DARTE SERIES

Rome

Initiated by Mariana de la Roche W. (BlackVogel) and Dr. Nina-Luisa Siedler (siedler legal), the DARTE Series is a high-level roundtable format designed to enhance legal clarity around digital assets, focusing on regulation, compliance, data protection, and market integrity.

The Rome DARTE edition took place on December 5th, 2025, in collaboration with the European Commission, UNIDROIT, and Bybit. The roundtable gathered legal scholars, regulators, and industry leaders to explore the evolving intersection between private law doctrines and digital asset infrastructure, in light of the recently published UNIDROIT Principles on Digital Assets and Private Law.

The agenda focused on three themes: (1) the key legal and operational challenges faced by the digital asset industry, presented by Georg Harer; (2) practical implementation of the "control" concept in digital asset transfers, discussed by Tomáš Kozárek; and (3) application of the UNIDROIT Principles on Digital Assets and Private Law to financial instruments, analyzed by Tecla Rodi. The session was opened with welcome remarks by Professor Ignacio Tirado (UNIDROIT Secretary-General) and concluded with a keynote address by Dr. Joachim Schwerin (European Commission).

We extend our sincere thanks to all speakers, participants, and institutional partners for their valuable contributions. The views presented in this report reflect the collective understanding of the participants and do not necessarily represent the official positions of individual attendees or rapporteurs.

Ignacio Tirado Keynote

The session opened with keynote remarks by Ignacio Tirado, Secretary-General of UNIDROIT, who emphasized the importance of ensuring that digital asset frameworks are grounded in legal certainty and anchored in trusted legal traditions. He reminded participants that records on a distributed ledger are not inherently legal rights, but must be connected to enforceable private law concepts to have real-world value. Highlighting the role of UNIDROIT's work on the Principles on Digital Assets and Private Law, he stressed that the regulation of crypto-assets must go hand in hand with clear private law definitions, particularly regarding control, custody, and good faith acquisition.

The keynote served as a call to anchor innovation in market infrastructure within the rule of law, ensuring protection, certainty, and interoperability across jurisdictions.

1. **Industry Challenges: Legal Certainty for CASPs and Private Law Fragmentation**

The first session of the Rome roundtable, presented by Georg Harer, Co-CEO of Bybit EU, explored the regulatory and civil law disconnects facing CASPs operating under MiCAR. While MiCAR establishes robust rules for custody, safekeeping, and operational conduct, it remains silent on core private law issues such as the legal nature of crypto-assets, their transferability, or enforceability.

These gaps create friction between compliance obligations and legal certainty, particularly when service providers operate across multiple Member States with divergent civil codes.

Participants emphasized that the absence of harmonized private law rules undermines MiCAR's intended legal clarity and cross-border effectiveness. While full unification of property law across Europe is politically unrealistic, there was strong support for a sector-specific harmonization instrument, akin to the EU Financial Collateral Directive, that could establish minimum standards for the recognition of ownership, transfer, and enforcement rights for crypto-assets.

The discussion drew on the experience of jurisdictions like Italy and Liechtenstein, which have begun to link digital asset frameworks with domestic securities and property law regimes. It also considered the role of soft law, with UNIDROIT's Principles on Digital Assets and Private Law cited as a functional template for building consensus and guiding legislative reform.

The roundtable featured three complementary approaches to addressing the legal uncertainty. First, the proposal for a dedicated EU directive was widely discussed. While many agreed on the need for a sector-specific instrument, some raised concerns that directives, unlike regulations, leave room for national variation, potentially reintroducing fragmentation. A minority of participants suggested that a regulation might better serve the goals of consistency and legal certainty across Member States. Others, however, flagged the limitations under the Treaty on the Functioning of the European Union (TFEU), particularly Article 345,

which reserves property law to national competence, and Article 114, which may not be sufficient on its own to justify harmonization. Some participants cited the CJEU's Essent judgment as a reminder that EU legislative efforts must remain within clearly defined legal bases.

Second, soft law solutions were highlighted as a valuable interim measure. The UNIDROIT Principles on Digital Assets and Private Law were seen as an appropriate tool to guide NCAs, legislators, and the private sector in interpreting and applying digital asset-related rules until formal EU legislation is adopted. Given the often lengthy and politically complex process of drafting hard law, soft law instruments offer flexibility and responsiveness in rapidly evolving technological contexts. Participants noted that a bottom-up approach, starting with shared definitions and best practices, may be more realistic than seeking full convergence at the outset.

Third, the concept of mutual recognition was introduced as a pragmatic alternative to harmonization. Rather than seeking to align national private law systems substantively, Member States could agree to recognize each other's legal characterizations of digital asset ownership, transfer, and enforcement rights. This approach would preserve national sovereignty while enabling cross-border legal operability, particularly for CASPs active across multiple jurisdictions. Participants noted that similar recognition mechanisms already exist in the treatment of e-money and financial instruments, offering a workable precedent for digital assets. Some further suggested that bilateral or multilateral agreements between Member States could help build legal bridges in the absence of binding EU law, and that such strategies could eventually be backed by a new treaty-based provision, akin to Article 118 TFEU on intellectual property rights, to support future legal harmonization of digital assets as intangible goods.

The group also debated key technical-legal questions: What constitutes ownership in a digital asset system? Where do rights start and end? If "control" is used as the functional equivalent of ownership, what happens to traditional legal notions like custody, enforcement, and title? Discussions highlighted that in many cases, civil law still relies on contractual agreement or user terms to define transfer rights, which is insufficient for robust legal certainty.

There was general consensus that "we can't build a regulatory regime on a legal fiction," and that allowing Member States to drift into incompatible interpretations would erode the effectiveness of MiCAR.

The roundtable concluded that legal certainty for digital assets, especially in the context of control, pledge, and custody, must be addressed not only through regulatory measures but also through private law instruments that ensure interoperability across borders. Whether pursued through hard law, soft guidance, or mutual recognition, the shared objective remains clear: to align MiCAR's supervisory framework with enforceable legal rights that underpin trust and functionality in crypto markets.

Calls to Action regarding Legal Certainty for Crypto-Assets
The key calls to action from the discussion are: • Promote an EU Directive or Regulation on the Legal Certainty of Crypto-Assets, drawing from the Financial Collateral Directive model to align MiCAR with minimum private law standards. • Encourage Member States to recognize the proprietary character of digital assets and the validity of control-based transfer mechanisms, using the UNIDROIT Principles on Digital Assets and Private Law as reference. • Support the inclusion of crypto-asset legal effects in broader EU private international law instruments (e.g., Rome I, Rome II) to resolve cross-border legal fragmentation.

2. Implementing the "Control" Concept in Civil Law Systems

The second topic, presented by Tomáš Kozárek, Head of the International Law Unit in the Ministry of Industry and Trade of the Czech Republic, examined the challenges of incorporating the concept of control, as developed in the UNIDROIT Principles on Digital Assets and Private Law, into civil law jurisdictions. Control, as distinct from ownership, is the functional equivalent to possession of movables. It is a factual concept intended to reflect the technical capacity to manage a digital asset via private keys or similar mechanisms. However, this concept lacks a clear analogue in traditional civil codes, where property rights are closely tied to tangible possession or legal registration.

Participants debated whether control can be analogized to possession for the purposes of legal effect, or whether a sui generis legal category is needed. Some jurisdictions, such as the Czech Republic, are exploring interim solutions that interpret control functionally while avoiding structural changes to their civil law systems.

Others noted that analogies may be insufficient, particularly when addressing questions of liability, transfer, and dispute resolution in decentralized environments.

The discussion also touched on the risks of relying solely on factual abilities (e.g., access to a private key) as a basis for legal recognition, especially in cases of shared or multi-signature control structures. Participants noted that while "custody" and "control" are distinct legal concepts,

they often overlap in practice: custodians typically hold not just legal responsibilities, but also technical control over digital assets. This raises questions about who holds entitlement versus who holds power, particularly in custodial arrangements under MiCAR, where CASPs may possess control without being the beneficial owner.

Several speakers emphasized the need for legal frameworks to distinguish between factual control and legal entitlement, especially in light of the growing complexity of custody models in digital finance. In this context, participants also discussed the importance of protecting good faith acquirers and third parties who act in reliance on on-chain data. Without legal presumptions or clear standards around what constitutes effective "control," these actors may be exposed to unjustified legal risks.

A central theme in the discussion was the need to reconcile the technological functionality of DLT systems with the existing legal traditions of civil law countries. Some experts argued that efforts to "force" the concept of control into pre-existing legal categories like possession or ownership may ultimately limit innovation or create inconsistencies in enforcement. Others advocated for a more cautious, incremental approach — for example, by interpreting control as a form of "factual power" that gains legal effect only when combined with intent or contractual context.

There was also discussion around the flexibility of soft law instruments such as the UNIDROIT Principles on Digital Assets and Private Law to support legal systems in adapting to these challenges. As formal legal reform can be slow and politically sensitive, participants viewed soft-law guidance as an essential bridge in the transition phase. Comparative legal experiences, including insights from jurisdictions like Kyrgyzstan and Liechtenstein, were cited as useful models for understanding how digital asset control could be integrated into private law.

Ultimately, there was consensus that implementing the concept of control will require legal innovation, but also careful calibration to avoid unintended consequences in other areas of private law, such as succession, security rights, and good faith acquisition. Participants noted that while national approaches may differ, the creation of a harmonized functional definition of control, even if implemented through soft law, would help reduce legal ambiguity, facilitate cross-border recognition, and support MiCAR's effective implementation.

Calls to Action regarding the "Control" Concept
The key calls to action from the discussion are: • Develop model provisions or interpretative guidance to support the functional recognition of control in civil law jurisdictions, aligned with the UNIDROIT Principles on Digital Assets and Private Law. • Encourage academic and legislative working groups to evaluate whether control should be incorporated as a standalone legal category or treated analogously to possession. • Facilitate comparative law research to document how control is being implemented or interpreted across jurisdictions and identify best practices for convergence. • Establish legal presumptions or safe harbors for good faith acquirers relying on blockchain-based indicators of control, especially in the absence of centralized registries, consistently with the UNIDROIT Principles on Digital Assets and Private Law.

3. Applying the DAPL Principles to Financial Instruments

The third topic, presented by Tecla Rodi, Policy and Regulatory Advisor at Italy's Ministero dell'Economia e delle Finanze, focused on how the UNIDROIT Principles on Digital Assets and Private Law can inform the treatment of financial instruments issued and transferred via DLT.

Using Italy's Fintech Decree as a case study, participants explored how DLT-based securities could leverage existing book-entry frameworks while adapting key concepts like bona fide acquisition to a decentralized environment.

The Italian approach illustrates how national legal systems can integrate native digital financial instruments into their private law using a combination of traditional rules and digital-specific adaptations. For example, while book-entry and DLT-based securities share many functional similarities, novel issues arise since digital assets are accessed and disposed of through means such as cryptographic keys. The Italian model adopts the concept of "control" from the UNIDROIT Principles on Digital Assets and Private Law over the means of

access to the financial instruments, that pertains specifically to the digital world, while mirroring traditional book-entry securities rules for the creation of liens and pledges, suggesting that hybrid approaches combining traditional and new digital-specific rules may be viable.

Participants noted that one of the innovations of the Italian Decree is the identification of a "manager of the distributed ledger" (*responsabile del registro*) with specific duties related to the integrity of the ledger and the enforceability of security rights. This figure helps ensure that the private law effects recognized in Italian law can be generated, serving as a legal and technical bridge between DLT systems and traditional securities frameworks.

Discussions also covered how the concept of "control" under the UNIDROIT Principles on Digital Assets and Private Law was used to define not only transferability but also enforceability of rights in rem, including the ability to create pledges over digital financial instruments. Participants considered the interplay between such innovations and MiFID II obligations, noting the need to clarify supervisory roles and ensure consistency with EU financial regulation.

The roundtable surfaced open questions about ledger-based registration systems, competing claims, and cross-border recognition of digital securities. For example, what happens when two different jurisdictions recognize two different ledgers as "official" for the same financial instrument? How can claims be prioritized in insolvency or enforcement scenarios involving both on-chain and off-chain claims? Participants agreed that further clarity is needed on how digital control and legal title interact, especially when digital ledgers function as de facto registries of entitlement.

There was also consensus that the UNIDROIT Principles on Digital Assets and Private Law offer a flexible but coherent foundation to address these challenges. Several speakers noted that the Principles, by addressing control, good faith acquisition, and third-party effectiveness, could support convergence even in jurisdictions with very different legal traditions. Italy's experience was presented as a promising model for gradual adoption and adaptation of the UNIDROIT Principles on Digital Assets and Private Law in financial markets.

Additionally, the group debated whether DLT-based financial instruments require a rethinking of settlement and clearing models under securities law, particularly when the ledger itself functions as the registrar. Participants emphasized the need for interoperability between DLT registries and central securities depositories (CSDs), and for mechanisms that allow courts and insolvency practitioners to reliably assess ownership and enforceability.

Calls to Action regarding Digital Financial Instruments and DLT

The key calls to action from the discussion are:

- Promote the adoption of the UNIDROIT Principles on Digital Assets and Private Law in national financial legislation, especially in areas involving acquisition of digital assets and collateral.
- Encourage Member States to expand existing book-entry frameworks to accommodate DLT-based securities without full legal overhaul.
- Develop legal guidance on the interaction between on-chain digital registries and off-chain enforcement tools, including in cases of insolvency or default.
- Clarify the legal responsibilities and functions of distributed ledger managers or registrars under national law, particularly in relation to evidence of title and compliance with MiFID II.

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