve and to manage such a reserve in a prudent manner (see MiCAR, Articles 36, 37 and 38). The value of the reserve assets must at all times be at least equal to the value of the claims that holders of ARTs in circulation have against the issuer. Issuers of EMTs are required to safeguard the funds received in exchange for EMTs. These funds must be safeguarded in accordance with the Second Electronic Money Directive (EMD2) and are subject to two additional requirements. First, at least 30% of the funds received are always deposited in separate accounts with banks. Second, the remaining funds received must be invested in “secure, low-risk assets that qualify as highly liquid financial instruments with minimal market risk, credit risk and concentration risk”, and must be denominated in the same official currency to which the EMT refers (e.g., government bonds).³

Currently, US dollar-backed stablecoins (such as Tether (USDT) and USD Coin, issued by Circle) dominate the stablecoin market (European Systemic Risk Board, 2025, p. 9).⁴ In Europe, nine European banks, including ING, a Dutch bank, have launched a plan for a euro-backed stablecoin which will be regulated under MiCAR and licensed in the Netherlands (ING, 2025).

Compared to other crypto-assets, ARTs and EMTs entail increased risks with respect to the protection of crypto-asset holders—in particular, if stablecoin issuers do not consistently maintain sufficient reserves to cover outstanding liabilities—and for financial stability. Moreover, the issuers of stablecoins typically hold large volumes of “traditional” financial assets, such as US government bonds. If confidence in a crypto issuer declines due to, for example, concerns about its reserve of assets, it may trigger redemption of many clients, resembling a bank run. Issuers of stablecoins may then be forced to liquidate large amounts of assets, which may cause losses to financial institutions holding similar financial assets. This illustrates how shocks from the crypto sector may spill over into the traditional financial system. This is why MiCAR introduces stricter requirements for issuers of ARTs and EMTs (MiCAR, Recitals 19 and 40).

³ Article 54 of MiCAR. The European Banking Authority (EBA) has developed “regulatory technical standards”, specifying the financial instruments that can be considered highly liquid and bearing minimal market risk, credit risk and concentration risk (European Banking Authority, 2024).

⁴ Recently, the United States Congress passed the *GENIUS Act 2025*, which, amongst others, provides guidelines on the regulatory requirements for issuing payment stablecoins.

3.3 Crypto-asset services

The MiCAR regime for stablecoins differs from the regime for so-called “unbacked” crypto-assets such as bitcoin and DOGE. Unbacked crypto-assets consist merely of unique cryptographic identifiers recorded on distributed ledger technology (DLT, i.e. blockchain), devoid of any intrinsic or asset-linked value. Issuers of unbacked crypto-assets that have no identifiable issuer are not regulated by MiCAR (Recital 22). However, service providers that offer services with respect to such crypto-assets within the EU⁵ are in this scope (MiCAR, Article 59). MiCAR identifies ten types of crypto-asset services, including: (i) the custody and administration of crypto-assets on behalf of clients (e.g., holding and administering the crypto-assets or the means of access to such assets—such as private keys—on behalf of clients); (ii) operating a trading platform for crypto-assets; (iii) the execution of orders for crypto-assets on behalf of clients and (iv) transferring crypto-assets on behalf of clients from one DLT address or account to another (this service will often be ancillary to other crypto-asset services (e.g., services (i) or (iii))).⁶

Like the issuers of ARTs and EMTs, crypto-asset service providers (CASPs) are bound by safeguarding obligations. These apply when a CASP holds crypto-assets belonging to clients or the means of access to such assets or when a CASP’s business model or its crypto-asset services require holding clients’ funds other than EMTs (i.e., banknotes, coins, money held in a bank account (*giraal geld* in Dutch) or electronic money). In such cases, CASPs must implement adequate arrangements to safeguard clients’ ownership rights, particularly in the event of provider’s insolvency, and to prevent the use of clients’ crypto-assets for proprietary purposes (MiCAR, Article 70(1) and (2)). In addition, funds belonging to their clients should be placed with a credit institution or a central bank where an account with the central bank is available.⁷

Furthermore, CASPs that provide “custody and administration of crypto-assets” are required to comply with Article 75 of MiCAR. Article 75(7) requires CASPs to legally segregate crypto-assets held in custody from their own estate in accordance with applicable law. The aim of this requirement

⁵ On the question when crypto-asset services are deemed to be provided in the EU, see Van der Grint and De Koning (2025, p. 134).

⁶ See the definition of ‘crypto-asset services’ in Article 3(1)(16) of MiCAR.

⁷ Article 70(3) of MiCAR. See also Recital 82 of MiCAR. Van Poelgeest, Röell and Loonen (2024) observe that MiCAR appears to leave no room for (partial) investment of funds in liquid, low-risk instruments such as government bonds, particularly given the fact that MiCAR does explicitly provide for such arrangements in respect of ARTs and EMTs.

is to prevent the creditors of a CASP from recourse to crypto-assets held in custody, particularly in the event of insolvency of the CASP.

3.4 Safeguarding of client assets

The Dutch legislature deemed it unnecessary to introduce new rules to give effect to MiCAR's asset segregation requirements for issuers of ARTs and EMTs and for CASPs. The appropriateness of this approach has been subject to scrutiny in Dutch legal literature (Haentjens and Kaptein, 2025, pp. 733–734). Dutch law is not familiar with trust. While there exists a construct of 'trust account' (*rekening met afgescheiden vermogen*) with a somewhat similar effect in Article 3:29aa of the Dutch *Financial Supervision Act* (*Wet op het financieel toezicht*, hereafter DFSA), these rules are not applicable to CASPs, issuers of ARTs and issuers of EMTs (to the extent that such issuers are not licensed as an electronic money institution). Moreover, the 'trust account' rules are designed to apply to client funds that consist of money held in a bank account (*giraal geld*), and not to the safeguarding of crypto-assets. That said, Article 3:29e of the DFSA does provide the possibility to designate, by way of general administrative order (*algemene maatregel van bestuur*), other categories of financial undertakings to which Article 3:29aa of the DFSA shall apply *mutatis mutandis*. However, the Dutch legislature has not made use of this option.

Under Dutch law, *administrative* segregation—the operational separation of client assets from the assets of the licensed entity⁸—does not result in *legal* segregation. As a result, if client assets are merely administratively segregated from another party's estate, the assets fall within the legal estate of the latter party on the basis of Article 3:276 of the Dutch *Civil Code*. In the event of insolvency, clients may be left with no more than a personal claim for the recovery of assets that ought to have been held in safekeeping.⁹ As discussed below, a clearly articulated framework for determining ownership, especially in situations where "ownership" is mediated, is not yet drawn, resulting in legal uncertainty regarding the precise nature and strength of clients' rights in insolvency scenarios.¹⁰

⁸ It follows from a recent Q&A of the European Securities and Markets Authority (ESMA) that the MiCAR asset segregation rules do not allow commingling client's crypto-assets with crypto-assets of the group when acting as custodian (ESMA, 2025b).

⁹ Dutch Supreme Court, ECLI:NL:HR:2003:AF3413 (*ProCall/Beatrixziekenhuis*), 13 June 2003.

¹⁰ See, more extensively, Diamant (2024) on ownership of money held in financial networks.

Safeguarding client assets under Dutch law would typically require the establishment of a separate legal entity—typically, a foundation (*stichting*)—with the sole purpose of holding such assets. The Netherlands Authority for the Financial Markets (AFM) endorses this approach for CASPs in its FAQs on asset segregation under MiCAR.¹¹ However, this approach poses several challenges. For example, Van Oosten and Hillen point out that it may be problematic to register the means of access to crypto-assets or the crypto-assets itself in a foundation's name (Van Oosten and Hillen, 2022, p. 189; cf. Doets, 2024, pp. 50–51).

In its FAQs, the AFM indicates that, alternatively, asset segregation may be accomplished by adhering to the requirements of another EU Member State's legal framework:

Other Member States in the European Union allow for crypto-assets to be held in custody by CASPs without the need for a separate entity. If CASPs decide to make use of such arrangements, the AFM considers it important that the CASPs demonstrate that this construction is as a minimum equivalent to the protection clients have under Dutch law and that clients are clearly informed about the method of asset segregation and their rights in the event of the loss of crypto-assets.¹²

A key question is how parties can ensure the application of another legal regime to the custody of crypto-assets held by a CASP on behalf of their clients. In this regard, at least one complicating factor is that the connecting factors for determining the law applicable to the property-law aspects of crypto-assets are—at least under Dutch law—not yet well settled (Koumans, 2024, pp. 113–124; Welling-Steffens, 2024).

In several jurisdictions, such as in Germany, asset segregation frameworks for crypto-assets provide more clarity—and thus, legal certainty—regarding the manner in which asset segregation is affected (*Kreditwesengesetz* or *The Banking Act (Germany) 2021*, § 46i). The creation of a coherent statutory framework for asset segregation of crypto-assets in the Netherlands would be favourable from a market perspective. Legal certainty may also be reinforced by addressing another outstanding issue pertaining to crypto-assets—namely, the legal status of crypto-assets under Dutch private law.

¹¹ Available in English at <https://www.afm.nl/en/sector/cryptopartijen/contact-qa>.

¹² See the answer to the question 'How should crypto-assets be legally segregated?'

4. Crypto-assets as property, money or obligations

An important issue in Dutch law is the legal status of crypto-assets. This is also relevant in other jurisdictions, and the Dutch debate may be instructive in highlighting several relevant issues for appropriate regulation. The main literature is by Tjong Tjin Tai (2017), Tweehuysen (2018; 2019), de Graaf (2019a), Verstappen (2021), Lambers (2024), also Dammers (2016) and Snijders and Tonino (2018).

The system of Dutch property law is derived from the French *Code civil*, with some modifications. The qualification of objects is important for issues such as ownership, legal powers, damages and performance. The main distinction is made between things (*zaken*) and patrimonial rights (*vermogensrechten*) (Article 3:1 BW, Dutch *Civil Code*).

Things are tangible objects for which human control is feasible (Article 3:2 BW), which does not apply to crypto-assets. Admittedly, it is argued that the requirement of being tangible (*stoffelijk*, ‘material’) should be interpreted more broadly, which would allow crypto-assets to count as things (Lambers, 2024). However, a counterpoint is that the aspect of human control implies¹³ the possibility of forcible intervention by the state to reclaim property on behalf of the legal owner, and this appears to be infeasible in many common types of blockchain. Qualification as ‘things’ would formally make a number of rules applicable that would in practice be unenforceable because there is no tangible good that can be controlled simply by physical force (as in the case of revindication): you need to have the private key.¹⁴

The scope of patrimonial rights is not entirely clear; Article 3:6 BW defines those as rights that are transferable or that aim at providing the right holder to a material advantage. The problem is that crypto-assets do not qualify as a *right*—something that confers specific (legal) power to the right holder. They may provide factual powers, but factual powers themselves do not imply a legal right per se. Admittedly, this argument is contested: several authors argue that crypto-assets should qualify as patrimonial

¹³ As follows from several provisions relating to the loss of ‘possession’ and possibility of ‘revindication’ (reclaiming) of a thing.

¹⁴ As Lambers (2024) also acknowledges.

rights (Tweehuysen, 2018; Snijders and Tonino, 2018). However, their viewpoint has not been recognised by courts or the legislator,¹⁵ so it cannot be considered a representation of the current law.

As crypto-assets do not match either of the two forms of property, they are not property under Dutch law. There is also discussion as to whether crypto-assets are money (*geld* in Dutch law) and/or currency (*valuta* in Dutch law), as this has various consequences in the law of obligations. The current consensus is that crypto-assets are neither money nor currency.¹⁶ As this is only tangentially relevant to the present topic, we will not discuss this further.

So, what private-law rules apply to crypto-assets? Legally speaking, crypto-assets are not anything specific; they are a factual phenomenon with legal consequences, without being a legal object as such. This is not problematic: there are also other phenomena, such as goodwill, that fulfil an economic purpose, have value and are factually transferable, without needing a specific classification as property.

True, it would be useful if crypto-assets were classified as a kind of property, as this would mean that a clear and well-known set of rules applies, which provides legal certainty. Furthermore, property rules clarify who is legally *entitled* to the property and who owns it, which is particularly important in insolvency. As noted above (see Section 3), MiCAR requires that crypto-asset service providers (CASPs) supply the service of “custody and administration of crypto-assets” to ensure that, on the DLT, “their clients’ crypto-assets are held separately from their own crypto-assets” (MiCAR, Article 75(7)). This appears to require a distinction in ownership of the service provider’s and clients’ crypto-assets, which is especially important in the case of insolvency or liens on assets of the CASP. Currently, Dutch law does not recognise such a distinction from the viewpoint of property law, leading to concerns about

¹⁵ Although Wessels (2018, para. 1240a) refers to District Court of Amsterdam, ECLI:NL:RBAMS:2018:968, 14 February 2018, where the court noted that bitcoin has the characteristics of such a right, to qualify the obligation to pay out bitcoins as a claim for payment, which is sufficiently like an obligation to pay money, hence can provide grounds for insolvency.

¹⁶ See District Court of Overijssel, ECLI:NL:RBOVE:2014:2667, 14 May 2014 (relevant for assessment of damages) and commentary in Rank (2015, p. 183; 2024, para. 33), Mijnsen (2017, Section 1.6) and Bierens (2020, para. 31.2). The Court of Appeal of Arnhem-Leeuwarden, ECLI:NL:GHARL:2016:4219, 31 May 2016 confirmed this decision, and assessed damage as for any good with variable market value. See also, District Court of Amsterdam, ECLI:NL:RBAMS:2024:7830, 13 December 2024; Court of Appeal of The Hague, ECLI:NL:GHDHA:2024:1406, 2 April 2024.

whether Dutch law really conforms to MiCAR and whether Dutch law should be interpreted or modified to recognise some form of property effect (see also Section 3) (Haentjens and Kaptein, 2025; Minister of Finance, 2025).

Several authors have argued that in the absence of specific rules, we can and should use the general rules to reach results similar (where applicable) to how tangible goods (and currency) are treated. This can be achieved in Dutch law owing to the flexible law of obligations, in particular rules regarding contract law (with “reasonableness and fairness”, Articles 6:2 and 248 BW) and tort law (the open negligence rule, *zorgvuldigheidsnorm*, whereby it is wrongful to act against the requirements of social commerce, see Article 6:162 BW). We will see this, in particular, with the practice of liens on bitcoin (see Section 6 below). In most instances, the construction chosen would be that the contractual party or third party is obliged (if necessary, by court order) to act on the blockchain to achieve the result that would pertain if crypto-assets were actual goods or money. Such an obligation is based either on implied terms, the requirements of good faith as part of contract law or, in the absence of a contractual relationship, on tort (or rarely unjustified enrichment, Article 6:211 BW).

In the area of insolvency law the qualification of crypto-assets is, perhaps surprisingly, unproblematic, as the insolvency covers the entire estate/patrimony of the insolvent party (Article 20 of the Dutch *Bankruptcy Act 1896* (*Faillissementswet*)) and therefore also applies to other phenomena that have value even though they are not property, strictly speaking (Wessels, 2019, paras. 2014, 2018–2110a cited in Beerepoot, 2023). Hence, the specific enforcement means of insolvency can be applied to obtain, for instance, the private key.¹⁷ However, the case-law does not yet concern cases where there is discussion about who “owns” the crypto-assets; one could distinguish having the actual private key (or the password of the wallet where the key is stored) from an indirect control over the private key/wallet (for instance, by having the password for the general wallet where the passwords for specific currency wallets are stored, or having a claim on the exchange to obtain the actual private key on command). Hence, there is still concern about the separability of crypto-assets: there is no clear line drawn as to who counts as owner under which cases, especially where the “ownership” is mediated (see above).

¹⁷ Cf. the District Court of Oost-Brabant 23 November 2018, ECLI: NL:RBOBR:2018:5938, r.o. 3.2. cited in Beerepoot (2023).

5. Tokenisation

Tokenisation may be described as the process in which a real-world asset existing outside the DLT network is represented by a token within the DLT network. Such tokens may represent physical assets (*zaken*), such as real estate, financial assets (e.g., bonds or money held in bank accounts) or any other asset. Here, the token embodies a representation of an underlying real-world asset in the DLT network.

An example of a non-fungible token (NFT) in the art world is Mike Winkelmann's *Everydays: the first 5000 days*. This digital artwork, a collage of 5,000 images created daily by the artist across 13 years, was sold as an NFT at Christie's in March 2021 for over \$69 million. Another example of NFTs is utility tokens. Such tokens may, for example, grant access to a service or a good, allowing the holder to redeem the good or make use of the service.

From a legal perspective, tokenisation gives rise to a number of questions that merit closer scrutiny. One question that may arise is the regulatory treatment of tokens. Crypto-assets that "are unique and not fungible with other crypto-assets" (non-fungible tokens fall outside the scope of MiCAR (see Article 2(3)). This may seem surprising at first, given the broad definition of crypto-assets in MiCAR, but it is nonetheless consistent with the fact that MiCAR is a part of the European Union legislative acts on *financial services*. NFTs are not readily interchangeable, and the relative value of one such crypto-asset in relation to another, each being unique, cannot be ascertained by means of comparison to an existing market or equivalent asset. Such features limit the extent to which those crypto-assets can have financial use, thus limiting risks to holders and the financial system and justifying their exclusion from the scope of MiCAR (Recital 10).

According to the European Securities and Markets Authority (hereafter ESMA), the classification of a crypto-asset as "unique" and "non-fungible" does not solely depend on its technical specificities, such as the attribution of a unique identifier, but to a range of relevant factors attached to NFTs, such as (i) intrinsic value and rarity (e.g., whether the crypto-asset possesses unique attributes that contribute to its intrinsic value and rarity, making it distinct from other assets), (ii) utility and functionality (e.g., specific utility or functionality) and (iii) ownership and rights (e.g., exclusive access or usage rights that are unique to the holder) (ESMA, 2025, paras. 67 and 68).

For example, services such as product guarantees and physical assets such as real estate represented by a token, are “unique and non-fungible” (NFTs) and, consequently, fall outside the scope of MiCAR (Article 2(3) and Recital 10). However, MiCAR shall apply to the extent that tokens are not unique and fungible, and a limited number of rules are specifically applicable to utility tokens.¹⁸

Another legal issue to consider is the private-law legal status of a token (which is a crypto-asset, as defined in MiCAR). We concluded above (see Section 4) that crypto-assets do not match either of the two forms of property known in Dutch law—*zaken* or *vermogensrechten*—which means that they are not property under Dutch law. However, some authors argue that a single transaction on the blockchain suffices to effect not merely a transfer of the token itself, but also of the ownership rights of a physical asset (*zaak*) or even a claim (*vordering*) that is represented by such a token (Kopalit, Verheul and Verstijlen, 2024). Consequently, the Dutch *Civil Code* seems to offer considerable potential for tokenisation. However, these authors also pointed out that additional legislation could further facilitate developments like tokenisation.

In financial markets, tokenisation is progressively emerging as well (Financial Stability Board, 2024, pp. 9–10). For example, tokenised bonds have been issued by the European Investment Bank (2021). Potential benefits of tokenisation of financial instruments include improved efficiency, reduced costs, increased transparency and broader investor access through asset fractionalisation (i.e., dividing an asset into smaller parts, making them potentially more accessible to investors) (Financial Stability Board, 2024, pp. 10–11). However, the Financial Stability Board (2024, pp. 11 and 14–21) cautions that “many of the purported benefits have yet to be fully proven, may not be uniquely achievable through tokenisation, and may involve trade-offs that might negate the benefits”.

Given the broad definition of crypto-assets in MiCAR, tokens generally fall within the scope of this definition. However, as explained above, if a crypto-asset *also* qualifies as a ‘financial instrument’ under MiFID, it is excluded from the scope of MiCAR and remains subject to the regulatory framework of MiFID II (see Section 3). While the ESMA stated that the process of tokenisation should not affect the *regulatory* qualification of such assets, it may be of relevance to other areas of law. One of the questions

¹⁸ See, for example, Article 6(5) of MiCAR and specific disclosure items for utility tokens in Annex I to MiCAR.

that arises in the context of tokenisation of financial instruments is whether financial instruments that exist solely as tokens, for example digital bonds, can be incorporated into the framework of the Dutch *Securities (Bank Giro Transactions) Act* (*Wet giraaleffectenverkeer*, hereafter Wge). The Wge is based on the existence of a chain of intermediaries and a system of centralised settlement. Generally, the issuer of securities creates one global note or global certificate that covers the full amount of the issuance. This “global” note is typically deposited with a central securities depository (CSD), such as Euroclear. Individual investor ownership is recorded through book entries in the accounts of intermediaries. A tokenised bond issuance, for example, does not involve a global bond and does not (necessarily) involve a chain of intermediaries. Some authors suggest that legal certainty can be reduced by adapting the Wge, similar to other jurisdictions (see further Evenhuis, Nieuwendijk and Reutelingsperger, 2025).

6. Cryptos in legal practice

The discussion in Section 4 referred to the practical approach of Dutch law to reach just and fair results, despite the lack of a clear legal regime for crypto-assets. This can be illustrated by an overview of Dutch case-law on crypto-assets.¹⁹ Some decisions have been referred to above, particularly regarding the qualification of crypto-assets. These will not be repeated here. We will also not discuss numerous cases of fraud on supposed crypto investments, as these do not provide useful information about the legal status or treatment of crypto-assets.²⁰

6.1 General decisions involving crypto-assets

An example of the practical approach of Dutch courts is a case about the sale of an ancient Chinese bowl in exchange for one bitcoin. The sale was annulled on the basis of a mistake, and the court reasoned that the seller should return the bitcoin and not pay back its value at the time of sale

¹⁹ Note that there have not been any decisions by the Dutch Supreme Court (*Hoge Raad*) about these issues.

²⁰ One case involved a crypto exchange being sued for operating without license and thereby being a contributing factor to fraud (District Court of Noord-Holland, ECLI:NL:RBNHO:2023:12695 (Coinbase), 13 December 2023). The court decided that the exchange was conducted wrongfully, but there was no causal connection to the fraud: the client had on their own decided to follow the instructions of the scammer to open a bitcoin account without any influence by the exchange.

(although bitcoin had devalued in the meantime).²¹ Even though bitcoin is not a foreign currency, the court reasoned along lines similar to what would hold if it were currency, in order to reach a satisfactory result.

This is a common approach by courts: they decide that a claim on cryptocurrency is not a claim to payment of money; hence, it does not give a claim to payment of the value in euro, but only a claim to the transfer of cryptocurrency.²² The fact that cryptocurrency is not money is even beneficial for claimants, as it allows a court to put a private court-imposed fine (*dwangsom*, like the French *astreinte*) on the court order to transfer cryptocurrency.²³

Similarly, if the claim is for damage, the damage is not calculated according to the rules for currency exchange losses (Article 6:125 BW).²⁴ In the case of loss, damage is calculated in the same way as the loss of goods with variable market value.²⁵ In cases of late delivery, one court ruled that damages are to be assessed at the fixed interest rate applicable to late performance (Article 6:119 BW),²⁶ whereas others appear to be assessed at market value.²⁷ In the case of a sale of bitcoin that was terminated for non-performance, the proper remedy is damages, and the loss could be assessed at the difference between sale price and bitcoin value at the termination, applying the rule for sale of (tangible and non-tangible) goods (Articles 7:36 and 47 BW).²⁸

The muddy property status of cryptocurrency is usually sidestepped by courts, which reach fair conclusions in practical ways. For instance, in the case of the theft of bitcoin from a platform (from the wallets held by the

²¹ District Court of Rotterdam, ECLI:NL:RBROT:2023:360, 18 January 2023.

²² E.g., Court of Appeal of The Hague, ECLI:NL:GHDHA:2024:1406, 2 April 2024 (on appeal of District Court of Rotterdam, ECLI:NL:RBROT:2022:3208, 20 April 2022).

²³ District Court of Midden-Nederland, ECLI:NL:RBMNE:2017:6646, r.o. 4.6, 7 December 2017. According to Dutch law, it is not allowed to put a private fine on an obligation to pay actual money: as bitcoin is not money, this prohibition does not apply.

²⁴ E.g., District Court of Amsterdam, ECLI:NL:RBAMS:2020:4563, 16 September 2020; also, District Court of Limburg, ECLI:NL:RBLIM:2024:7401, 23 October 2024, concluding that damages for late payment are also calculated on the fixed interest rate of Article 6:119 BW.

²⁵ Court of Appeal of Arnhem-Leeuwarden, ECLI:NL:GHARL:2021:6115, 22 June 2021 (later cassation procedure only related to evidence, Dutch Supreme Court, ECLI:NL:HR:2022:1725, 25 November 2022).

²⁶ District Court of Limburg, ECLI:NL:RBLIM:2024:7401, 23 October 2024.

²⁷ District Court of Amsterdam, ECLI:NL:RBAMS:2020:4563, 16 September 2020; District Court of Limburg, ECLI:NL:RBLIM:2024:10082, 20 November 2024.

²⁸ Court of Appeal of Arnhem-Leeuwarden, ECLI:NL:GHARL:2016:4219, 31 May 2016. Similarly, for a claim for non-delivery of bought bitcoin: difference value at date sale and date termination, see District Court of Rotterdam, ECLI:NL:RBROT:2020:4732, 29 May 2020. For a claim to return of borrowed bitcoin, the court took the date of the court decision, see District Court of Rotterdam, ECLI:NL:RBROT:2022:3208, 20 April 2022.

platform on behalf of clients), the thief argued that the platform was not the owner. The court reasoned that the platform suffered pure economic loss as it had to compensate the clients.²⁹

In divorce cases, bitcoin accounts are, as a matter of course, taken into account for the distribution of marital goods.³⁰

Similarly, a claim for delivery of bitcoin can support a bankruptcy request; therefore, the claim is considered equivalent to a claim for payment of money (insofar as bankruptcy requests are concerned).³¹

6.2 The relation to the crypto exchange

Several decisions involve qualification of the relationship between the client and crypto exchange. Since crypto-assets are not currency, the rules on bank accounts (Title 7b of book 7 BW, an implementation of Payment Services Directive II, 'Council directive 2015/2366/EU', 2015) are not applicable to a platform.³² These rules can, however, be applied by analogy,³³ leading to similar outcomes as if they were directly applicable. In another case, the court decided that the relationship was an innominate contract (*onbenoemde overeenkomst*) and used contract interpretation to determine the content of the respective obligations.³⁴

²⁹ District Court of Rotterdam, ECLI:NL:RBROT:2022:11517, 28 December 2022.

³⁰ District Court of The Hague, ECLI:NL:RBDHA:2023:22197, 15 December 2023; Court of Appeals of Arnhem-Leeuwarden, ECLI:NL:GHARL:2023:10923, 28 December 2023; Court of Appeal of The Hague, ECLI:NL:RBDHA:2024:9020, 19 April 2024; District Court of Amsterdam, ECLI:NL:RBAMS:2023:8998, 10 March 2023; Court of Appeal of Arnhem-Leeuwarden, ECLI:NL:GHARL:2025:560, 4 February 2025; District Court of Midden-Nederland, ECLI:NL:RBMNE:2023:5990, 17 November 2023; Court of Appeal of Amsterdam, ECLI:NL:GHAMS:2024:2176, 6 August 2024. This applies provided there is sufficient evidence, which can be a hurdle, see District Court of Rotterdam, ECLI:NL:RBROT:2024:2642, 27 March 2024; District Court of The Hague, ECLI:NL:RBDHA:2025:8940, 13 February 2025; Court of Appeal of Arnhem-Leeuwarden, ECLI:NL:GHARL:2025:3130, 22 May 2025. Loss of recovery phrase may lead to later correction as value is practically lost, see District Court of Zeeland-West-Brabant, ECLI:NL:RBZWB:2023:9661, 1 August 2023.

³¹ District Court of Amsterdam, ECLI:NL:RBAMS:2018:869, 14 February 2018. Further on insolvency see Beerepoot (2018; 2023).

³² District Court of Amsterdam, ECLI:NL:RBAMS:2024:6485, 18 October 2024; District Court of Amsterdam, ECLI:NL:RBAMS:2024:7830, 13 December 2024. Both qualify it as 'service contract' (*opdracht*). The District Court of Amsterdam, ECLI:NL:RBAMS:2024:7830, 13 December 2024, qualifies it as 'innominate' (*onbenoemd*) since it is not storage/custody.

³³ District Court of Amsterdam, ECLI:NL:RBAMS:2023:5425, 8 September 2023; however, cf. District Court of Amsterdam, ECLI:NL:RBAMS:2024:6485, 18 October 2024.

³⁴ District Court of Amsterdam, ECLI:NL:RBAMS:2024:7830, 13 December 2024, because it is not storage/custody.

6.3 Procedural law and liens

A practical problem with crypto-assets is the provision of evidence. Proof of existence of crypto accounts can be problematic,³⁵ such as in the case of loss from theft from a phone containing a wallet.³⁶ There are also cases of obtaining evidence through platforms (crypto exchanges).³⁷

As regards liens, courts appear to accept the doctrinal view that a lien on and seizing of cryptocurrency is feasible by ordering the defendant to take the actions and provide the information necessary for transferring the assets to a bailiff for subsequent sale.³⁸ A lien on cryptocurrency can also be achieved by obtaining a court order to the crypto exchange to freeze the accounts of the “owner”.³⁹ It appears that some exchanges voluntarily abide by the demand to freeze an account.⁴⁰

7. Conclusion

Dutch law is in flux: after a period of inactivity, the European legislator has established a regulatory regime for crypto-assets (MiCAR). To aid the proper functioning of these rules, we argued that further clarification and explicit regulation of the (private-law) legal status of crypto-assets would be advisable. This applies particularly to the property status of crypto-assets and to what extent they can and should be treated like currency. In the absence of explicit rules, the courts have nonetheless managed to mostly work out just and fair solutions to the issues that have arisen.

³⁵ Also, for insolvency imprisonment to incentivise insolvent to provide information on accounts, see District Court of Oost-Brabant, ECLI:NL:RBOBR:2018:5938, 23 November 2018.

³⁶ District Court of Amsterdam, ECLI:NL:RBAMS:2023:6765, 20 October 2023.

³⁷ District Court of Rotterdam, ECLI:NL:RBROT:2021:11903, 1 December 2021; District Court of Amsterdam, ECLI:NL:RBAMS:2024:2212, 15 February 2024.

³⁸ District Court of Amsterdam, ECLI:NL:RBAMS:2023:849, 16 February 2023, referring to de Graaf (2019b) and Langemheen and Wehrmeijer (2022). Similarly, de Graaf and Krans (2018), Graaff (2022), van Lingen and Smits (2018) and Lombardo (2022).

³⁹ E.g., District Court of Rotterdam, ECLI:NL:RBROT:2024:6723 (Hong Kong crypto exchange), 19 July 2024.

⁴⁰ For more detail, cf. District Court of Amsterdam, ECLI:NL:RBAMS:2024:2212, 15 February 2024.

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