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# Current trends in Swedish crypto market

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### Introduction

Over the past few years, trading in cryptocurrencies has increased in Sweden. The most common cryptocurrency is Bitcoin. Cryptocurrencies are often held for investment purposes, rather than for payment purposes. Hence, Swedish authorities find "crypto asset" to be a more precise term than "cryptocurrency". The crypto market is, however, essentially unregulated within the European Union and in Sweden. Therefore, there are almost no restrictions regarding trading in cryptocurrencies, and Sweden may be described as a "crypto-friendly nation". Despite this, Swedish banks are restrictive in providing crypto-related services. In fact, there are almost no Swedish banks that provide crypto as an investment option.

In contrast to traditional currency, such as the Swedish krona, cryptocurrencies are not issued by a national central bank. Instead, cryptocurrencies may be issued by anyone through a specific software. However, the most common way to trade in cryptocurrency in Sweden is through crypto exchanges and brokers.

One of the few regulations that apply to cryptocurrencies in Sweden is the Currency Exchange and Other Financial Activities Act (the CEFA Act), implementing EU Directive 2018/843. Pursuant to the CEFA Act, entities with the intention to provide "other financial operations", which includes services regarding managing and trading in cryptocurrencies, are required to apply for registration with the Swedish Financial Supervisory Authority (SFSA). Trading, in this case, is defined as an exchange between cryptocurrencies and:

- Swedish krona or foreign currencies;
- electronic money (e-money); or
- other cryptocurrencies.

The managing of cryptocurrencies includes services to safeguard cryptographic keys on behalf of customers to hold, store and transfer cryptocurrencies.

The CEFA Act mainly aims to prevent money-laundering and financing of terrorism. Due to the requirements of compliance with the anti-money laundering and terrorism funding regulations that come with the banking license, banks do not have to be registered. However, the SFSA expects that entities that provide services regarding trading in cryptocurrencies will be phased out of the scope of application of the CEFA Act, due to such entities may become subject to an authorisation requirement in the upcoming EU regulation, the [Market Crypto-Assets Regulation \(MiCA\)](#).

### Response to increasing trade

Some of the potential advantages of trading in cryptocurrencies are that the trading is anonymous, and the exchange is quick and may be associated with lower costs than trading with traditional assets. However, the SFSA considers trading in cryptocurrencies inappropriate for consumers and has warned participants in the financial market about trading and investing in these currencies. In addition to this recommendation from the SFSA, several other authorities and banks, including Sweden's central bank (Riksbank), have pointed out the risks with trading in cryptocurrencies. Broadly, these risks may be summarised in the following ways.

Firstly, there is a lack of regulation regarding cryptocurrencies in Sweden. The current regulation mostly focuses on compliance with anti-money laundering and terrorism funding rules. As a result, in contrast to traditional currencies, cryptocurrencies lack consumer protection. For example, cryptocurrencies are not covered by deposit insurance in the Deposit Insurance Act. However, it may be considered if cryptocurrencies have consumer protection through other regulations. For example, cryptocurrencies may be covered by the regulation regarding segregation of funds. Pursuant to the Funds Accounting Act, banks must separate funds that they are obligated to account for on behalf of customers. At the time when the regulation was enacted, the meaning of "funds" was money. According to the 80-year-old preparatory work, the regulation may apply analogously to fungible assets.<sup>(1)</sup> Such fungible assets may potentially be, for example, cryptocurrencies. However, due to the lack of more recent guidance, this legal matter remains unclear.

In the absence of regulation, there is yet no legal definition of cryptocurrency in Sweden. However, cryptocurrencies could possibly be defined as a transferable security in the Markets in Financial Instruments Directive II (MiFID II), implemented through the Securities Market Act. To be defined as a "transferable security", cryptocurrency has to be transferable and negotiable on the capital market. Among other things, this includes obtaining rights in rem by registration under Swedish law. Registrations on contractual grounds do usually not fulfil this requirement.<sup>(2)</sup> If cryptocurrency is classified as a transferable security, it can be traded on a regulated market. However, according to the European Securities and Markets Authority, this depends on the characteristics of the specific currency. Furthermore, as an effect of the increasing trade in cryptocurrencies, new products have been developed, such as tracker certificates. A tracker certificate is a financial instrument with an underlying crypto asset or assets. As these financial instruments are based on the price of the underlying crypto asset, MiFID II applies to it and enables indirect trading of cryptocurrencies on regulated markets.

Further, the often anonymous character of cryptocurrencies results in lacking transparency and trackability. However, these characteristics vary depending on the relevant currency. Bitcoin, for example, is based on a blockchain process. In the blockchain process, all transactions are filed in a journal, which is open for everyone to read. The transactions of Bitcoin are hence trackable. The information about Bitcoin owners does, however, remain undisclosed, which makes it difficult for banks to conduct crypto services and, at the same time, fulfil the requirements of the anti-money laundering and terrorism financing regulations. Additionally, the price of cryptocurrencies is solely based on demand and lacks an underlying value, which makes them **volatile**. Hence, it is difficult to value cryptocurrencies in a reliable way, which poses a significant risk to customers who intend to invest in them.

Lastly, the issuance and trading of several cryptocurrencies can discourage the transition to a sustainable financial system. In contrast to traditional assets and as mentioned above, cryptocurrencies are usually not produced by a national central bank. Instead, cryptocurrencies such as Bitcoin may be issued by anyone through a specific software. Bitcoins are issued when this specific, demanding, software is driven through a computer by using the so-called "proof-of-work" method. The issuer is rewarded with Bitcoins and transaction fees for the work done. The process of issuing cryptocurrencies **requires** a large scale of computer power and is therefore energy-intensive. However, new, less energy-intensive methods to mine cryptocurrencies have been developed. For example, some currencies, such as Ethereum, are issued by a so-called "proof-of-stake" method. The proof-of-stake method **requires** fewer resources and consumes 99.95% less energy than the proof-of-work method.

### **Future of cryptocurrencies**

With the increasing trade, cryptocurrencies will probably be more acceptable as an investment option. As a response to this, there is now a process towards a more regulated field of cryptocurrencies within the European Union. However, according to Riksbank, the volatile character of cryptocurrencies makes them inappropriate to use for payments. Instead, Riksbank is currently investigating the possibility to issue a digital central bank e-krona, as a complement to the traditional Swedish krona.

In 2020, the European Commission presented the MiCA, which is expected to enter into force in 2024. The MiCA is expected to, among other things, impose an authorisation requirement for legal entities that intend to:

- issue asset-reference tokens or e-money tokens; or
- provide services regarding any cryptocurrency.

Further, the MiCA is expected to introduce an obligation for issuers of any cryptocurrency token to publish information about it in a so-called "white paper". This white paper will provide customers with relevant information about the characteristics, functions and risks of the currency in which the customers may invest. The MiCA may also impose rules regarding reserve of assets and segregation of funds in respect of asset-reference tokens, which is expected to strengthen customer protection further.

According to the SFSA, the MiCA is expected to decrease some of the risks associated with cryptocurrencies. However, the SFSA has **emphasised** that the MiCA will not handle all the risk related problems and maintain its warnings about investing in cryptocurrencies.

### **Comment**

In the absence of regulation, there is a large discretion when it comes to how cryptocurrencies are dealt with. This does not only apply to entities that provide services regarding cryptocurrencies, but also to Swedish authorities. For instance, in 2022, the Swedish Companies Registration Office (SCRO) declined a company's application to set up a new Swedish limited liability company on the basis that Bitcoin could not be used as contributed capital in kind due to it lacking an intrinsic value. However, after an appeal from the company to the Administrative Court, the Court **stated** that it was not right to decline the registration on these grounds. The SCRO has appealed this judgement.

The prognosis is that the MiCA will slightly clarify the legal field of cryptocurrencies and solve some of the risks associated therewith in Sweden. However, even if the MiCA is expected to impose rules to strengthen customer protection, the SFSA has emphasised that some challenges will remain. For example, certain cryptocurrencies will still have a volatile and speculative value, making them difficult to estimate. Further, an interesting question is how the banks will respond to the MiCA. Before the risks are eliminated, or at least manageable, it is likely that Swedish banks will remain restrictive in providing services regarding cryptocurrencies.

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### **Endnotes**

(1) SOU 1943:24, p. 41.

(2) Prop. 2006/07:115, p. 281.