



# 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 Updates*

INATBA is partnering with the European Commission to hold a standards workshop on December 9<sup>th</sup>, from 9 am-5 pm CET. The event will convene standards-setting and technical specification bodies such as ISO, IEC, ITU-T, CEN CENELEC, 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.](#)

INATBA Working Groups are working to finalise policy positions and research on a wide variety of topics. The Finance Working Group is focused on DeFi, DAOs and NFTs, as well as the Travel Rule and ALMR. The Education Working Group is collaborating with the European Commission for a discussion on tokenisation in education. The Identity Working Group is finalising an INATBA position on eIDAS 2.0. To get involved with the Working Groups, please contact [sofie.peeters@inatba.org](mailto:sofie.peeters@inatba.org) or [xenofon.kontouris@inatba.org](mailto: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 16<sup>th</sup> November to the 26<sup>th</sup> November 2021. During the last weeks, the Digital Euro and the Central Bank Digital Currencies have been in the spotlight of several events and on the agenda of legislators. Non-public information confirms that the European Parliament is very delayed on the discussion around the Markets in Crypto Assets Regulation (MiCA). In the meantime, the Council has reached a final position on the Digital Operational Resilience act and MiCA. These negotiations now await Parliament in order to progress to tri-party negotiations between the EU institutions, delaying MiCA entry into force to end-2022.

After months of negotiation, President Joe Biden signed the Infrastructure Bill into law on November 15, and Congressional members on both sides of the aisle wasted no time introducing bills to change the crypto tax provision. A lot of attention has been paid to crypto these two weeks on Capitol Hill, with lawmakers also releasing guidelines for a central-bank digital currency (CBDC), holding a hearing on digital assets, and releasing a draft legislation on the Commodity Futures Trading Commission's authority over crypto. Congress indicated they would continue to lead discussions on the industry as the House Financial Services Committee scheduled a full committee hearing on crypto for December where members will question crypto CEOs on a range of topics, including climate, DeFi, and "crypto Twitter." Congress's domination of the crypto regulation conversation was amplified by the lack of Securities and Commission (SEC) Chair Gary Gensler's comments on crypto.

# EU Policy Developments

## MiCA and DORA: Council agreement on final position

On 17 November 2021, the Council reached a political agreement on the Markets in Crypto Assets Regulation (MiCA) and Digital Operational Resilience Act (DORA), thus adopting their negotiating positions. The political agreements can be expected to be signed off at the upcoming Economic and Financial Affairs Council (ECOFIN) meeting on 7 December. The final Council compromise is as we have shared it via non-public information in this newsletter before. We are still waiting for the European Parliament to agree on its compromise amendments. Once they have been voted on, the trilogue (ie tri-party) negotiations will begin most likely under the French Presidency of the Council in Q1 2022. While Council presidencies are a-partisan mediators, they tend to matter significantly for the negotiations.

## MiCA: European Parliament state of play

Non-public information seen during the week of 22 November confirms that the European Parliament has delayed its discussions on the Markets in Crypto Assets Regulation. There is not a meeting planned for the shadow rapporteurs of the political groups and there some doubt to the approach taken by the rapporteur. Conversations around the file in the European Parliament show that the discussion could go well into the first quarter of the year until a final common position is agreed on.

## Blockchain: BIS defines blockchain as uncertain and tenuous

On 17 November 2021, Hyun Song Shin, Economic Adviser and Head of Research of the Bank for International Settlements (BIS) gave a [presentation](#) on the possibilities arising from the decentralization in digital finance. During the presentation he argued that blockchain, rather than levelling the financial playing field, “tends to entrench the position of insiders”. He continued saying the while insiders can collect large rents from new users of blockchain, its ultimate viability when the flow of new entrants dries up and rents are squeezed is uncertain and tenuous.

## Stablecoins: European Parliament Research Service Briefing

Earlier this month the European Parliament Research Service (EPRS) [published](#) a briefing on stablecoins. The paper analyses the changes by the payment industry in



the past decade and their explosive growth, helped by progress in digital technology applications, with blockchain exhibiting volatility and encouraging their speculative use instead. The briefing highlights that these risks have so far prevented the massive adoption of cryptocurrencies by the public.

## Digital Euro: Prototype due in early 2023 according to the ECB

On November 18, the ECON Committee of the European Parliament convened for an exchange of views with Fabio Panetta, Member of the Executive Board of the ECB to discuss the Digital Euro. He noted that the design features of a digital euro will be narrowed down at the beginning of 2023, with a prototype underway in the subsequent months. Panetta warned that failure to introduce the central bank digital currency could mean that "foreign-based entities and big techs" dominate the market, undermining the functioning of European payments. On the road ahead, Panetta indicated that the exploratory phase would last until the end of 2023, after which a prototype of the Digital Euro will be built by mid-2024. The governing Council of the ECB will then analyse before the legislative process starts and the prototype is further developed.

## AML – Council State of Play

On 17 November, a non-public document from the Slovenian Presidency (PCY) provided an overview of the current discussions on elements of the European Commission's (Commission) 20 July Anti-Money Laundering (AML) Package. Overall, discussions are progressing at pace with a particular focus on the Transfer of funds regulation (TFOFR).

A majority of MS expressed support for faster application of the TFOFR, in accordance with the application timeline of MiCA. This means subjecting CASPs to the current AMLD with a view to speeding up the application of the TFR recast proposal and to synchronise it with MiCA. On thresholds, a majority of MS supported the removal of the EUR 1000 threshold regarding the necessary information that must accompany crypto-asset transfers and the verification obligations by CASPs. On unhosted wallet transfers, MS considered that, in line with FATF's latest guidance, CASPs that either receive or send crypto-assets from/to unhosted wallets should collect the same information on the originator and beneficiary as for regular transfers.

Regarding the Anti-Money Laundering Regulation (AMLR), MS questioned the relevance and asked clarity on the definitions of e-money tokens (EMTs) and non-fungible-tokens (NFTs). Some MS suggested the inclusion of issuers of ARTS in the AMLR's scope to avoid a loophole when reading the legislative framework together

with MiCA. On Crypto-asset transactions, some MS considered that the proposed threshold for the application of CDD to occasional transactions, i.e. EUR 1000, should be omitted for crypto-assets, given broad support to lifting this threshold for crypto-asset transfers under the TFOFR and the opportunity for criminals to carry out several anonymous transactions below this limit. Some MS supported the view that all crypto-asset services, as listed in the MiCA proposal, should qualify as occasional transactions in line with FATF standards. A majority of MS considered that the EUR 1000 CDD threshold for occasional crypto transactions should not be limited to transfers of crypto assets, but rather apply to all types of crypto services listed in MiCA.

The PCY is expecting to finalise a general approach on the TFOFR by the end of 2021. Discussions on the AMLR, AMLD and AMLA are ongoing with a General Approach expected to be reached by the Council late in the French PCY or during the Czech PCY (H2 2022).

## CBDC: World Economic Forums white paper on key cybersecurity threats

The World Economic Forum (WEF) has [published](#) a white paper that presents information for policy-makers to help inform their choices around the technical design requirements and security features for an effective central bank digital currency (CBDC). On it, the WEF explains how Central bank digital currencies (CBDC) are increasing in uptake, but to ensure trust in CBDC, central banks must ensure their cybersecurity. The white paper stresses the risks to cybersecurity attacks, data breached and theft, counterfeiting and also mentions other challenges such as quantum computing. On the user side, the white paper highlights that the citizens will have to feel comfortable adopting CBDCs, and that Central Banks should focus in carefully explaining their efforts on cybersecurity strategies and real-life applications of the currency.

### **Looking Ahead**

29 November 2021	<ul style="list-style-type: none"> <li>• Financial Services Attachés</li> </ul>
30 November 2021	<ul style="list-style-type: none"> <li>• Council Working Party on Financial Services</li> </ul>
30 November 2021	<ul style="list-style-type: none"> <li>• Council Working Party on Financial Counsellors</li> </ul>
1 December 2021	<ul style="list-style-type: none"> <li>• Coreper II</li> </ul>
6 December 2021	<ul style="list-style-type: none"> <li>• Eurogroup</li> </ul>
7 December 2021	<ul style="list-style-type: none"> <li>• Economic and Financial Affairs Council</li> </ul>
8 December 2021	<ul style="list-style-type: none"> <li>• Coreper II</li> </ul>
9 December 2021	<ul style="list-style-type: none"> <li>• Working Party on Financial Counsellors</li> </ul>
21 December	<ul style="list-style-type: none"> <li>• Coreper II</li> </ul>





# US Policy Developments

## Congress

After months of negotiations, President Biden signed the [infrastructure bill](#) with the crypto provision into law on November 15. The crypto tax provision will take into effect January 1, 2024, for 2023 tax reporting. Since its passage, several members of Congress across the aisle began proposing legislation in response.

On the House side, members spent the past two weeks introducing several pieces of legislation on a range of crypto issues. Specific to the infrastructure bill, 10 Congressional Democrats led by Reps. Darren Soto (D-FL), Co-Chair of the Blockchain Association, and Ro Khanna wrote a letter to Speaker Nancy Pelosi (D-CA) urging the House to support innovation, to give more tax certainty for crypto, and to amend the crypto provision. A bipartisan group, led by House Financial Services Committee Ranking Member McHenry (R-NC), Rep. Tim Ryan (D-OH), and eight other members, introduced a [bill](#) aimed at “fixing” the tax provision. It is a comprehensive bill that gets rid of the expanded tax reporting requirement, requiring a study of such an expansion instead. The bill also eliminates the Treasury Department’s authority to further expand the definition of a broker and limits the definition of a broker. The bill still has a long road ahead, but the Treasury Department still will have a public notice-and-comment rulemaking on the original provision to define the scope of the new reporting requirements and such comment period provides an opening for the industry.

On the Senate side, Sens. Cynthia Lummis (R-WY) and Ron Wyden (D-OR), two of the biggest crypto advocates in the Senate, introduced a bill that resembles the original compromise bill the crypto industry rallied behind in August. It is less comprehensive than the House bill, adding in a “rule of construction” to narrow the bill’s scope, but does not change the bill’s language. Sen. Ted Cruz (R-TX) also introduced a bill to repeal the entirety of the crypto tax provision. However, the likelihood of passage is slim because of the lack of a Democratic co-sponsor and Cruz’s limited political capital under the Biden Administration.

On November 17, 2021, the Joint Economic Committee (JEC) held a hearing [entitled “Demystifying Crypto: Digital Assets and the Role of Government.”](#) The Joint Economic Committee rarely discusses the topic of digital assets, so this hearing served as an initial opportunity for members to relay their views and concerns on the topic in a hearing; acting as a forum for members to discuss digital assets broadly. Like previous hearings on the topic, a slight partisan divide was present, with



Republican members emphasizing the benefits of crypto and Democratic members voicing skepticism, with several members highlighting consumer protection concerns. Most Democratic members and nearly all witnesses, excluding Peter Van Valkenburgh of Coin Center, agreed that broad oversight was needed but lacked a consensus on details. In response to the President's Working Group (PWG) report on stablecoins, many members expressed concerns over stablecoins but failed to discuss the "prompt Congressional action" the report recommended. Several members also discussed the benefits of crypto regarding financial inclusion, with Sen. Mike Lee (R-UT) stressing the benefits to the lower and middle class and Rep. Beatty (D-OH) bringing up its impact on the remittance process. One of the key takeaways from the hearing was the criticalness of Congressional education on digital assets, with several lawmakers voicing concern over the lack of member education on digital assets and other members admitting their limitations on the topic.

Republicans on the House Financial Services Committee, led by Ranking Member Patrick McHenry (R-NC), released [principles](#) to guide Congress' evaluation of potential proposals for a U.S. Central Bank Digital Currency (CBDC). The principles call for a CBDC to address inefficiencies in the U.S. payment system, to not squash the potential of stablecoins, to allow private sector leadership, and to ensure privacy and security. The introduction of these introduction further solidifies Ranking Member Patrick McHenry (R-NC) as an influential leader on crypto.

The House Agricultural Committee Republicans published a discussion draft of the [Digital Commodity Exchange Act \(DCEA\)](#), a bill that will further bolster the CFTC's role in regulating crypto. As a discussion draft, it has not been introduced to the House Committee yet, but the Republicans on the committee are using the draft as an opportunity for feedback on the bill from crypto stakeholders to support innovation.

The House Agricultural bill draft comes a few weeks after Acting Commodity Futures Trading Commission (CFTC) Chair Rostin Behnam suggested the CFTC may be better suited to broadly oversee the crypto spot markets. Benham's call, coupled with the PWG report that concluded that both the CFTC and SEC have a role in regulating crypto, the House and Senate Agricultural Committee will likely increase their authority on the industry in the following months.

On November 23, Senate Banking Chair Sherrod Brown (D-OH) sent several stablecoin issuers and exchanges [letters](#) about consumer and investor protections. The letter gives a December 3<sup>rd</sup> response time, which is quick turnaround for Congressional offices. The letters could indicate these are the companies whose execs may be asked to testify before the Senate Banking Committee.

## Treasury

This past week, Treasury Undersecretary Nellie Liang participated in a [Q&A with](#)





[Politico](#) discussing the recent President's Working Group (PWG) report on stablecoins. Liang discussed how the report focused on the most prudential risks of stablecoins, such as illicit finance, investor protection, and consumer protection. She stressed the urgency of passing some legislation on the topic. Liang acknowledged the possible benefits of decentralized finance (DeFi), urging regulators to avoid preemptively banning them; however, she did state they should be monitored.

Treasury Undersecretary Nellie Liang and Treasury Deputy Secretary Wally Adeyemo have become the most vocal Treasury Department officials on crypto as Treasury Secretary Janet Yellen has been largely quiet on the issue.

## Securities and Exchange Commission (SEC)

The Securities and Exchange Commission (SEC) [stopped](#) another spot bitcoin ETF application, VanEck, on November 12. While several futures-linked ETFs have launched, the SEC is still concerned over market manipulation of a spot option. In VanEck's denial, the SEC indicated the approval of a spot Bitcoin ETF still has a long road ahead, citing that Bitcoin markets are too prone to market manipulation to let an ETF tracking spot prices go live.

With Congress dominating the crypto talks the past few weeks, SEC Chair Gary Gensler largely focused on other issues, including shareholder proposals on ESG issues and universal proxy rules. Gensler will likely be back on the crypto topic shortly, with the Chair scheduled to speak at a digital assets conference on December 1.

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

Acting Comptroller of the Currency (OCC) Michael Hsu continues to ramp up his comments on crypto. On November 16, Hsu [advocated](#) for consolidated supervision of crypto and stated that OCC is set to provide more information on its review of its existing crypto policies soon. After stating he was technology-neutral, Hsu implied his stance toward crypto is more skeptical than former Acting Comptroller Brian Brooks.

The Office of the Comptroller of the Currency [updated](#) Trump-era guidance to emphasize that banks need to ask permission before engaging in cryptocurrency-related activities on behalf of their clients. In an interpretive letter, the OCC calls for banks wanting to offer custody services or engage in other activities related to crypto-assets must first get the approval of their local OCC supervisory office.

The nomination [hearing](#) for the controversial new OCC head, Saule Omarova, occurred on November 18. The confirmation process turned highly personal and highly partisan, making the topic of crypto not top of mind despite her public critical comments and papers on the subject. The real threat to her nomination could come from moderate Democrats like Sens. Jon Tester (MT) and Mark Warner (VA), who took



issue with her opposition to a 2018 law they spearheaded that rolled back regulations on some small and regional banks. Senate Banking Chairman Sherrod Brown (D-OH) strongly reconfirmed their commitment to her confirmation. Omarova's hearing indicates Hsu may have a longer time than expected to speak on crypto as Comptroller.

## Federal Reserve (Fed)

After months of speculation, President Biden [announced](#) the renomination of current Federal Reserve (Fed) Chair Jerome "Jay" Powell. Biden nominated Lael Brainard, currently a Fed Governor, to become Vice-Chair, which pleased progressives. Powell has already received widespread support from key members of both parties and even a progressive member of the Democratic party. While Brainard is more outspoken and critical on the topic of crypto, both Brainard and Powell have discussed how the space should not be allowed to grow to a level that threatens the existing financial system.

Brainard is an outspoken advocate for a U.S. central bank digital currency and skeptical of private cryptocurrencies. Powell has been less open about his views and maintains that Congress should lead the topic of creation of a CBDC. With Powell's renomination looking solid, the agency can now get back to releasing their Fed-MIT report on central bank digital currencies (CBDC).

Federal Reserve Governor Chris Waller, who has been vocally supportive of private cryptocurrencies, [challenged](#) some of the recommendations laid out in the recent President's Working Group (PWG) report on stablecoins. Waller argued against limiting stablecoin issuance to banks, expressing concern it would stifle innovation and competition in payments. He added that the proposal would restrict stablecoin issuance to banks and force companies without bank charters out of the game. Waller agreed with the PWG report that Congress must increase oversight of stablecoins but argued for a narrow regulatory framework.

## Federal Reserve (Fed), Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corp (FDIC)

On November 23, the U.S. banking agencies, the Federal Reserve (Fed), Office of the Comptroller of the Currency (OCC), and Federal Deposit Insurance Corp. (FDIC) have released their "[crypto sprint](#)"; the agencies' agenda on oversight for the crypto industry. The joint statement covered the issue of custody, crypto-backed loans, stablecoins, and the possibility of capital standards for the sector. The broad focus is on what banks can do with crypto and applying existing laws to the industry. The joint statement does not affect any current regulations or discuss new information but



lays out the agencies' plan to clarify and regulate the industry.

### ***Looking Ahead***

December 8	<ul style="list-style-type: none"><li>• The House Financial Services Committee is hosting a hearing entitled, <a href="#">“Digital Assets and the Future of Finance: Understanding the Challenges and Benefits of Financial Innovation in the United States.”</a></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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