EU framework for crypto-assets

- innovation through legal certainty

European Economic and Social Committee

14 January 2021

DG FISMA

European Commission

Digital Finance Strategy

1 Tackle fragmentation in the Digital Single Market

2 An EU regulatory framework facilitating digital innovation

3 Create a European financial data space

4 Address new challenges and risks

Cross-cutting: create opportunities for and protect consumers

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Objectives ➡ Realisation

- Legal certainty

- Supporting innovation

- Consumer protection

- Market integrity

- Financial stability

- Mitigating risks to

monetary policy transmission

and to monetary sovereignty

Regulation for markets in crypto-assets (MiCA)

- Regulating crypto-asset service providers

- Covering issuers and crypto-assets <u>not</u> covered elsewhere under the EU financial services legislation

- Regulating so-called 'stablecoins'

Regulation on a pilot regime for DLT market infrastructures

- Regulation for market infrastructures based on distributed ledger technology

- Legislative instrument allowing for exemptions from EU law

- Gain evidence base about possible obstacles to the application of DLT

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MiCA

New regime for crypto assets not qualifying as financial instruments

MiCA & the "taxonomy" of crypto-assets

Crypto-asset	Asset-referenced tokens and e-money tokens (general and <u>significant*</u>)	Crypto-assets qualifying as financial instruments
- utility tokens	- asset-referenced tokens - e-money tokens (includes e-money)	Financial instruments (MiFiD)
'crypto-asset' means a digital representation of value or rights which may be transferred and stored electronically, using distributed ledger technology or similar technology	*'asset-referenced token' means a type of crypto-asset that purports to maintain a stable value by referring to the value of several fiat currencies that are legal tender, one or several commodities or one or several crypto-assets, or a combination of such assets* *'electronic money token' or 'e-money token' means a type of crypto-asset the main purpose of which is to be used as a means of exchange and that purports to maintain a stable value by referring to the value of a fiat currency that is legal tender*	*'crypto-assets that qualify as: (a) financial instruments as defined in Article 4(1), point (15), of Directive 2014/65/EU;*
• 'Catch-all' definition – in line with the FATF recommendations • Not attempting exhaustive list or a full taxonomy • Future-proof	**'Asset-referenced token'** A token referring to gold A token referring to several currencies A token referring to other crypto-assets	• Promote consistent application across EU (Commission interpretative communication) • DLT pilot
⟶ **covered by MiCA**	⟶ **covered by MiCA**	⟶ **<u>not</u> covered by MiCA**

MiCA: authorisation, regulation & supervision

Type	Authorisation	Regulation	Supervision
Crypto assets (CA)	No, but white paper	Information, general obligations	Ad hoc powers NCA
Asset-referenced tokens (ART)	Issuer White paper	Stricter requirements than CA, including own funds & reserve requirements	NCA
➜ *Significant*	*Same*	*+ higher own funds* *+ remuneration* *+ liquidity mgmt.* *+ Interoperability*	*EBA + college*
E-money token (EMT)	Issuer (credit/e-money institution) White paper	Stricter requirements than ART, including redemption at par (1:1)	NCA
➜ *Significant*	*Same*	*+ additional rules on reserves* *+ higher own funds* *+ orderly wind-down*	*NCA/EBA + college*
Service providers (CASPs)	Yes	Requirements on governance, own funds, etc	NCA College (services to ART/EMT)

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Crypto assets - ecosystem

E-money tokens

Asset-referenced tokens

Crypto assets

Crypto asset service providers
Custody, trading platform, exchange services, execution/placing of orders, reception and transmission of orders, advice

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Key policy issues

- "Stablecoins"

  - Dividing line ART – EMT?

- Proportionality

  - Requirements sufficiently account for different risk CA/ART/EMT?
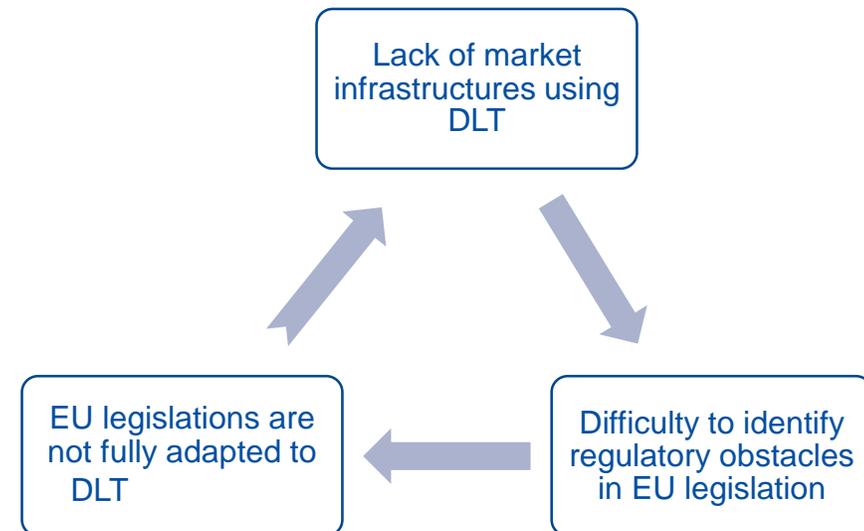
- Supervision

  - National or European?

DLT market infrastructures pilot regime

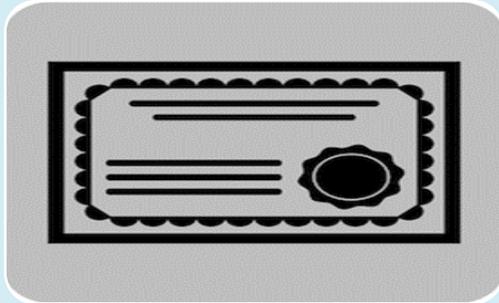Supporting security token issuance & trading in the EU

Objectives

Why

- Development of secondary markets for 'tokenised' financial instruments

- Promote the uptake of DLT in the trading and post-trading area

- Enable market participants and EU regulators to gain experience on new opportunities and issues raised by DLT

- Breaking the cycle, while ensuring financial stability, investor protection and market integrity:

Lack of market infrastructures using DLT

Difficulty to identify regulatory obstacles in EU legislation

EU legislations are not fully adapted to DLT

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Pilot regime attributes (Articles 3-9)

Shares
Issuer market cap < €200m

Bonds
Issuance size < €500m

Overall cap
Total value < €2.5bn

DLT MTF
MTF operated by market operator/investment firm; only admits DLT transferable securities

DLT SSS
SSS operated by a CSD; settles transactions in DLT transferable securities

Exemptions
CSDR (book-entry for MTF; outsourcing, participants, cash settlement and standard link/access for SSS)

New rules
Business plan/ documentation; DLT; transparency; cyber; safekeeping.

Permission
NCA; up to 6 years

Exemption
DLT MTF/SSS ➜ NCA

Coordination
ESMA

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Report and review (Art.10)

- ESMA shall produce an annual report on the experimentation

- After 5 years from the entry into application, ESMA shall produce a report on the experimentation

- On the basis of ESMA's report, the Commission presents a report to the Council and Parliament on whether the pilot regime shall be:

  - Extended for another period;

  - Extended to other types of financial instruments;

  - Made permanent with or without amendement;

  - Terminated;

  - Base for informing future reviews of underlying trade/post-trade legislation

Key policy issues

- Scope

  - Instruments

  - Thresholds

- Safeguards / level playing field / market structure

  - DLT MTF/CSDs

- Process

  - Role of ESMA

  - Medium to long-term prospects

Thank you!