



# Latest Policy Developments for DLT



International Association for  
Trusted Blockchain Applications



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*Prepared exclusively for INATBA Members.*

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## *Highlights: INATBA Policy Developments*

INATBA is hosting the second session of its MiCA Goes Global series, MiCA Goes Global: USA, with the Blockchain Association on 12 October. INATBA’s MiCA Goes Global series intends to spotlight the current status of blockchain regulation in key geographies worldwide with a focus on how the European Commission’s Digital Finance Package might impact the current state of play. The event will feature high-level speakers from the US and EU public and private sectors, including Bao Nguyen, former principal deputy chief counsel at the Office of the Comptroller of the Currency (OCC). [Register now.](#)

INATBA Working Groups are working on a variety of policy documents following key themes in the blockchain ecosystem. Keep an eye on your email and Slack for updates related to digital identity, education and DeFi.

## *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 17<sup>th</sup> September to the 1<sup>st</sup> October 2021. Last week, the trilogue negotiations between the European Commission (Commission), the Council of the European Union (Council) and the European Parliament (EP) on the final text of the Distributed Ledger Technology Pilot Regime officially begun. On the international stage, the Bank for International Settlements (BIS), along with several other central banks, successfully concluded its experiment on central bank digital currency (CBDC), stating that blockchain technology is the most efficient option for the architecture of a CBDC.

Washington DC continues to be dominated by talks about the infrastructure bill and budget reconciliation. October is gearing up to be a busy month for the crypto industry from Securities and Exchange Commission (SEC) Chair Gary Gensler efforts to increase jurisdiction on crypto to the President's Working Group (PWG) report on stablecoins and more. Congressional hearings the past two weeks have largely covered non-crypto topics, but that is likely to change in October and November as more regulators comment on the industry and will want to respond to the Fed-MIT and PWG reports. Federal Reserve (Fed) Chair Jerome "Jay" Powell reiterated that Congress should take the lead on a CBDC and let pass another deadline for the agency's report on the topic. Lastly, an increased number of Congressional offices are working on topics across the crypto space and are voicing their opinions. Legislation and comments will continue to come from both sides of the aisle in regard to crypto and some may even be bipartisan.



# EU Policy Developments

## DLT Pilot Regime: Beginning of Trilogues

On 28 September, the Council of the European Union [published](#) the so-called three-column table. It is important because it has the respective mandates of the three co-legislators on the Pilot Regime proposal ahead of the trilogues started on 29 September 2021. Overall, there does not seem to be, at this stage, key divergences between the mandates of the Parliament and the Council on scope. Although they do hold diverging views on (I) certain caps and thresholds on securities traded on DLT market infrastructures and (II) feedback periods for ESMA to give its opinion on applications to operate DLT market infrastructures and exemptions. The now starting trilogue negotiations are expected to be swift, since the positions of the Council and the Parliament don't differ in the most contentious points from the original proposal.

## CBDC: BIS experiment on central bank digital currencies.

On 30 September, the Bank for International Settlements (BIS) [published](#) the findings of its CBDC trials for general purpose developed along the Bank of Canada, Bank of England, Bank of Japan, European Central Bank, Federal Reserve, Sveriges Riksbank and Swiss National Bank. The findings are divided into three reports, (I) [system designed and interoperability](#), (II) [user needs and adoption](#) and (III) [financial stability implications](#). The main findings of the BIS are that all CBDC systems will need balanced involvement of both public and private sectors to deliver the desired policy outcomes. On user needs and adoption, the report stresses that CBDC adoption will be driven by its future usefulness to users and acceptance by merchants. The reports add that all strategies for CBDC adoption would need to be tailored to the diverse economic structures and payment landscapes in use in individual jurisdictions. Finally, the BIS points out to the need of carefully design and implement CBDC's to avoid systemic risks and additional risks to the economy, notably through the development and implementation of integrated safeguards by Central Banks.

## European Payments Initiative: Expected Launch

On 17 September, Denis Beau, First Deputy Governor of the Bank of France [announced](#) that the launch of EPI (European Payments Initiative) is due for October 2021 during his speech at the Faculty of Law and Political Science of the University of Marseille. He touched upon the growth on digital means of payments during the pandemic, a trend that has been taking place since a decade ago. Additionally, the speech stresses the improvements of new forms of payments while also pointing to issues arising from BigTech entering the field of payments, creating subsequent

problems in terms of sovereignty and integration of payments systems.

## Crypto Derivatives Standards

On 30 September, the International Swaps and Derivative Association (ISDA) [published](#) a press release regarding its recently established “Digital Asset Legal and Documentation Working Group”. The Working Group will aim at amending and modifying the current ISDA definitions and templates on digital assets. The press release considers that the “ferocious” growth of crypto-assets in the recent years has caught the interest of financial institutions. The interest and adoption of crypto-assets by market participants, in particular retail investors and trade venues, has prompted a lack of standardization that may ultimately hamper transparency and liquidity and lead to higher levels of risk. The Working Group will work alongside retail investors and market participants in this growing asset class to develop market-standard documentation and ensure that these can integrate with existing data models.

## Crypto Assets: IMF blog on challenges to financial stability

On 1 October, the International Monetary Fund (IMF) [published](#) in its blog a summary of the [chapter](#) that the upcoming Global Financial Stability Report will include. The entry in the blog highlights the increase by ten times of the market value of crypto-assets since beginning of 2020. The text stresses the risks that these unregulated currencies entail, mentioning hacking consumer protection, speculation or volatility. Additionally, the publication points out at cryptoization as one of the main risks currently, with citizens start using crypto-assets instead of the local currencies. Threats to the fiscal policy of the states are also mentioned as one of the risks, as well as the energy use in countries that rely on more CO<sub>2</sub>-intensive forms of energy. Finally, the texts calls on regulators to implement global standards on crypto-assets, monitoring the role of stablecoins, strengthening macroeconomic policies and considering the benefits of issuing central bank digital currencies and improving payment systems.

## DORA: Progress in the European Parliament and the Council

The Digital Operational Resilience Act (DORA) has recently made some progress within the EP, which has just finished another round of compromise amendments. The EP is aiming to conclude its work on the file around November. The topics that are still likely to cause some discussions are the oversight mechanism of critical third-party providers, as well as use and access to third-country third-party providers (TCTPP). In the current situation, it is only small insurance intermediaries which are out of scope but the EP has proposed new wording to the review clause of DORA to

allow for extending the scope to potentially include operators of payment systems.

In the Council, the Presidency Compromise text seen this week shows that the Slovenian Presidency has proposed to revert to the original Commission's proposal meaning that any of the three ESAs may be designated as the Lead Overseer, as this would lead of a balanced allocation of tasks and responsibilities between the three ESAs. Other changes seen in the text include clarification as to the financial institutions exempt under the CRD and the PSD2 as well as a clarification to the proportionate regime for some payments and e-money institutions.

## ESMA Chair: Verena Ross, likely to become the new chair.

On 22 September 2021, after a secret ballot of ambassadors, Verena Ross was [elected](#), pending ratification by the European Parliament, as the Chair of the European Securities and Markets Authority (ESMA). Ross was selected ahead of Italy's Carmine di Noia (Commissioner at the Italian Regulator CONSOB). The decision will now need to be confirmed by the European Parliament. However, the nomination is unlikely to meet much resistance as the Parliament had previously supported Ross, and had repeatedly called for more women in senior financial roles. The vote in Plenary will take place during the 5th October session. Ross had previously served as the Executive Director at ESMA, and before that she worked in the UK for the Bank of England and Financial Services Authority (FSA).

## Digital Wallets: ENISA holds its 7th "Trust Service Forum"

The European Union Agency for Cybersecurity (ENISA), in collaboration with the European Commission, delivered the [7th "Trust Service Forum"](#) which attracted over 1000 participants and more than 40 experts, service providers, conformity assessment, supervisory bodies and national authorities together, to discuss the online trust market and its emerging issues under the eIDAS Regulation. The first panel on, "EU Digital Identity Framework – bring opportunity to wider use of online trust solutions across the EU", discussed the concept of decentralised online identity, that gives back control to users over their persona; data and leverages the use of an identity wallet. The second panel discussion focused on certification and standardisation efforts, and the third discussed the trust service market, current state of play, opportunities, and outlook. The eIDAS proposal will allow for citizens to prove their identity and share electronic documents from their European Digital Identity Wallets. These wallet will enable all Europeans to access services online without have to use private identification methods or unnecessarily sharing private data.

## AML: CWG on the Transfer of Funds Regulation

The negotiation process on the European Commission's Anti-Money Laundering (AML) package started in the Council and the EP. The first Council Working Group



(CWG) on the matter took place on 28 and 29 September. Member states provided introductory remarks on the elements of the package, with a particular PCY driven focus on the recast of the transfer of funds regulation and the travel rule, namely (i) its date of application, given the lack of an implementation period in the Commission proposal; (ii) the proposed thresholds regarding the scope of the TFR and (iii) the required information and verification of the accuracy of information which should accompany transfers of crypto-assets.

Of particular interest, on thresholds regarding the necessary information that must accompany crypto-asset transfers and the verification obligations by CASPs, the PCY asked MS if there should be a difference between the information that must accompany crypto-asset transfers and the verification of that information based on the value of a crypto-transfer. The PCY also inquired of MS if thresholds regarding transfers of funds should be removed if the thresholds regarding crypto-asset transfers are chosen to be removed.

## AML: Joint Committee Procedure

On the EP side, it is expected that the AML package will be shared between the Committee on Civil Liberties, Justice and Home Affairs (LIBE) and the Committee on Economic and Monetary Affairs (ECON) which will both lead the files of the package under a joint committee procedure. In that event, the respective rapporteurs shall draw up a single draft report per file, which shall be examined and voted on by the committees involved, under the joint chairmanship of the committee Chairs. The final decision on the allocation of the package is expected to be made during the 5 October plenary session. The ECON committee has already allocated the elements of the package between political groups, with a member of the Greens being expected to take the lead as rapporteur for the Transfer of funds regulation.

### ***Looking Ahead***

04 October 2021	<ul style="list-style-type: none"> <li>• European Parliament Plenary Session</li> <li>• Eurogroup</li> </ul>
05 October 2021	<ul style="list-style-type: none"> <li>• European Parliament Plenary Session</li> <li>• Economic and Financial Affairs Council</li> </ul>
06 October 2021	<ul style="list-style-type: none"> <li>• European Parliament Plenary Session</li> <li>• Financial Services Committee</li> </ul>
07 October 2021	<ul style="list-style-type: none"> <li>• European Parliament Plenary Session</li> <li>• Expert Group on Money Laundering and Terrorist Financing</li> </ul>
08 October 2021	<ul style="list-style-type: none"> <li>• Working Party on Financial Services</li> </ul>
11 October 2021	<ul style="list-style-type: none"> <li>• Financial Services Attachés</li> </ul>

12 October 2021	<ul style="list-style-type: none"><li>• Working Party on Financial Services</li></ul>
12 October 2021	<ul style="list-style-type: none"><li>• Working Party on Financial Counsellors</li></ul>
13 October 2021	<ul style="list-style-type: none"><li>• Coreper II</li></ul>
14 October 2021	<ul style="list-style-type: none"><li>• Working Party on Financial Services</li></ul>
15 October 2021	<ul style="list-style-type: none"><li>• Working Party on Financial Services</li></ul>



# US Policy Developments

## Congress

Sens. Maggie Hassan (D-NH) and Joni Ernst (R-IA) have proposed legislation that would require the Treasury Department and other agencies to track how crypto mining has propagated worldwide. This would be, in part, to “identify vulnerabilities” crypto introduces to “the global microelectronic supply chain.” So far, the bill has gotten little traction, but its bipartisan nature may help it eventually get some movement.

In a speech on the Senate floor that largely focused on the potential development of a U.S. central bank digital currency (CBDC), pro-crypto Sen. Cynthia Lummis (R-WY) expressed her concern that stablecoins are not fully backed “in a transparent manner,” echoing the concerns of many in the crypto community. Lummis called for regular audits of stablecoins, which would be a first in the stablecoin sphere. Lummis isn’t the first crypto-friendly lawmaker to express concerns about stablecoins. Earlier this year, Rep. Warren Davidson (R-OH) suggested that stablecoins might meet the definition of a security, which would subject them to regulatory oversight from the SEC.

In response to China’s recent crackdown on cryptocurrency, some lawmakers are using it as an opportunity to support crypto growth in the US. Senate Banking Committee Ranking Member Pat Toomey (R-PA) called China's crackdown a “big opportunity” in a tweet. Reps. Warren Davidson (R-OH) and Tom Emmer (R-M) in concurring tweets said that the US has “an incredible opportunity” to strengthen its advantage, with Emmer taking it a step further and voicing concerns over the CBDC the Fed might be designing. Emmer has said he wasn't opposed completely to a US central bank digital currency, but that it should have the same attributes as cash such as privacy and allowing anyone anywhere to join without being approved by a third party such as a government.

House Speaker Nancy Pelosi (D-CA) said on September 29 that the chances of the infrastructure bill vote being delayed had increased. The complexity of passing the bipartisan agreement has grown, and it appears like Pelosi’s deadline to pass the bill will pass. The infrastructure bill contains key cryptocurrency legislation that would require brokerage licenses for anyone who provides “any service effectuating transfers of digital assets on behalf of another person.”

## Treasury

The Treasury Department's Office of Foreign Asset Control (OFAC) is taking on the ransomware fight, sanctioning a crypto exchange for the first time. OFAC is the Treasury Department's sanctions enforcer. OFAC sanctioned SUEX OTC SRO for allegedly facilitating financial transactions by ransomware groups. SUEX is the first virtual currency exchange targeted by the office for its involvement in moving funds for online criminals. The sanctions action was carried out with the assistance of the Federal Bureau of Investigation. The move comes as the U.S. government takes more aggressive steps to counter cybercrime and concerns over cryptos involvement in ransomware.

The Treasury Department plans to publish a report on stablecoins for the President's Working Group on Financial Markets in early October. The working group is composed of the heads of the leading federal financial regulators, including the SEC, CFTC, Federal Reserve and Treasury Department. The group has been looking at stablecoins since at least last year during the Trump Administration. An unidentified Treasury official stated that the concern with stablecoin comes from a fear of financial instability that if a crisis happens, the stablecoins will not be as safe as perceived.

## Securities and Exchange Commission (SEC)

SEC Chair Gary Gensler, during a Washington Post Live interview, stressed the importance of investor and consumer protection for the crypto industry. Gensler also reiterated points that investors may be harmed if cryptocurrency exchanges remain unregulated and need to engage with the SEC. Gensler argued that exchanges offered securities, making them under the SEC's jurisdiction. He added that most tokens are also securities, but some are commodities, so the SEC needs to coordinate with the CFTC on the issue. Gensler noted that he is working with Treasury Secretary Yellen on the PWG stablecoin report, and that Congressional input would be helpful on the topic. Gensler was fairly bleak when discussing benefits of crypto and called the SEC a "cop on the beat" on crypto.

In another interview with the Financial Times, Gary Gensler reiterated that cryptocurrency trading and lending platforms that promise returns to investors cannot avoid regulation. He added that investors in such crypto products deserved the same kind of safeguards against fraud and manipulation as bank depositors or purchasers of insurance policies or mutual funds.

The SEC has tapped Dan Berkovitz, the Commodity Futures Trading Commission commissioner who voiced his concerns about regulation of decentralized finance (DeFi), as the SEC's new top lawyer. The move places Berkovitz, who voiced a pro-oversight tone toward crypto while at the CFTC, in a key court-facing role at one of the U.S.'s top investment regulators. The Office of the General Counsel manages much of the SEC's litigation and makes recommendations on enforcement actions, rulemaking and inter-agency activity.



## The Federal Reserve (The Fed)

Federal Reserve Chair Jerome “Jay” Powell, during the Senate Banking Committee hearing on the CARES Act, called the development of a U.S. central bank digital currency (CBDC) “critical work,” telling Senate Banking Committee Ranking Member Pat Toomey (R-PA) that while existing laws governing the Fed's activities could serve as a basis for issuing a digitized version of the U.S. dollar, he preferred working on a legislation-backed push instead. Powell has let another deadline for the Fed-MIT report on crypto and stablecoins pass, originally saying it would be end of July and then end of September.

## Commodity Futures Trading Commission (CFTC)

On September 29, the Commodity Futures Trading Commission (CFTC) after largely letting the SEC take the lead on crypto- announced charges against 14 crypto merchants, 12 of which offer binary options based on foreign currencies and cryptocurrencies. The CFTC alleges that the 14 have either failed to register or have claimed to be registered with the CFTC already in customer-facing information. The agency dropping several fines at once is typical as agencies often load up such bombshell cases at the end of the fiscal year in order to maximize their budget. Despite their number, the platforms targeted in today's action are not especially high-profile. The move signals the CFTC might be changing as they jockey with the SEC for power.

With the announcement on Tuesday, September 28, that Commissioner Dan Berkovitz would be departing the CFTC to serve as the SEC's general counsel under SEC Chairman Gary Gensler, the normally five-person CFTC will be operating with a skeleton crew of only two commissioners: Commissioner Dawn Stump and Acting Chairman Rostin Behnam, until Biden's nominees can be seated.

## Office of the Comptroller of the Currency (OCC)

Acting Comptroller of the Currency Michael Hsu made some harsh remarks against crypto during a Blockchain Association meeting. Hsu warned that the explosion of financial innovations risks creates a mountain of “fool's gold” and said he worries cryptocurrency has the potential to become a “perversion.” He compared digital assets with unregulated credit default swaps and other derivatives that paved the path to the 2008 financial crisis. Hsu went on to question a main selling point of financial innovation — the idea that it will help the unbanked — questioning how it expands access to banking services and credit.

Hsu's comments came shortly before Biden announced he would nominate, Cornell University Professor Saule Omarova to lead the OCC. The administration was first rumored to be vetting Omarova last month. Omarova has criticized the existing bank structure and cryptocurrencies in recent years and has advocated for a U.S. central bank, rather than private banks, to provide consumer banking services. In a 2019



paper, “New Tech v. New Deal: Fintech as a Systemic Phenomenon,” Omarova wrote that crypto was changing the financial system but was critical of the idea that cryptocurrencies or fintech at large may “revolutionize’ the provision of financial services.” If nominated and confirmed, Omarova will be the first full-term Comptroller since Joseph Otting, who headed the federal banking regulator between 2017 and 2020.

## State Updates

Regulators in Texas, New Jersey, Alabama, and Kentucky have all gone after crypto lenders as violating securities laws with its core lending products. New Jersey issued a cease-and-desist, Texas scheduled a hearing for next year and Alabama and Kentucky publish a show-cause order against Celsius, mimicking how state regulators (including Alabama and New Jersey) treated BlockFi accounts a couple weeks before.

### ***Looking Ahead***

Estimated early October	<ul style="list-style-type: none"> <li>• President’s Working Group report on stablecoins</li> </ul>
TBD	<ul style="list-style-type: none"> <li>• Fed-MIT report on crypto, central bank digital currency (CBDC), and stablecoins</li> </ul>



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