Latest Policy Developments for DLT

International Association for
Trusted Blockchain Applications

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Prepared exclusively for INATBA Members.

Content

1. *Highlights: INATBA Policy Developments*

INATBA is partnering with the European Commission to hold a standards workshop on December 9th, from 9 am-5 pm CET. The event will convene standards-setting and technical specification bodies such as ISO, IEC, ITU-T, CEN CNENELEC, ETSI, IEEE as well as regional bodies like EBP/EBSI, LACChain and national authorities from countries including Japan, India, Korea, USA, Brazil for a day-long series of activities. The event will consist of presentations and panels to discuss progress made as well as ongoing challenges and collaboration opportunities. Register and learn more here.

The Finance Working Group and three Sub-Working Groups (focused on CBDCs/the PRR, AMLR and taxes, and Defi, DAOs and NFTs) are hard at work drafting new policy responses and documents. Currently, Working Group members are compiling a response to the new AMLR and building on their position paper on DeFi, DAOs, and NFTs. To get involved, please contact xenofon.kontouris@inatba.org.

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 29th October to the 15th November 2021. In the last weeks most of the European and International topics of conversation have focused on the Digital Euro and the possible application of the Central Bank Digital Currencies. The work on the Digital Euro is still ongoing, with the European Central Bank (ECB) having appointed Evelien Witlox as its Programme Manager. Furthermore, the Council seems to be close to its final position regarding the Markets in Crypto Assets Regulation (MiCA). Finally, the European Parliament (EP) held and extraordinary public hearing on the taxation of new technologies such as blockchain and crypto-currencies.

Crypto had another big couple of weeks in Washington, D.C., with the highly anticipated President's Working Group (PWG) report on stablecoins released and the House of Representatives passing the infrastructure bill. The PWG report on stablecoins was the first in a series of government reports on crypto. The report called for Congress to take the lead in regulating the industry, which supports previous calls by regulators, including Securities and Exchange Commission (SEC) Chair Gary Gensler, for Congress to lead and delegate jurisdiction on the topic. Congress's ability to act on crypto will likely be drawn out, as evidenced by the long process it took to pass the infrastructure bill. Regarding the infrastructure bill, the legislation passed with the crypto provision is still intact. However, since the provision will not go into effect until 2024, industry leaders hope to pass a standalone bill to reign it in or eliminate it.

EU Policy Developments

MiCA: Council near to agreement on final position

According to non-public documents seen on the week of 15 November, the Council of the European Union could be moving closer to a final agreement on the MiCA regulation. It I expected however, that the trilogue negotiations between the three institutions, the Commission, the Parliament and the Council will begin in 2022, already under the French Presidency of the Council. The latest version of the document seen shows some relevant changes compared to the previous one. DeFi Crypto – Assets Service Providers (CASPs) as well as DeFi stablecoins appear to be disallowed, with an explicit mention in the text for all offerors and persons seeking admission to trading having to be legal entities. Additionally, the requirements for CASPs to settle any transactions on a DLT is removed from this version of the text. Also, under this version the redemption fees for E-Money Tokens (EMTs) are not allowed. Regarding the restrictions on issuance of Asset Referenced Tokens (ARTs) and EMTs are as seen in previous Council draft texts. On the reporting of significant EMTs and ARTs, the information will have to be submitted to both the European Banking Authority (EBA) and the ECB. And finally, the text mentions that the ECB and the national central banks should provide the competent authority with an opinion on the risks for the smooth operation of payment systems, monetary policy transmission or monetary sovereignty.

Digital Euro: Role in payments and international aspect

On 5 November, Fabio Panetta, Member of the Executive Board of the ECB, gave a speech at the Elcano Royal Institute in Madrid on the role of the digital euro in payments and its international aspect. He stressed the growth of cashless payments, especially during the pandemic, and the progressive digitalisation of society and interactions. On the design of the digital euro he pointed out to the need of making it attractive enough to be widely used as a means of payment, but at the same time prevents it from becoming so successful as a store of value that it crowds out private money and increases the risk of bank runs. Panetta argued that for consumers, the digital euro would offer a cost-free and convenient way to pay digitally anywhere in the euro area, while it would also be an additional means to receive customer payments through the instant reception of risk-free money for merchants and small businesses. Panetta also argued that a digital euro would support the euro's international use and Europe's autonomy in global payments by making it accessible to non-residents and interoperable with other CBDCs in order to facilitate cross-border payments.

Digital Euro: Policy Implications of Digital Currencies

On 9 November,Fabio Panetta gave a presentation to the Bank of Finland Institute for Emerging Economies (BOFIT) following the Eurogroup meeting in which EU finance ministers agreed that further "investigations" into the ECB's plan to establish a digital euro need to be pursued. Panetta provided some light on the scope of the investigation phase, as well as some "safeguards" being considered by the ECB to help ensure the digital euro doesn't destabilize financial markets. This comes after a consultation period was wrapped by the ECB earlier this year, in which "privacy" emerged as the biggest concern for stakeholders.

Digital Euro: Programme Manager appointment

On 11 November the ECB published the appointment of Evelien Witlox for the position of Programme Manager of the digital euro project as of 1 January 2022. She is currently the Global Director of Payments at ING. As Programme Manager for the ECB's digital euro project, she will join the senior management team of the Directorate General Market Infrastructure and Payments, notably working during the investigation phase of the Digital Euro project will run until October 2023 and aim to address key issues regarding design and distribution.

Blockchain: BIS announces the conclusion of Project Genesis

On 4 November, the Bank for International Settlements (BIS) Innovation Hub announced the successful completion of Project Genesis. The project includes two prototype digital platforms that aim to enable investment in green bonds with higher transparency and greater access to retail investors. The platforms combine blockchain, smart contracts, internet-of-things, and digital assets. The aim is to allow issued and other stakeholders to explore innovative approaches to green bond distribution in a transparent manner, while also enabling retail investors the positive environmental impact that the financed projects achieve in terms of reduced carbon dioxide emissions. The first prototype simulates the lifecycle of a typical bond on a permissioned distributed ledger platform, including origination, subscription, settlement, and secondary trading. The second tested the same procedures using a public blockchain infrastructure.

Taxation: Public Hearing on New Technologies of Taxation

On November 9, the European Parliament Subcommittee on Tax Matters (FISC) held a public hearing on "The impact of new technologies on taxation: crypto and blockchain". The discussion with experts and institutional representatives was focussed on fiscal challenges regarding crypto assets, the impact of technologies such as blockchain on taxation and the use of technologies as an instrument to support tax fraud and evasion. Crypto-assets, and virtual currencies in particular, have developed rapidly over the past years, creating new opportunities but also new risks of tax avoidance and fraud. The hearing looked at whether it is necessary to strengthen the legal and regulatory frameworks to address these issues and raise some key questions concerning the definition of 'crypto-assets', the magnitude of crypto assets, the possibility to tax crypto-assets and the contribution of technology such as blockchain to fighting tax evasion and tax fraud and others.

CBDC: BIS comments on the improvement of cross-border payments and settlements

On 4 November, Agustín Carsterns, General Manager of BIS gave a speech during Hong Kong Fintech week on multi-CBDC arrangments. In his speech he highlighted the current developments of CBDC's by several main Central Banks globally while stressing the need for cross-countries cooperation in order to develop effective cross-border payments infrstructure. On this point, he went over the three models that are being considered right now to promote this cooperation. The first model is based on the promotion of compatibility between different national payment systems and through harmonised regulatory frameworks, market practices and messaging formats that can make it easier for these systems to interoperate. The second model, aims to link two domestic payment systems together with technical interfaces that allow them to interoperate. And finally, the third and most ambitious model is the establishment of a single multi-CBDC system. Central Banks would create a jointly operated payment system upon which they would each issue a CBDC. The CBDCs could be traded between central banks and financial institutions. In this way, they could settle cross-border payments while bypassing the correspondent banking system.

Looking Ahead

15 November 2021	• ECON Committee, hearing with Christine Lagarde
15 November 2021	• FISC Committee
16 November 2021	• Council Working Party on Financial Counsellors
17 November 2021	• Coreper II
17 November 2021	• Council Working Party on Financial Services
18 November 2021	• ECON Committee
18 November 2021	• Council Working Party on Financial Services

18 November 2021	• EP Negotiation team meeting on DLT Pilot Regime
19 November 2021	• Council Working Party on Financial Services
22 November 2021	• European Parliament Plenary
23 November 2021	• European Parliament Plenary
24 November 2021	• European Parliament Plenary
24 November 2021	• Coreper II
25 November 2021	• European Parliament Plenary
30 November 2021	• Council Working Party on Financial Counsellors

US Policy Developments

Congress

After months of negotiations, the House of Representatives passed the infrastructure bill with the crypto provision. The provision will require a person who regularly provides a service that executes transfers of digital assets to report those transactions to the Internal Revenue Service (IRS), like securities brokers must do for stock and bond trades. The provision also requires businesses to report digital asset transactions of more than $10,000. The bill is now on the way to President Biden's desk for his signature, which he will sign.

While the crypto industry failed to pass an amendment to the original legislation before it passed in the Senate, the new focus is passing standalone legislation to soften the reporting requirements before they go into effect in 2024. Support for amending the rules is both bipartisan and bicameral. On the Senate side, Sens. Kyrsten Sinema (D-AZ), Mark Warner (D-VA), Ron Wyden (D-OR), Pat Toomey (R-PA), Cynthia Lummis (R-WY), and Rob Portman (R-OH) publicly support changes to the law. As Ranking Member of the Senate Banking Committee Sen. Toomey has an oversized influence on other committee members, legislation, and witnesses on any hearing on the topic. In the House, the leadership of the House Blockchain Caucus, which is bipartisan and has 30 members, has given their support for amending the language.

The provision allows the IRS broad leeway on interpretation, and one of the critical questions is who will be considered a “broker” of digital assets and responsible for reporting all crypto transactions to the government. The broad interpretation will push the focus of the industry onto how the IRS will act on the provision and lead to increased lobbying action. In August, Treasury Secretary Janet Yellen came out in favor of an amendment to the legislation that would have exempted miners of bitcoin and other digital assets and makers of digital wallets used to store crypto tokens. Reportedly the IRS has promised industry representatives that once the bill is signed into law, it will implement rules that exempt them. Treasury Department procedures require that the Department allow interested stakeholders time to comment and provide input.

Other Congressional action on the topic came from frequent crypto-allies Reps. Tom Emmer (R-MN) and Darren Soto (D-FL) who advocated for the trading of bitcoin spot exchange-traded funds (ETFs) in a strongly worded letter to SEC Chairman Gary Gensler. The letter questioned why the SEC would allow a derivatives-based bitcoin ETF but not a bitcoin spot ETF.

Treasury

After months of speculation, the President's Working Group (PWG) released its report on stablecoins. The report punted the responsibility of regulatory clarity to Congress, calling for Congress to act promptly to enact legislation that will ensure that stablecoins and payment stablecoin arrangements are consistently subject to a federal framework and subject stablecoins to bank-like supervision. The report goes as far as suggesting companies should be barred from offering stablecoins unless they are insured depository institutions. The report also suggests Congress subject stablecoin issuers to federal oversight and prevent stablecoin issuers from partnering with commercial entities. If Congress does not give the agencies the authority to regulate stablecoin issuers like banks, they will turn to the Financial Stability Oversight Council (FSOC), declaring stablecoins a systemic threat to financial stability. As with Congressional action, the FSOC process may also be drawn out. Amid an ongoing turf war over authority on stablecoins, the report left the question over which regulator will take the lead on regulation unanswered. Instead, the report states that the SEC and CFTC have shared authority on stablecoins for now, and the report did not define or set guidelines to determine whether a stablecoin is a security or commodity.

Prompt Congressional movement on the legislation suggested in the report seems unlikely as influential Republican members, House Financial Services Ranking Member Patrick McHenry (R-NC) and Senate Banking Ranking Member Pat Toomey (R-PA), swiftly released criticism of the report. Hearings are likely next from the House Financial Services, Senate Banking, and Senate and House Agriculture Committees.

Deputy Secretary of the Treasury Wally Adeyemo on Bloomberg discussed how regulators are creating a regulatory framework for cryptocurrencies to establish clear rules for the industry and curb illicit activities such as money laundering. Adeyemo stated that crypto companies could follow U.S. anti-money laundering (AML) standards once given the proper regulatory guidance, and those who do not comply will be held accountable.

Securities and Exchange Commission (SEC)

SEC Commissioner Caroline Crenshaw (D) released a statement on "DeFi Risks, Regulations, and Opportunities", where she laid out the benefits, risks, and next steps for regulation for DeFi. Crenshaw warned DeFi participants and potential entrants to exercise caution and, like SEC Chair Gary Gensler, argued that well-regulated markets flourish. In contrast to Gensler's repeated calls that the SEC is the leading authority on crypto, on the issue of DeFi, Crenshaw recognized that multiple agencies have jurisdiction. Those agencies include the Department of Justice, the Financial Criminal Enforcement Network (FinCEN), the Internal Revenue Service, the Commodity Futures Trading Commission (CFTC), SEC, and some state regulators. Lastly, she noted optimism that DeFi players want to act compliantly and opened her doors to input. She added that no DeFi players currently are registered with the SEC.

Commissioner Crenshaw's entry into the DeFi space is important since the internal crypto battle at the SEC has primarily been between SEC Chair Gary Gensler (D) and Commissioner Hester Pierce (R).

Chair Gensler repeated calls for crypto companies to engage with the SEC by urging attorneys specifically to help crypto companies register with the SEC rather than skirt regulatory regimes at the Securities Enforcement Forum. He warned lawyers not to help crypto companies circumvent the law. Gensler also repeated that crypto and DeFi fall under the existing securities definition.

The SEC has until November 14 to approve or deny the VanEck Bitcoin ETF, the first exchange-traded fund in a long line of "spot" bitcoin ETFs that have applications in front of the regulator. The SEC has delayed a decision on the application twice before, but now that a maximum 240-day review period is over, they must decide. Chair Gensler has indicated hesitation to expand crypto offerings, particularly a "spot" bitcoin ETF without legislation defining agency jurisdiction over the crypto spaces. While Gensler approved several bitcoin futures-based ETFs, they operate in a "regulated" space while bitcoin and bitcoin exchanges do not. Gensler repeatedly has urged crypto companies to enter the regulatory space.

On November 11, the SEC shut down a Wyoming-based decentralized autonomous organization (DAO), American CryptoFed, from registering two digital tokens as securities. The SEC alleged that the company filed a deficient and misleading registration form. Wyoming legally recognized American CryptoFed after the pro-crypto state became the first in the U.S. to recognize DAOs as a type of limited liability company.

Office of the Comptroller of the Currency (OCC)

Acting Comptroller of the Currency (OCC) Michael Hsu announced that his office's crypto review and inter-agency collaboration on a collective approach to crypto have concluded. He stated that a series of "communications" on the findings would be coming in the next few weeks. Hsu highlighted that regulators should work with each other, and crypto firms should embrace comprehensive and consolidated supervision.

The review's conclusions come as the OCC moves closer to a change of leadership. The nomination hearing for the hotly contested new OCC head, Saule Omarova, is scheduled for November 18. The confirmation process will be an uphill battle for Omarova, but President Biden reiterated his support for his nominee.

Federal Reserve (Fed)

Discussions about the Federal Reserve (Fed) report on a central bank digital currency

(CBDC) have largely died down as the Fed's focus has been on inflation and the pending nomination of a Fed Chair. President Biden said that he would announce his choice for the lead the Federal Reserve "fairly quickly" but did not specify whether it's going to be Jerome "Jay" Powell, whose term as chairmanship will expire in February. The Vice-Chair of Supervision of the Fed, Randall "Randy" Quarles announced his retirement, which is impactful for crypto since Quarles was a supporter of private cryptocurrencies, while many people speculative his replacement will be Fed Governor Lael Brainard. Brainard has criticized private cryptocurrencies but is optimistic about a central bank digital currency (CBCD).

The Federal Reserve published its latest financial stability report, including a section on stablecoins, comparing their risks to money market funds. Compared to the spring poll on financial stability, cryptocurrencies/stablecoins ascended to the fifth position from the ninth position.

State and City Update

Since winning, New York's newly elected Mayor Eric Adams wasted no time jockeying with Miami Mayor Francis Suarez in a battle over who can cement their cities as the crypto capitals of the country. Mayor Adams announced his intentions to take his next three paychecks in bitcoin and called for cryptocurrencies to be a part of the city's school curriculum. Adam's announcement came after Miami Mayor Frances Suarez announced he was taking his next paycheck "100% in bitcoin." Afterward, several other mayors across the U.S. announced plans to accept their paychecks in bitcoin.

The following week on November 11, Miami announced it would soon give out a "bitcoin yield" from the staking of its cryptocurrency to its citizens. The yield comes from the staking of the city's cryptocurrency, MiamiCoin, which was introduced early this year and has already earned over $21 million in the past three months for Miami. Suarez's goal is to eventually eliminate the need for Miami residents to pay taxes, which would be "revolutionary."

Looking Ahead

November 17	• The Joint Economic Committee is hosting a hearing entitled, "Demystifying Crypto: Digital Assets and the role government."
November 18	• The Senate Banking Committee is hosting a nomination hearing for the OCC nominee Saule Omarova.
TBD	• Fed-MIT report on crypto, central bank digital currency (CBDC), and stablecoins

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