

Faculty of Law, Economics and
Finance of the University of
Luxembourg

Prof. Dr. Dirk A. Zetsche, LL.M.
Areti Kolovou Nikolakopoulou, LL.M. (Doctoral Researcher)



Custody Practice and MiCA Custody Rules
-
an empirical analysis

I. Introduction

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- An empirical research on the TCs  of 100+ crypto custodians, with the goal to:
- analyze the rights & obligations vs clients;
 - show similarities and/ contradictions
 - ✓ between the TCs of custodians and
 - ✓ between their TCs and their website disclosures
 - unveil patterns and common practices;
 - examine compliance with MiCAR custody rules;

I. Introduction

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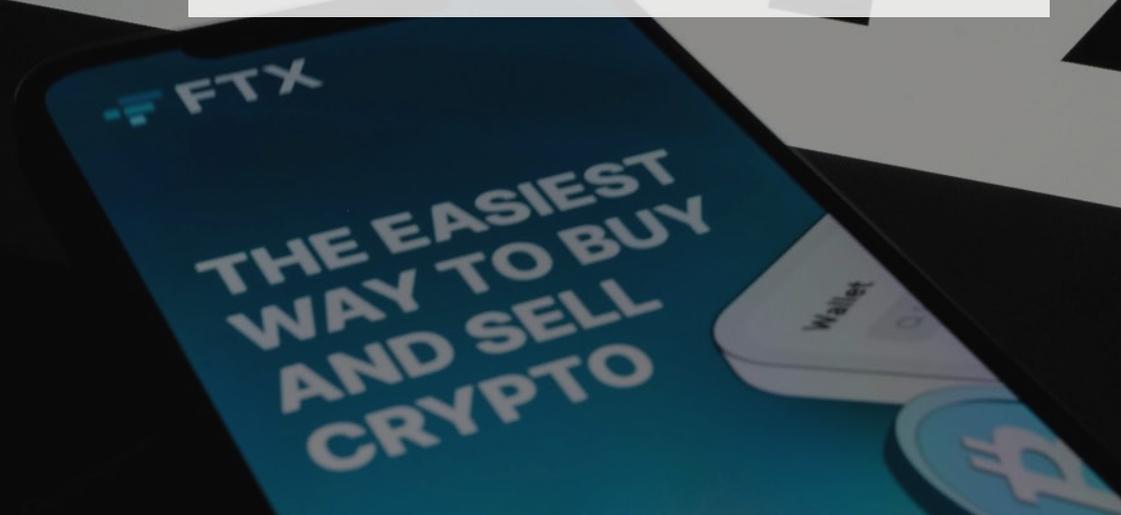


Why?

Crypto Winter

Ambiguity, outright unclarity

Seaming lack of client protection



Art. 3 (1) (17) MiCAR:

‘providing custody and administration
of crypto-assets on behalf of clients’

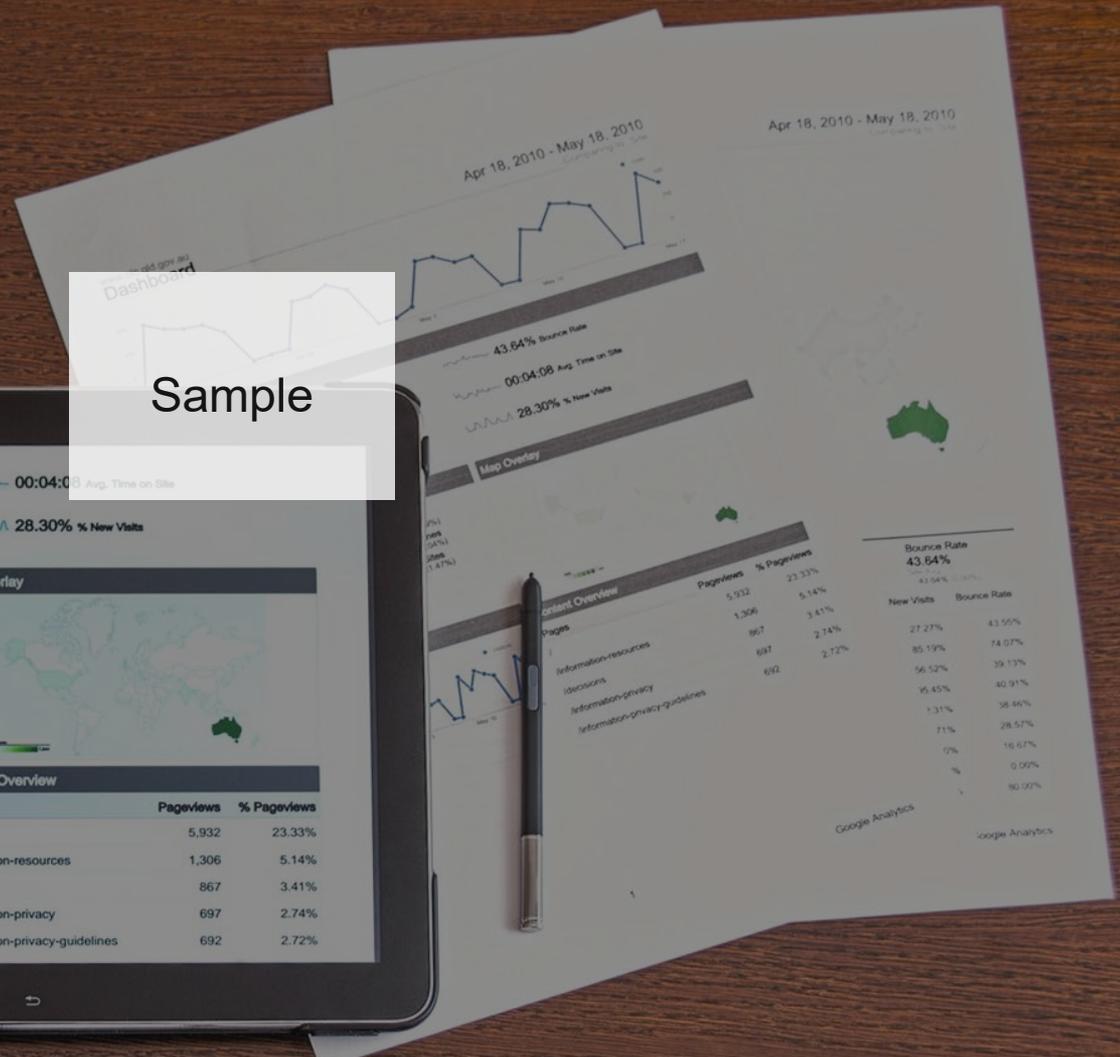
means the **safekeeping or
controlling, on behalf of clients, of
crypto-assets or of the means of
access to such crypto-assets,**

where applicable in the form of
private cryptographic keys;

II. Sample

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Sample



II. Sample

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Two categories that (at face value) fit the MiCAR definition of a custodian.

II. Sample

Centralized Exchanges (CEXs):

Important custodians, offering custody services to facilitate crypto trading.

Current sample size:

- 40 Providers (of the top 100)
- Custodians of 9.13% of entire market (by USD value)



II. Sample

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Custodial Wallet Providers:

Self-proclaimed custodians, offering dedicated crypto-custody services.

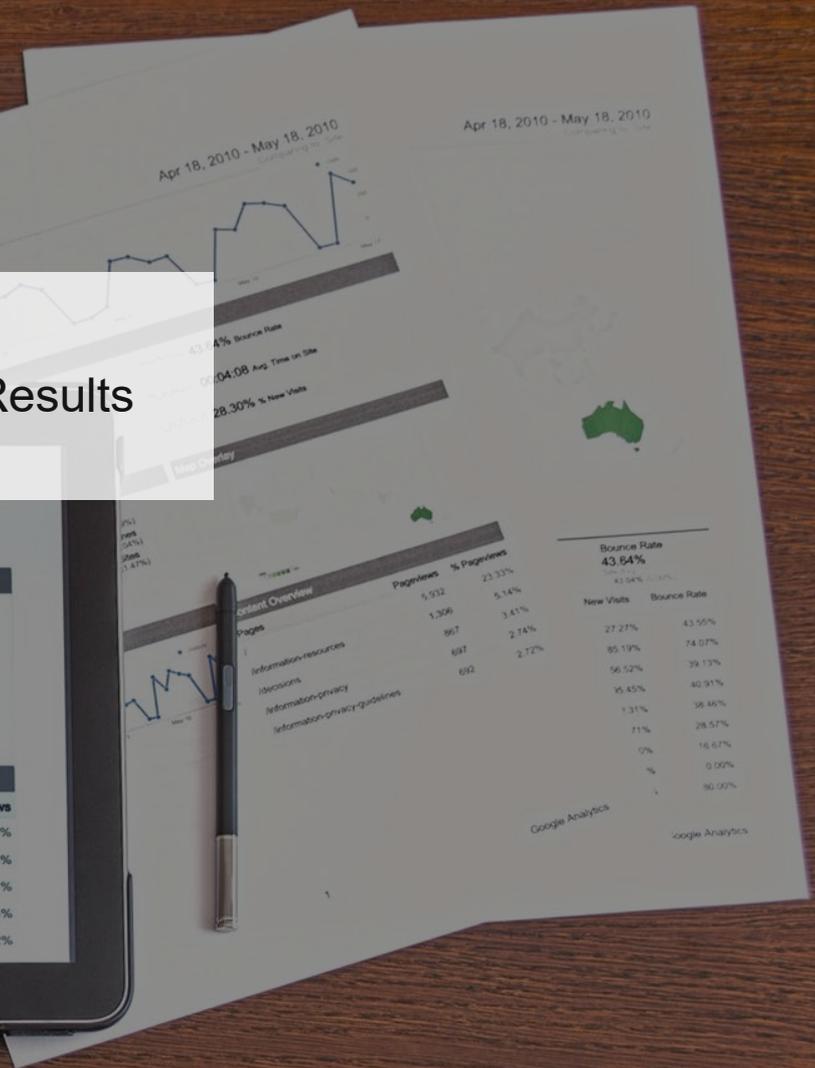
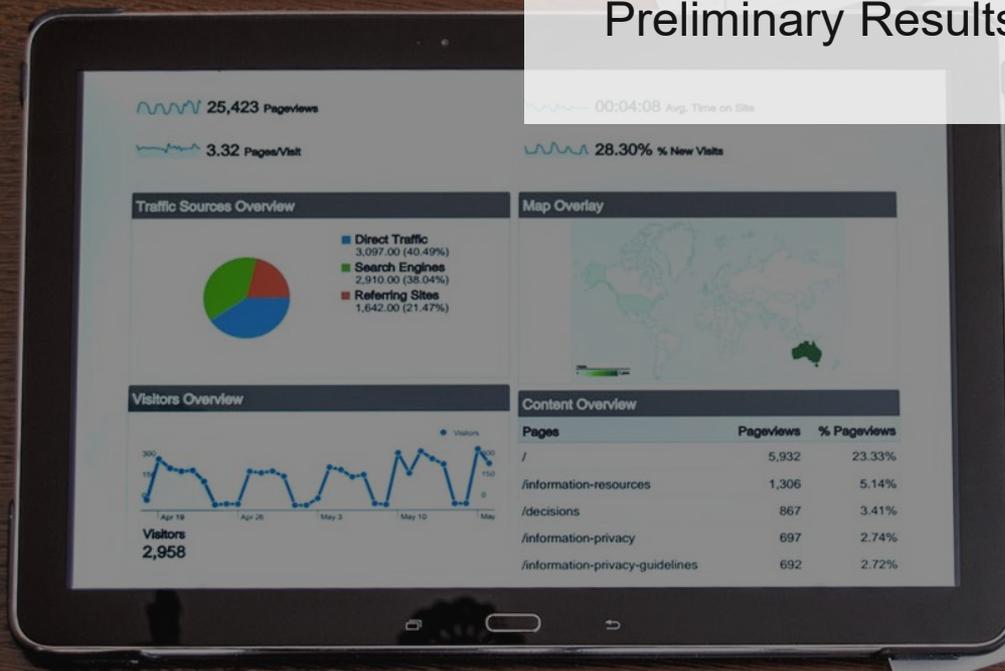
Current sample size:

- 31 Providers
- Major players (top industry brands)
- Market share unknown

III. Preliminary Results

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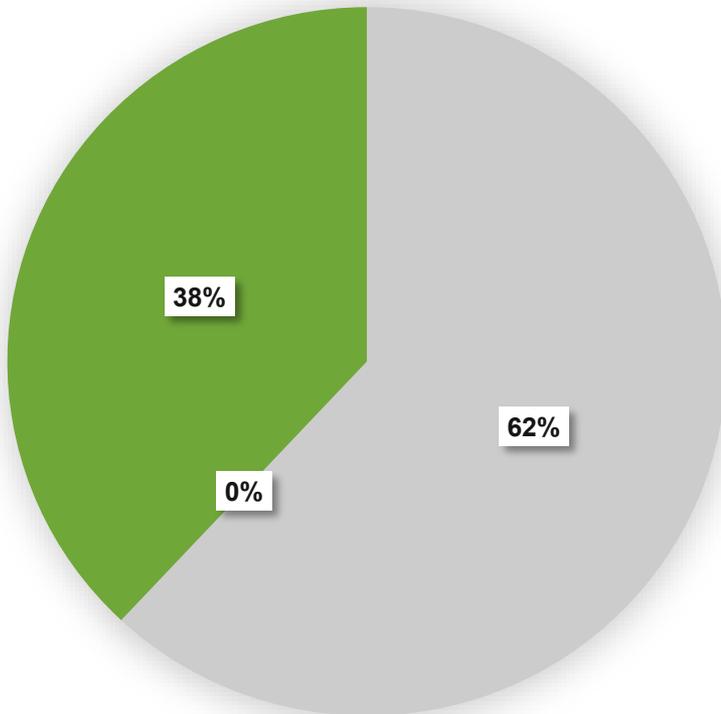
Preliminary Results



III. Preliminary Results: Safekeeping



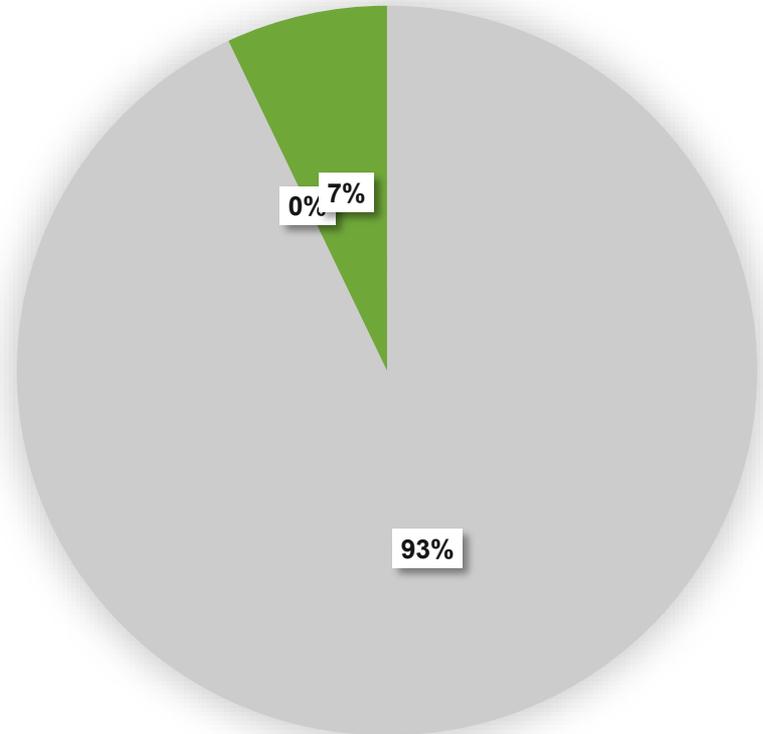
Safekeeping



- YES
- NO
- N/A



Safekeeping



- YES
- NO
- N/A

III. Preliminary Results: Ownership

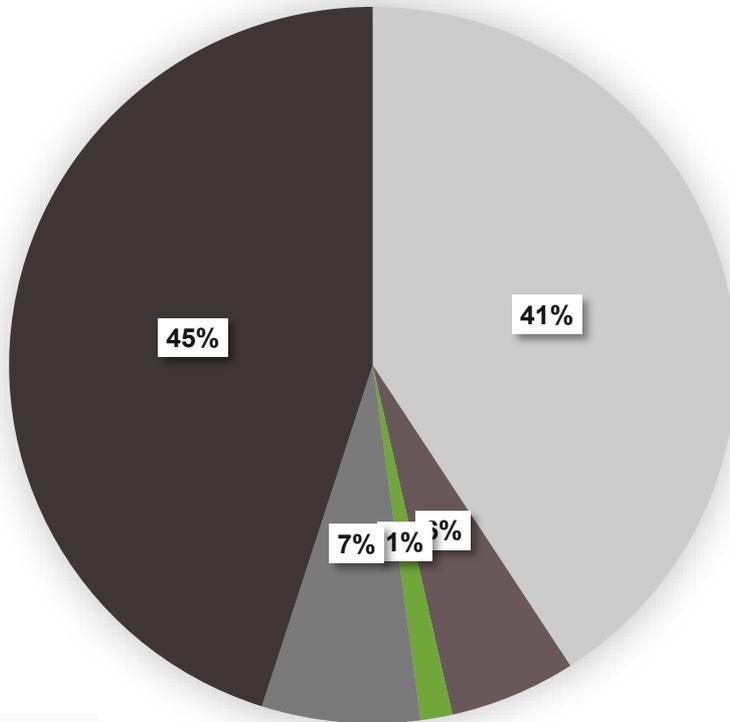
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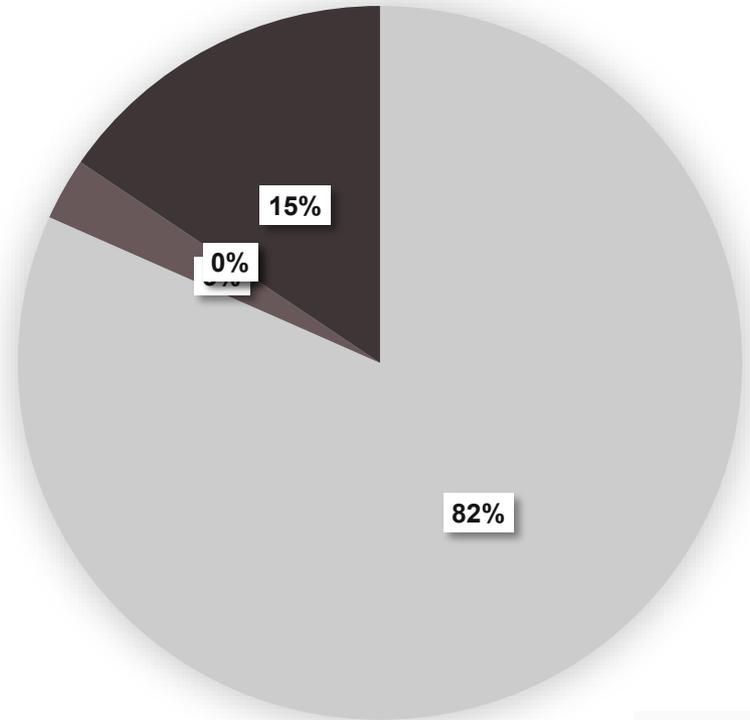
Ownership



Ownership



- OWNER
- BEN. OWNER
- TRUSTOR
- CLAIMANT
- N/A

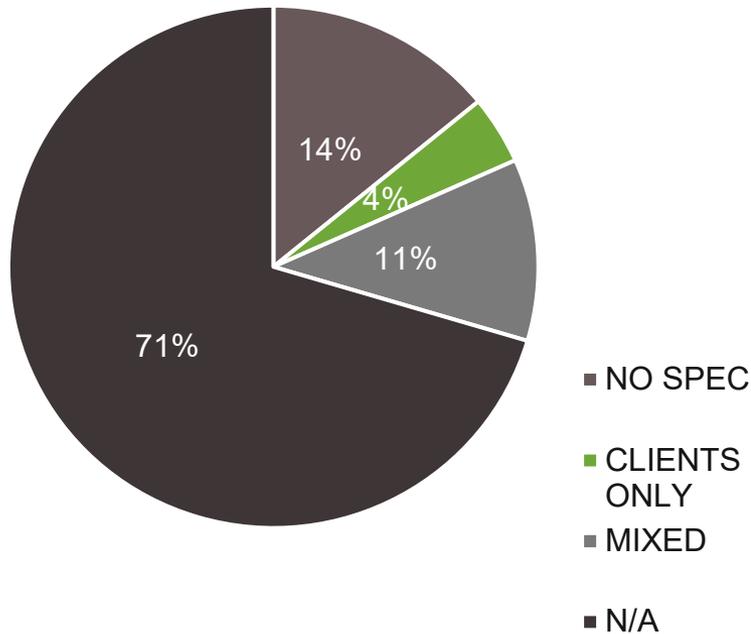


- OWNER
- BEN. OWNER
- TRUSTOR
- CLAIMANT
- N/A

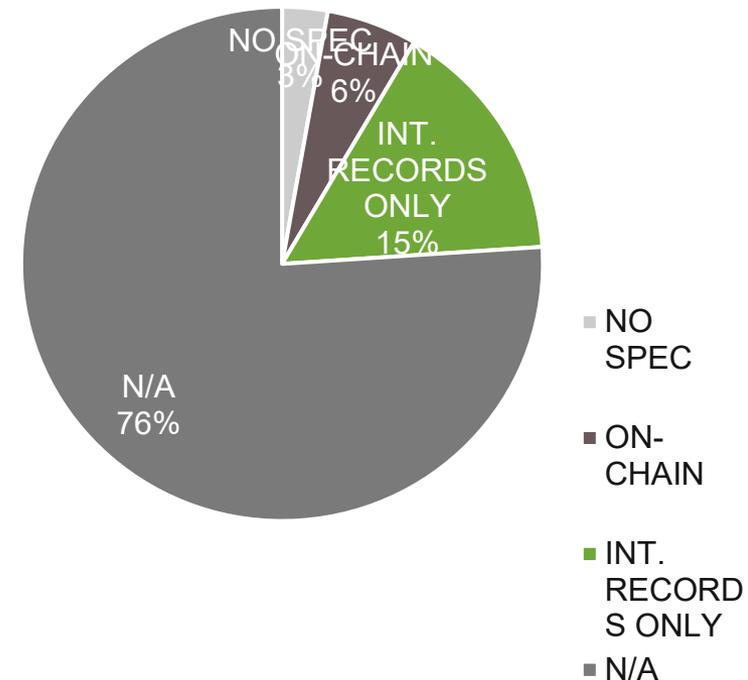
III. Preliminary Results: Omnibus VS Segregation



Omnibus Accounts



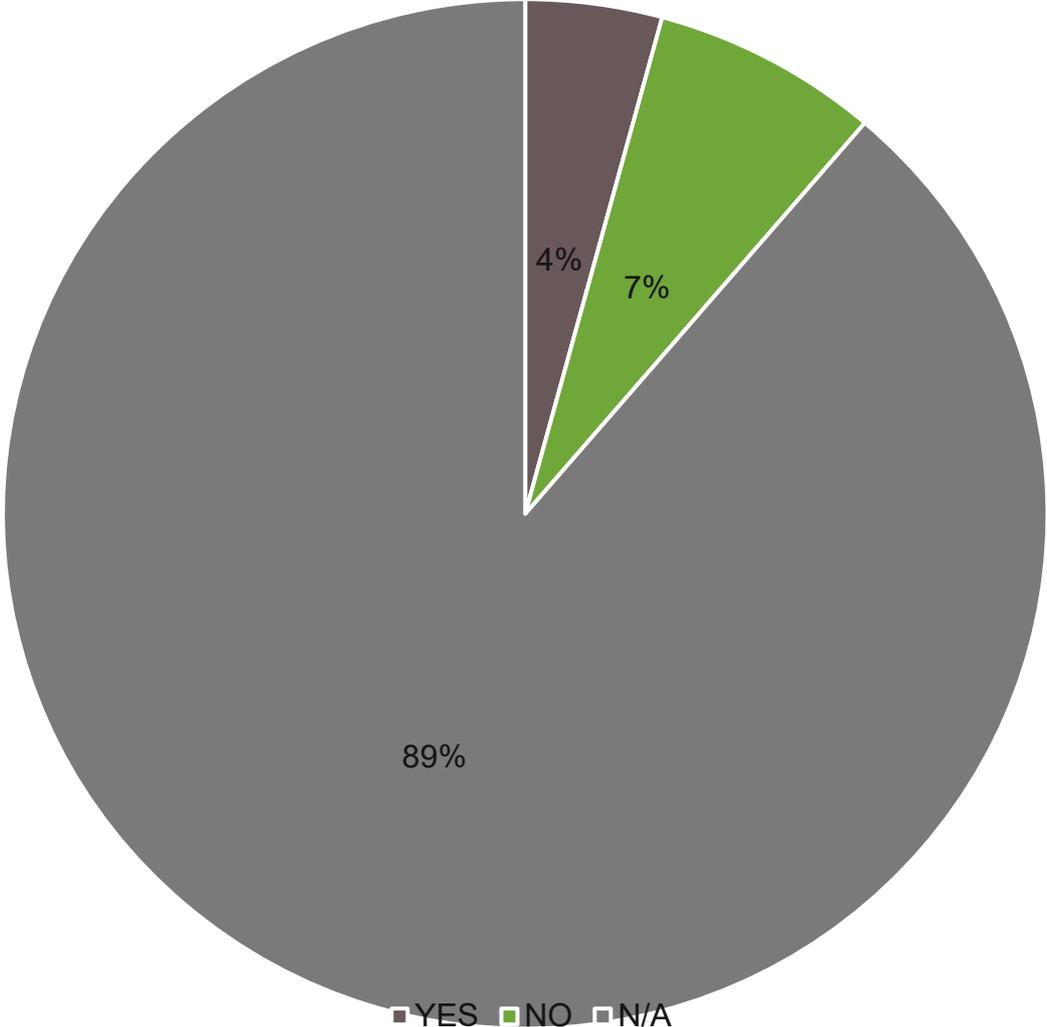
Segregated Accounts



III. Preliminary Results: Insolvency protection



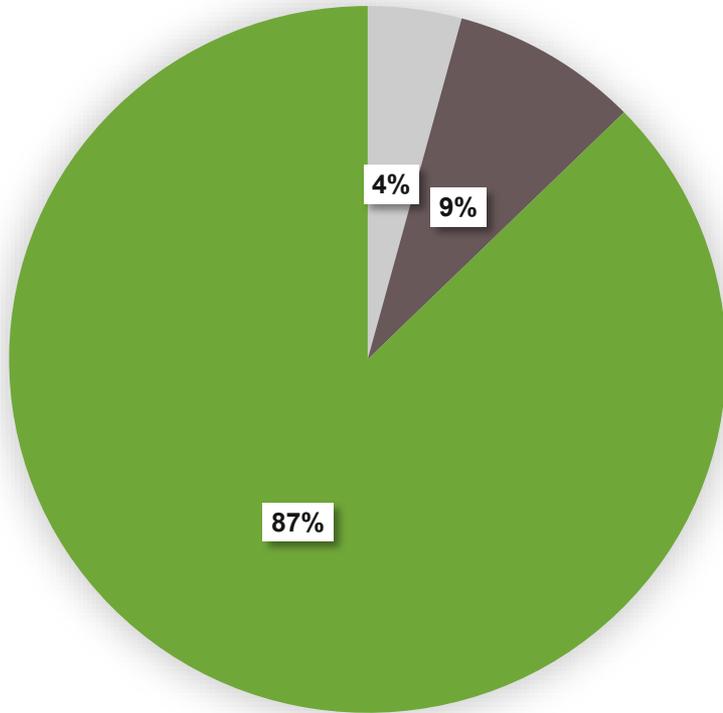
Insolvency protection



III. Preliminary Results: Right of reuse



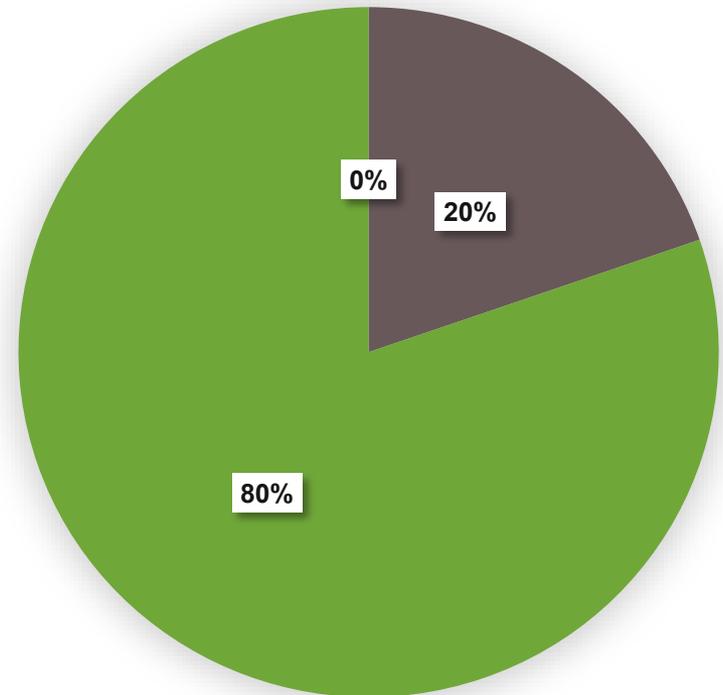
Reuse of clients' assets



- YES
- NO
- N/A



Reuse of clients' assets



- YES
- NO
- N/A

IV. Special Cases

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Special Cases

IV. Special Cases: Insolvency Protection

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Bitstamp

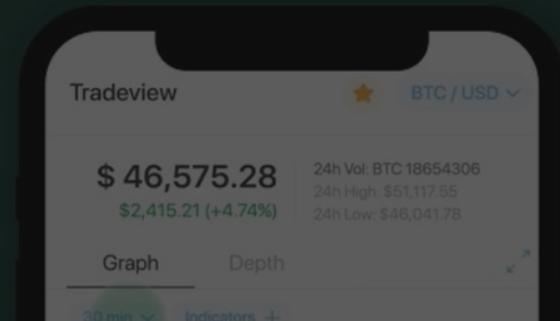
Rule #1: Absolute protection of customer assets

Since our inception we have lived by the mantra 'Your crypto is always yours'. All the funds you deposit to Bitstamp and the crypto you hold, down to the last token, are unequivocally yours. That means that your assets with us are always available to you.

exchange.

Bitstamp makes trading easy, fast & reliable. With live customer support, staking and bank-grade security & insurance. Trusted Crypto Exchange Since 2011.

Get started



Bitstamp

- Whilst Bitstamp uses reasonable care in the appointment of sub-custodians, **in the event of a third-party custodian becoming insolvent [...]**,
- you or we may **have only an unsecured claim against the sub-custodian**, and
- **Members' Digital Assets may be at risk** subject to any protections provided at law in the relevant jurisdiction.
- The same risks exist in case the sub-custodian is for any other reason not able to meet its obligations towards you or us.

IV. Special Cases: Liability exclusion for attributable events: Event 1: Unauthorized use of Client's Account



CEFFU

- *The Custodian assumes **no liability for any loss or damage arising from the use of your Account and/or Services***
- ***by you or any third party***
- ***with or without your authorization.***



TAURUS

- ***Taurus applies due care in verifying the identity of the Client [...]***
- ***takes customary measures to identify and prevent fraudulent activities. [...]***
- ***Taurus shall not be held responsible for the consequences [...] that it has failed to recognise despite exercising due diligence.***



- ***Liability for Unauthorized Transactions, Errors and Support: PayPal will protect you from unauthorized activity [...]***
- ***PayPal will cover you for the full amount of unauthorized purchase or sale activity.***

IV. Special Cases: Liability exclusion for attributable events: Event 2: System failure

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 Bitcoin
Suisse

- BTCS shall **not be liable for damages**, [...] if such damages: [...] occur due to circumstances,
- **both within and outside of BTCS' control**,
- that cause the **Services to become unavailable**;

System Error!

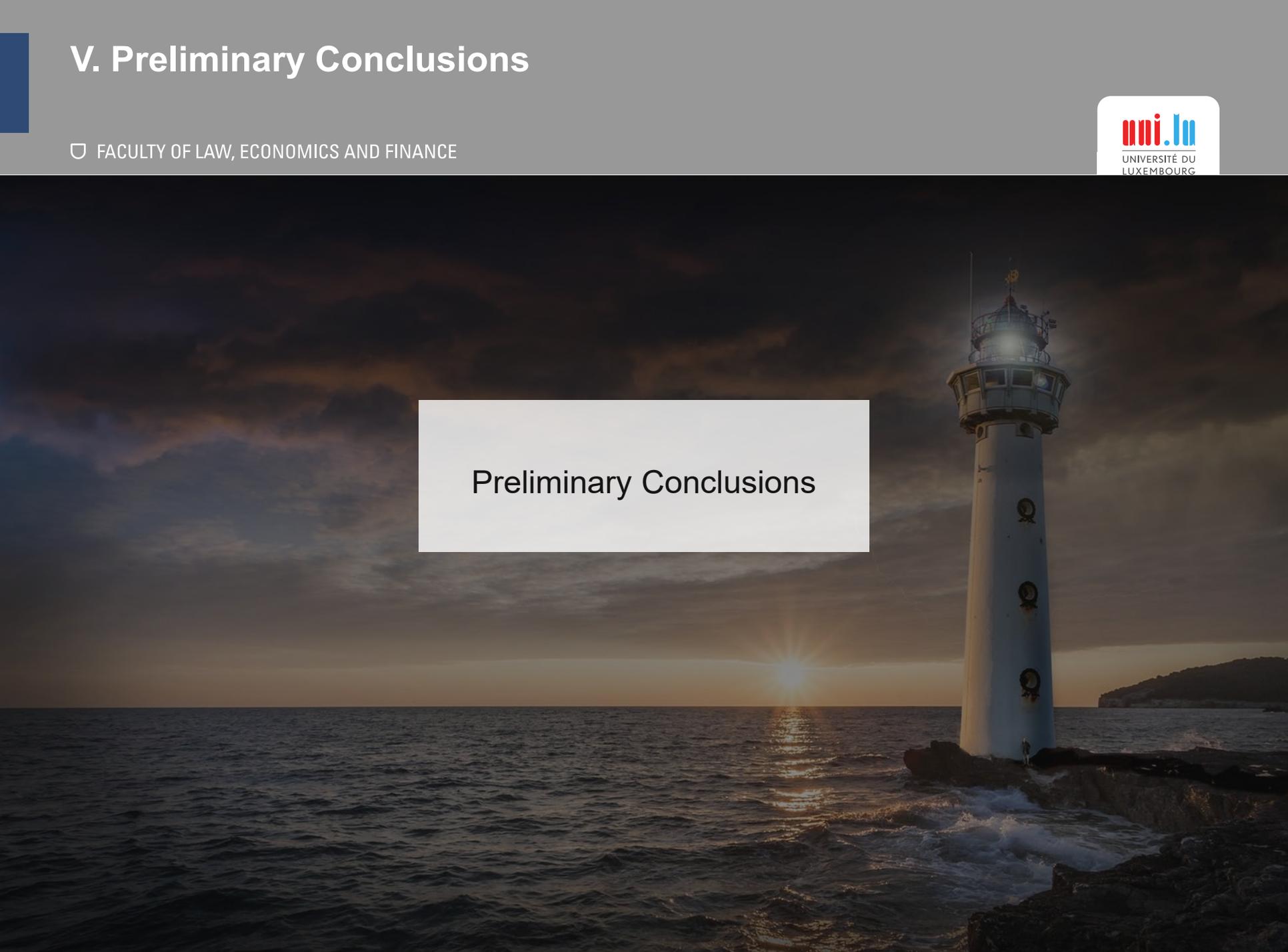


 GEMINI

- **Neither we nor any Gemini Service Provider can be held responsible for any [...] "System Failure"**
- (defined as a failure of any computer **hardware or software used by Gemini, a Gemini Service Provider**, or any telecommunications lines or devices **used by Gemini or a Gemini Service Provider**), [...].

V. Preliminary Conclusions

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Preliminary Conclusions

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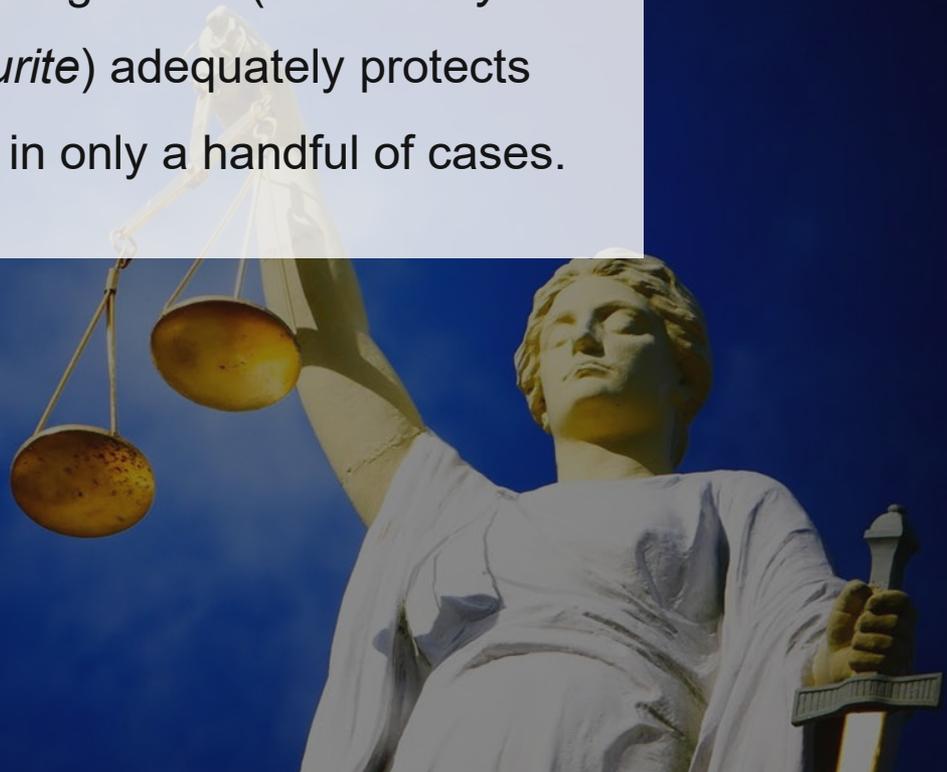
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Ambiguous use of definitions i.e.
terminology is prevalent.

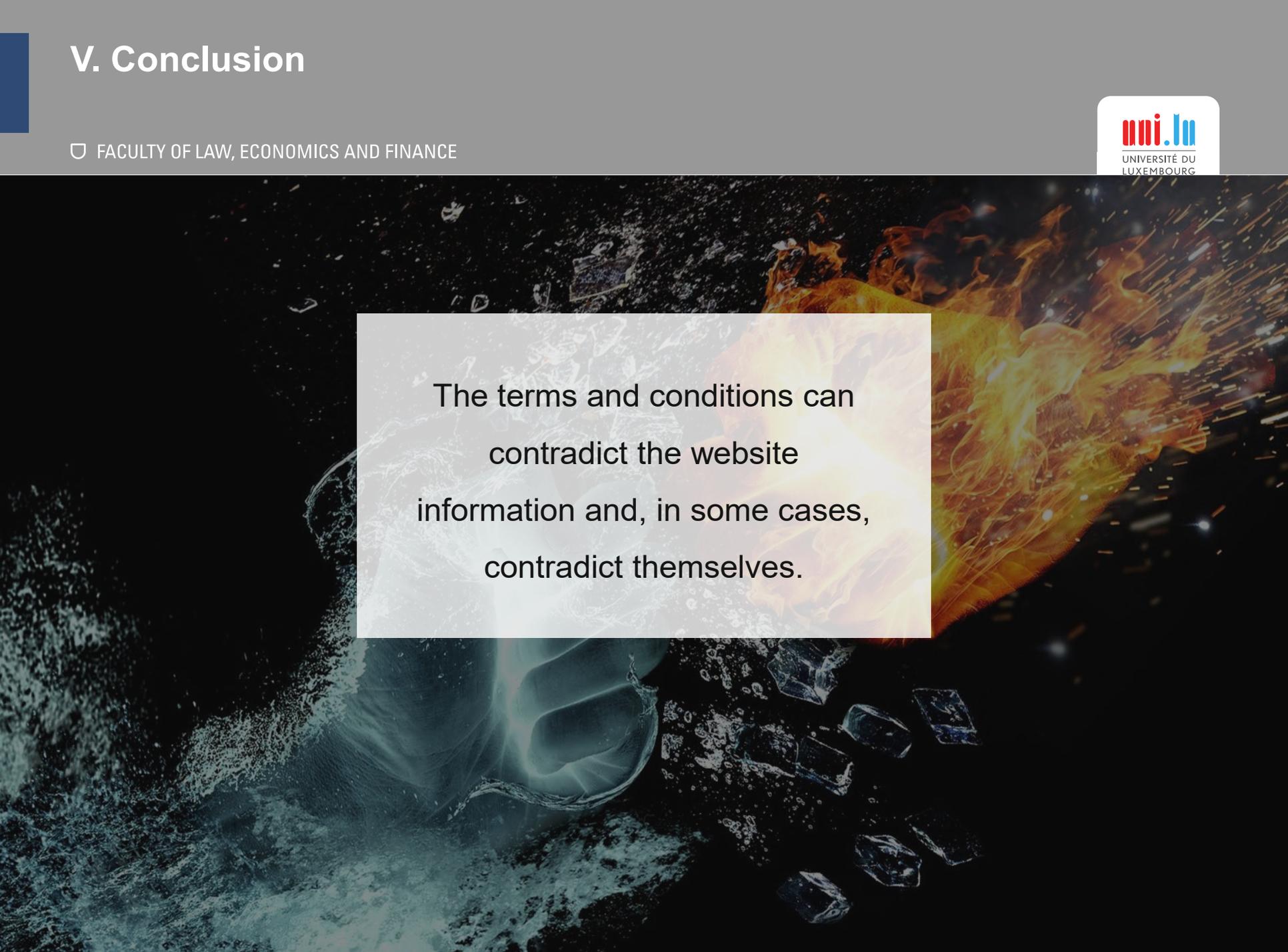
V. Preliminary Conclusions

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Self-regulation (*an industry favourite*) adequately protects clients in only a handful of cases.

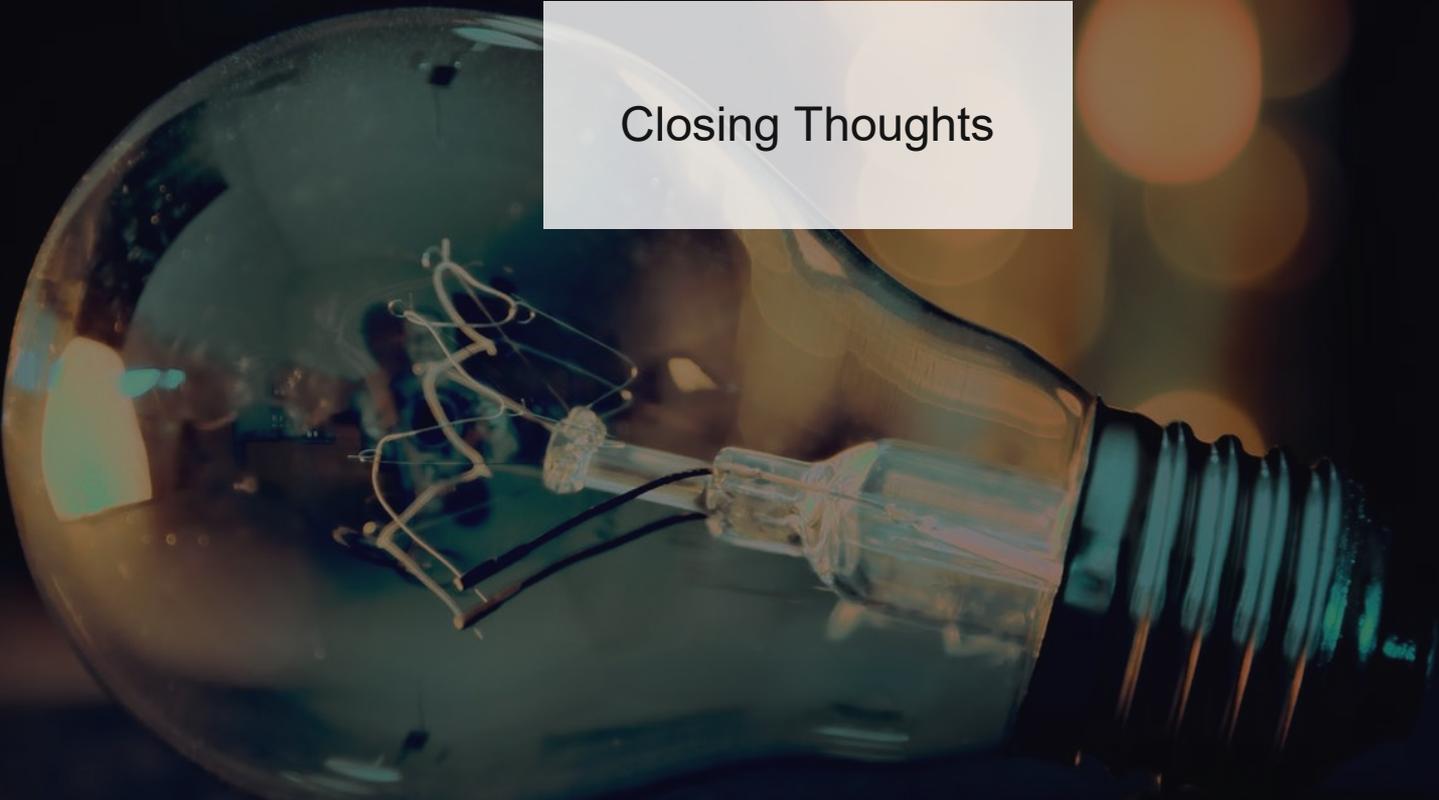
V. Conclusion



The terms and conditions can
contradict the website
information and, in some cases,
contradict themselves.

VI. Closing Thoughts

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Closing Thoughts

VI. Closing Thoughts

Self-regulation of crypto custody
appears to have failed.

We are facing ‘two-speed’ crypto
custodians: those protecting
client’s interests and those
significantly undermining them.

Financial regulation is crucial to
avoid race-to-the-bottom
approaches.

Can MiCA live up to this task?

Thank you!

Feel free to connect



Stay connected

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