Crypto-assets: Classification & applicability of EU law

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Overview

• Market trends

• State of play: Regulation

• Next steps
Crypto-assets

MARKET TRENDS
What are we talking about?

It used to be all about Bitcoin but now...

Source: Cambridge Centre for Alternative Finance (May 2019)
A basic taxonomy

... there are thousands of different types of crypto-assets used in different contexts.
Market trends – Exchange tokens

Bitcoin continues to dominate but other virtual currencies are emerging.

Market trends – The emergence of stable coins

And now we have ‘stable coins’ too – backed by ‘real world’ assets (non-native tokens).
ICOs have emerged as a way of capital raising but appear to be losing their shine...

Source: CoinSchedule
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Market trends – STOs

STOs are on the rise.

Source: Inwara
Observed crypto-asset activities in the EU

Relatively limited and do not appear to give rise to implications for financial stability.

Under EU law, institutions are not prohibited from carrying out crypto-asset activities but:

- institutions have been discouraged from carrying out activities involving virtual currencies (ESA warnings);
- activities may be banned under national law.

Financial institutions’ activities

- Examples: owning crypto-assets directly, clearing or trading derivatives with crypto-asset underlyings, piloting DLT-based solutions including a crypto-asset component.

Other firms’ activities

- Examples: custody/wallet and exchange services, ICO-related services.
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STATE OF PLAY: REGULATION
Legal status under current EU financial services law

January 2019 reports

Always case-by-case analysis

- Financial instruments
- Electronic money
- No status (unregulated)

Scope of AML/CFT requirements under current EU law

Even if crypto-asset activities do not constitute regulated financial services under current EU law, AML/CFT obligations will apply.

Traditional obliged entities e.g. financial institutions, professional services firms

Virtual currency:
- Custodian wallet providers
- Exchanges (fiat/VC)

Virtual Asset Services Providers (FATF October 2018 recommendations)
National initiatives

In the absence of EU-level measures national initiatives are emerging e.g.

- France
- Germany
- Malta
- UK

And other financial centres beyond the EU are also responding e.g.

- China
- Japan
- Switzerland
- US
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NEXT STEPS
ESA advice for the European Commission

To assess, on a holistic basis, whether EU-level action is appropriate and feasible at this stage.

- Should take into account:
  - issues within and beyond the financial sector;
  - the environmental impact of some crypto-asset activity;
  - the latest recommendations of the FATF and other international standard-setting bodies.

To take steps, where possible, to promote consistency in the accounting treatment of crypto-assets.
Work of the international standard-setting bodies

**FSB**
- Coordination of international initiatives
- Monitoring global trends.

**BCBS**
- Monitoring banks’ crypto-asset activities.
- Considering prudential treatment options for banks’ exposures to crypto-assets (consultation likely in Q3 2019).

**FATF**
- Ongoing work re the implementation of the October 2018 recommendations (new guidance expected very soon).
- Expanded scope to form part of assessments from Q3/Q4 this year.

**CPMI and IOSCO**
- Outreach to central banks re CBDCs.
- Monitoring of use of tokens for payment-related purposes.
- Consultation on crypto-asset trading platforms.
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ANNEX: EBA FINTECH WORK 2019/2020
EBA work programme 2019

Understanding opportunities and risks arising from financial innovations is one of the five strategic priorities for the EBA in 2019/20.
EBA immediate actions on crypto-assets in 2019

**Monitoring**
- Development of a template to assist competent authorities in monitoring institutions’ crypto-asset activities (Q3 2019).
- Assessment of institutions’ consumer-facing disclosure practices for crypto-asset products and services (Q4 2019).
- EU-level stock take of institutions’ crypto-asset activities (Q4 2019).
- Horizon scan: financial innovations and the regulatory perimeter (ongoing).

**Prudential treatment**
- Engagement in BCBS work on prudential treatment options for banks’ exposures to crypto-assets, reporting to the EC on conclusion (Q4 2019).
- Review of the need for guidance to support a common application of current prudential rules (ongoing).

**AML/CFT**
- Engagement in ongoing FATF work.
- Monitoring of risks (ongoing) and advice for the EC where appropriate.