

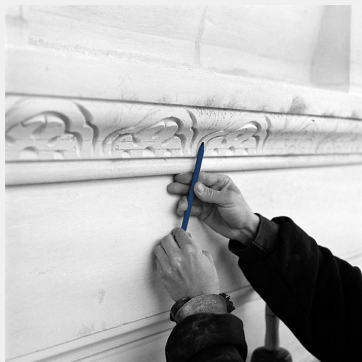


# MiCA Client Asset Protection

University of Luxembourg  
9th Fintech Conference  
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[arendt.com](https://arendt.com)

## Preliminary comments



### Focus: client asset protection rules for custody services



there are other asset protection rules in MiCA e.g. in relation to reserve assets for asset referenced tokens & in relation to e-money tokens



### MiCA contains a very broad definition of custody

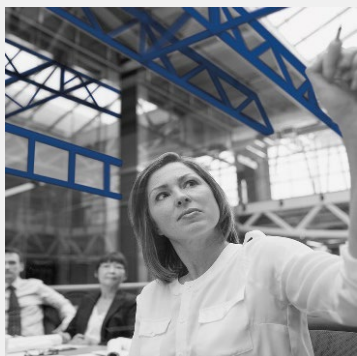


*safekeeping or controlling, on behalf of clients, of crypto-assets or of the means of access to such crypto-assets, where applicable in the form of private cryptographic keys*



### MiCA is not the only source of client asset protection rules

# Luxembourg pre-MiCA framework



## 1 Civil law

### General civil law rules on custody agreements

- for non-fungible assets
- for fungible assets (« *dépôt irrégulier* »)

## 2 Regulatory guidance

### CSSF FAQ on Virtual Assets:

- Virtual assets in custody are off-balance sheet items
- Virtual assets in custody have to be segregated from own assets
- Liability to clients in case of default of sub-custodian  
unless clients have a direct relationship with sub-custodian
- Banks cannot take deposits in virtual currencies  
& cannot facilitate or execute the settlement of payments in virtual currencies

## 3 Fiduciary contracts

### Law of 2003 on fiduciary arrangements

## MiCA requirements



**Agreement with mandatory minimum contents**

**Custody policy**

• Your text here

**Client reporting via periodic position statements**

**Segregation from own holdings, both legally and operationally**

**Subcustody restrictions and information duties**

**Register of client positions and asset movements**

**Facilitation of exercise of rights**

**Procedures for return of crypto-assets**

**Liability for losses as a result of incidents attributable to CASP**

