



Latest Policy Developments for DLT



International Association for
Trusted Blockchain Applications



Newsletter No. 10: 03/09/2021 - 17/09/2021

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Prepared exclusively for INATBA Members.

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Highlights: INATBA Policy Developments

This week, a number of INATBA Members and INATBA's Executive Director will be speaking at [European Blockchain Week: Blockchain and AI for the European Green Deal](#). Members of the Governance, Climate Action, Social Impact, Privacy, Education and Finance Working Groups as well as the AAB will be speaking on panels ranging from blockchain for SDGs to Blockchain and AI for the Circular Economy. For more information and for details on how to attend the hybrid event, please visit the [EBCW website](#).

The Identity Working Group's policy position for the updated European Commission's eIDAS regulation is in its final stages. A finalised response will be published on the INATBA website and shared with regulatory stakeholders within the next weeks. Keep an eye on the [INATBA website](#) for details.

Highlights: EU and US Policy Developments

This is INATBA's bi-weekly newsletter covering policy developments which affect Distributed Ledger Technology (DLT) and its applications in the EU And US. It covers

the period from the 3rd September to the 17th September 2021. The legislative developments have significantly ramped up during the last weeks, with Brussels returning to its usual pace. Commission President Ursula von der Leyen's State of the Union Address, which took place on 15th September, did not include any mention to digital finance or the current files. However, the Bank for International Settlements (BIS) has shown interests in the role of Central bank Digital Currencies (CBDCs) lately, announcing tests for their use in international settlements with selected jurisdictions. Finally, the second half of Slovenian Presidency of the Council has started, marked by the deadlock on the negotiations of the digital finance package.

The US Senate is back in session and the House of Representatives is set to return on September 20- setting up the House to vote on the Senate's bipartisan infrastructure bill by September 27. The House Ways and Means Committee has also added a crypto provision to budget reconciliation legislation through a proposal which would raise tax revenue through updating constructive and wash sale regulations around digital currencies. Congress's actions come as the Securities and Exchange Commission (SEC) Chair Gary Gensler continues to pay closer attention to the cryptocurrency industry, regulating through enforcement and arguing that crypto is largely under the SEC's jurisdiction.



EU Policy Developments

CBDC: Impact of introduction on banks.

On 10 September, the Head of the BIS, Mr Benoît Coeuré, said in a [speech](#) that the chance that banks will be negatively impacted by the introduction of a CBDC should not overly influence the pace of their introduction. He added that the time has come for central banks to progress on state digital cash as stablecoins and other digital token providers are already disrupting the payments sector. A primary aspect of his message to banks was that that, despite the concern's banks have voiced about CBDC, new forms of payments will end up disrupting the traditional business models of lenders. He then urged banks to roll out CBDCs as quickly as possible. Currently, central banks are still exploring the idea and have not committed to a CBDC yet.

CBDC: Test by the BIS on international settlements.

On 2 September, The BIS [announced](#) that it will test the use of CBDCs for international settlements with Singapore, South Africa, Australia, and Malaysia. The experiment seeks to develop prototypes that will let financial institutions transact directly with each other across borders in digital currencies used by participating central banks. The project will focus initially on the development of a common platform for multi-CBDC settlement that fulfils the needs and requirements of central banks and financial institutions. This work will explore the international dimension of CBDCs design and support the efforts of the G20 roadmap for enhancing cross-border payments. Its results, expected to be published in early 2022, will inform the development of future platforms for global and regional settlements. Results of the experiment are expected to be published early 2022.

Blockchain: Briefing to participants in ECOFIN.

On 10 and 11 September an informal meeting of the Economic and Financial Affairs Council (ECOFIN) took place in Brdo, Slovenia. A non-public working document covering the use of blockchain for a Digital Europe was circulated, highlighting the focus of the Slovenian Presidency and what direction we can expect it to take over the next 4 months on this issue.

The briefing provided several real-life examples on the use of blockchain, namely the creation of fully decentralised banks and financial institutions. The non-public document questions the possibility of a software obtaining relevant licenses such as PSD2 or banking. Additionally, the document touches upon the security of the system, highlighting private blockchain-based technology solutions for the development of Central Bank Digital Currencies (CBDC). Finally, the briefing stresses

the possibilities of blockchain regarding the tokenization of assets, allowing for greater liquidity of traditionally illiquid assets such as real estate.

Data Governance Act: Slovenia closer to finalisation.

The Data Governance Act, meant to encourage countries and companies to share data with each other, is soon moving on to trilogues. EU countries discussed the latest compromise text on September 14, reaching the ground for an agreement – only a few countries asked for minor changes on data intermediaries and international data transfers. Organizations reusing European industrial data and wanting to transfer them to a non-EU country will have to explicitly seek consent from the company that produced the data and inform it of the “intention, purpose, and the appropriate safeguards” of the transfer. COREPER I will deal with the text on October 1st. Parliament had reached a common position in July.

Digital Expenditure: Proposed increase for 2030.

On 15 September, the Commission proposed a [plan](#) to monitor how EU countries move forward on the bloc’s digital targets for 2030. The “Path to the Digital Decade” policy program sets up new mechanisms to monitor Europe’s digital progress and facilitate investment into essential sectors such as 5G, semiconductors and cloud. EU governments will be encouraged to work together on multi-country projects and will be responsible for devising the projects. The projects could involve a combination of state and private funds.

Under the draft legislation, a European Digital Infrastructure Consortium will help speed up multi-country projects. Countries come up with their own projects and the funding commitments, and they decide which partners to work with. In addition, the draft will establish a “cooperation and coordination mechanism” to identify nations’ digital goals and ensure they are being met. Each year, the Commission will submit a report.

Data Cooperation: G7 aims at increasing the sharing of data under the OCDE.

During meetings on 7 and 8 September, Data protection and privacy authorities from G7 countries agreed to strengthen their collaboration on the regulation of digital markets. The officials said that the Organization for Economic Cooperation and Development's (OECD) work on government access to personal data held by the private sector is a “key opportunity” to provide principles to data free flow with trust.

EIDAS: Council begins discussions.

This week, the Working Party on Telecommunication began discussions on the EIDAS proposal. Sources suggest that countries are still trying to understand the technical proposal and draft their position, with representatives from the Commission present to answer questions. No key developments have happened so far, and no negotiations are taking place as of yet. The Next discussion on the file will be on 28 September. The Slovenian Presidency is expected to present its first compromise proposal around the end of October.

AML: Slovenian priorities.

The Slovenian presidency has indicated that they aim complete an agreement on the Transfer of Funds Regulation element of the Commission's Anti Money Laundering (AML Package) by the end of their Presidency in December 2021. The updated Transfer of Funds Regulation increases the scope of obliged entities to ensure most entry points into the financial system are covered, notably for Crypto-asset services providers (CASPS). Additional requirements would also apply for payment services providers regarding the transfer of funds.

For the other files in the AML package, the Presidency only wants to present a progress report as the high political salience of these renders the possibility of an agreement before the January 2022 French presidency very unlikely. A Council Working Group meeting is scheduled on 28-September to discuss Transfer of Funds Regulation.

Looking Ahead

21 September 2021	• Financial Services Attachés
22 September 2021	• Coreper II
24 September 2021	• Financial Services Attachés
28 September 2021	• Financial Services Counsellors
29 September 2021	• Coreper II
01 October 2021	• Coreper II



US Policy Developments

Congress.

On September 14, the Senate Banking Committee held a hearing, “Oversight of the U.S. Securities and Exchange Commission”, marking SEC Chair Gary Gensler’s first appearance in front of the Senate since his confirmation. The hearing largely focused on the topic of crypto and Chairman Gensler throughout the hearing asked for more oversight on crypto and more resources to regulate the industry. For the most part, Republican Senators supported less regulation on the industry and Democrats called for more regulation and oversight. Chairman Gensler and Democratic members common criticism of crypto was the lack of investor protection. On the other hand, most Republican members praised the industry and called for more innovation.

Frequent crypto-skeptic Sen. Elizabeth Warren (D-MA) was the harshest critic of the industry. Sens. Mark Warner (D-VA) and Steve Daines (R-MT) voiced support for the industry, after only recently indicating interest in the industry. More established crypto-allies Sens. Pat Toomey (R-PA) and Cynthia Lummis (R-WY) were friendly as usual towards the industry. While opposition of the majority parties’ regulators are common by the minority party, Gensler’s recent comments and ramping up of enforcements have led Republican Senators to be a more vocal critic on him.

One of the more interesting lines of questions surrounded whether crypto is a security or commodity. Chairman Gensler argued most crypto assets are securities and not commodities. Gensler also argued that stablecoins “may well be securities.” Sen. Toomey pushed back on this arguing that some crypto assets were commodities and called for the SEC to better clarify when crypto crosses the line to being a security.

In the other chamber, House Democrats on the Ways and Means Committee will be marking up the budget reconciliation that has included the crypto tax wash rule. This last-minute addition would impose “wash sale” rules on commodities, currencies and digital assets and would raise an estimated \$16.8 billion over a decade. A wash sale is a sale of a security at a loss and repurchase of the same or substantially identical security shortly before or after. Losses from such sales are not deductible in most cases under the Internal Revenue Code in the United States. As a result, Bitcoin, Ethereum, dogecoin and other crypto would be subject to the anti-abuse rules, just like stocks, bonds and other securities. Since the rule is being viewed as closing a tax loophole and raising revenue, it is likely to pass.

The House returns to DC next week and will be focused on the infrastructure bill, budget reconciliation, avoiding a government shutdown, and Afghanistan. The



infrastructure bill with the original crypto provision is set for a vote unamended on September 27.

Treasury.

After weeks of deliberations, the Treasury Department and other federal agencies are nearing a decision on whether to launch an examination by the Financial Stability Oversight Council (FSOC) if stablecoins threaten financial stability. FSOC is led by Treasury Secretary Janet Yellen and has the power to deem companies or activities a systemic threat to the financial system -- a label that typically sets off tough rules and aggressive monitoring by regulators. The President's Working Group plans to issue stablecoin recommendations by December, and a consensus is building among regulators involved that an FSOC review is warranted. The group includes Treasury Secretary Janet Yellen, Federal Reserve Chairman Jay Powell and SEC Chair Gary Gensler. This designation for stablecoins would be impactful for the industry since they are considered crucial to the crypto market because traders widely use them to buy Bitcoin and other virtual currencies.

The Treasury Department and Internal Revenue Service (IRS) have reiterated their intention to tax issue guidance on cryptocurrencies. The agencies released their Priority Guidance Plan for the 2021-2022 fiscal year on September 9 and designing brokerage rules for crypto still made the list. The Tax Administration portion of the document details: "Regulations regarding information reporting on virtual currency under §6045," as one such priority.

Securities and Exchange Commission (SEC).

The SEC has continued to ramp up enforcement on crypto firms, mostly recently issuing a Wells Notice against Coinbase. This notice acts as a type of final warning to the company that the SEC intends to commence legal action against it. The SEC has concern with Coinbase's forthcoming crypto lending program, known as Lend. The SEC said it is an unregistered security offering and meets the Howey criteria. While insiders have said the SEC typically doesn't issue Wells Notices unless they are confident, they can win, it is unusual for the SEC to issue a conditional Wells Notice - threatening to sue - over a product that has not been launched.

Following previous comments from SEC Chair Gary Gensler that decentralized finance (DeFi) platforms and the parties behind them should become a legislative priority, the SEC announced it is conducting a probe into Uniswap Labs and other DeFi platforms. It's unclear whether these investigations are still primarily for information-gathering purposes or whether there will be enforcement actions coming. How the SEC approaches DeFi might determine how well DeFi platforms survive in the coming years, but details on the latest actions are sparse.



The Federal Reserve (The Fed).

The Fed continues to be largely silent on details surrounding the anticipated Fed-MIT report on crypto. The agency is also dealing with the administration's decision whether to renominate Chair Jay Powell. to another term. If he is not renominated a top other contender is Fed Governor Lael Brainard, who has been an outspoken critic of private crypto and advocate for a central bank digital currency.

Commodity Futures Trading Commission (CFTC).

After months without a head of the agency, President Biden announced he will nominate CFTC Commissioner Rostin Behnam to serve as the new CFTC Chair. The CFTC oversees commodities and is seen as one of the main regulators of crypto. For two other CFTC Commissioner seats, Biden will nominate Kristin Johnson, a professor of Law at Emory School of Law, and Christy Goldsmith Romero, the Special Inspector General for the Troubled Asset Relief Program. Ms. Romero is experienced in the crypto space, having taught securities and cryptocurrency regulation courses at Georgetown University Law Center and the University of Virginia Law School.

Currently the CFTC is reduced to just two commissioners: Acting Chairman Rostin Behnam (pro- crypto regulation) and Commissioner Dawn Stump (pro-crypto). The CFTC can seat up to five commissioners (with one acting as the chair) at a time.

Office of the Comptroller of the Currency (OCC).

During a speech at the Exchequer Club on September 14, Acting OCC Comptroller Michael Hsu voiced skepticism about crypto and pointed to the need on regulatory coordination. On crypto he framed it in reference to past nonbank risks (such as AIG) that cause risks and harm to the economy and banking sector and needed greater regulation. He said the lesson from that is regulators need to be coordinated in their formation of regulation particularly of the nonbank space. He stressed the importance of inter-agency cooperation on crypto and pointed to the President's Working Group (PWG) upcoming report on stablecoin. He said he hopes PWG can coordinate on definitions and options for the crypto space.

State Updates (New York).

New York authorities won a court order on September 13 to shut down a tiny cryptocurrency trading platform Coinseed. The New York Attorney General's office accused Coinseed of illegally selling securities and improperly acting as a broker-dealer before sinking all its investors' funds into Dogecoin. The New York AG sued Coinseed in February, alleging violations of New York's powerful Martin Act. The Martin Act grants the New York attorney general the power to investigate any public company for financial fraud if it trades securities in the state.



Looking Ahead

21 September 2021	<ul style="list-style-type: none">• House Financial Services Committee Task Force on Financial Technology will host a hearing entitled, “Preserving the Right of Consumers to Access Personal Financial Data”
September 2021 (expected)	<ul style="list-style-type: none">• MIT and Fed research on potential US digital dollar



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