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
Objectives

- Legal certainty
- Supporting innovation
- Consumer protection
- Market integrity
- Financial stability
- Mitigating risks to monetary policy transmission and to monetary sovereignty

Realisation

**Regulation for markets in crypto-assets (MiCA)**

- Regulating crypto-asset service providers
- Covering issuers and crypto-assets not 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
MiCA

New regime for crypto assets not qualifying as financial instruments
<table>
<thead>
<tr>
<th>Crypto-asset</th>
<th>Asset-referenced tokens and e-money tokens (general and significant*)</th>
<th>Crypto-assets qualifying as financial instruments</th>
</tr>
</thead>
<tbody>
<tr>
<td>- utility tokens</td>
<td>- asset-referenced tokens - e-money tokens (includes e-money)</td>
<td>Financial instruments (MiFiD)</td>
</tr>
<tr>
<td>‘crypto-asset’ means a digital representation of value or rights which may be transferred and stored electronically, using distributed ledger technology or similar technology</td>
<td>‘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</td>
<td>‘crypto-assets that qualify as: (a) financial instruments as defined in Article 4(1), point (15), of Directive 2014/65/EU;</td>
</tr>
<tr>
<td>• ‘Catch-all’ definition – in line with the FATF recommendations • Not attempting exhaustive list or a full taxonomy • Future-proof</td>
<td>‘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</td>
<td></td>
</tr>
<tr>
<td>covered by MiCA</td>
<td>covered by MiCA</td>
<td>not covered by MiCA</td>
</tr>
<tr>
<td>‘Asset-referenced token’</td>
<td>A token referring to gold A token referring to several currencies A token referring to other crypto-assets</td>
<td>• Promote consistent application across EU (Commission interpretative communication) • DLT pilot</td>
</tr>
</tbody>
</table>
## MiCA: authorisation, regulation & supervision

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

Crypto assets

Asset-referenced tokens

E-money tokens

Crypto asset service providers

Custody, trading platform, exchange services, execution/placing of orders, reception and transmission of orders, advice
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

  EU legislations are not fully adapted to DLT

  Difficulty to identify regulatory obstacles in EU legislation
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
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 amendment;
  - 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