



# 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 Working Groups are working to finalise policy positions for application in the remainder of 2021 and into the new year. The Finance Working Group is focused on DeFi, DAOs and NFTs to produce a report covering these three timely topics. The Identity Working Group is finalising an INATBA position on eIDAS 2.0 and will engage with policymakers on this document. To join these efforts and 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 26<sup>th</sup> November to the 10<sup>th</sup> December 2021. These last weeks the main developments have focused on the Digital Finance package files. In the Council,



both the Digital Operational Resilience Act (DORA) and the Markets in Crypto Assets Regulation (MiCA) have been approved, meaning that the position of the Council has been taken ahead of the trilogue negotiations with the European Parliament and the European Commission. On the European Parliament side, DORA has been approved in Committee and next week will most likely be approved in Plenary Session, meaning that it will be ready to move into trilogues as well while MiCA is still being discussed with no clarity on when a position will be reached. On AML the Council reached a General Approach on the Transfer of Funds Regulation (TFOFR)

Despite the end of the legislative year and the focus on National Defense Authorization (NDA), Capitol Hill has continued to work on crypto policy. In a hearing held on December 8, the House Financial Services Committee members questioned six executives of the biggest crypto companies, previewing what the Committee might do next year on crypto. Although the hearings did not result in any specific next steps, they did highlight the educational strides that several members have made regarding the topic. Since it is not a new session, Congress will resume its work in the New Year after its holiday recess. Chairman of the Securities and Exchange Commission (SEC) Gary Gensler also continued his criticism of crypto in recent speaking engagements, calling for more oversight of the industry.

# EU Policy Developments

## DORA: European Parliament agreement on position

On 1 December, the European Parliament's Committee for Economic and Monetary Affairs (ECON) adopted its position on the Digital Operational Resilience Act (DORA) with 44 votes in favour, 5 abstentions and 5 votes against. ECON members are calling for the framework to include strategies, policies, procedures, ICT protocols and tools to identify, prevent and protect entities from anomalous activities. Additionally, committee members called on the risk management requirements to not hamper financial entities from being innovative. The ECON Committee is also in favour of the creation of a Joint Oversight Body to directly oversee critical ICT third-party service providers. With its position reached, the European Parliament will enter the trilogue negotiations with the Council and the European Commission with an agreement on a final text expected during the first months of 2022.

## CBDC: ECB paper on scope, pricing and control mechanisms

On 30 November, the European Central Bank (ECB) [published](#) a paper on the functional scope, pricing and controls of Central Bank Digital Currencies (CBDCs). The paper highlights the need for Central Banks to find the right balance between the store of value and means of payments of the future CBDC to avoid flow of funds from traditional financial services players. Additionally, it touches upon the functional scope of the digital currency and proposes some criteria to help central banks understand which payments segment a CBDC is best suited for. Finally, it stresses the need for cost recovery and compensation structures to be based on a comprehensive analysis of other alternatives in place already.

## Digital Euro: Fabio Panetta's on the future of money

During an [intervention](#) in Rome on 10 December, Fabio Panetta, member of the Executive Board of the ECB, talked about the present and the future of money in the digital age. He stressed the need for CBDCs in an increasingly digital world and for central banks to ensure that central bank money is fully usable and can retain its role as a payments anchor. He went over the benefits of the Digital Euro, highlighting the importance that it would have on the monetary, financial political sovereignty. He added that its confidentiality and its efficiency were also aspects to be valued. Finally, he encouraged the private sector to participate in the development of the Digital Euro and called for increased cooperation at the global level.

## AML: ECB Position on the proposal for Transfer of Funds Regulation

On 1 December, the ECB [published](#) its opinion on the European Commission's (Commission) proposal for a Transfer of Funds Regulation (TFOFR) recast, part of its 20 July Anti-Money Laundering (AML) package. Overall, the ECB welcomes the proposed regulation as a means of levelling the playing field for crypto-asset service providers (CASPs), noting that since crypto-asset transfers are subject to similar money laundering and terrorism financing (ML/TF) risks as wire funds transfers, CASPs should be subject to the same level of AML/CFT requirements as other obliged entities. The ECB's opinion echoes the Council's General Approach that was reached on 29 November 2021 on the need for the TFOFR to enter into force at the same time as Markets in Crypto-Assets (MiCA) Regulation and the need for transactions between hosted and unhosted wallets to provide the same level of information as regular transfers. Interestingly, the ECB did not emit any opinion on the EUR 1,000 threshold below which information need not accompany crypto-asset transfers.

## AML: Council general approach on Transfer of Funds Regulation

On 29 November, according to non-public documents, the Council reached a General Approach on the TFOFR. This lays out the Council's position on the TFOFR ahead of trilogues with the European Parliament (EP). The text diverges from the European Commission's proposal published on 20 July 2021 in several significant ways. Firstly, the Council is favouring a faster application of the TFOFR in accordance with the application timeline of MiCA. Second, the Council removes the EUR 1,000 threshold below which information need not accompany crypto-asset transfers. Third, transfers from/to unhosted wallets should collect the same information on the originator and beneficiary as between two CASPs. Finally, regarding the data retention, the document clarifies that upon expiry of the information retention period, payment service providers and CASPs shall ensure that personal data is deleted.

## AML: ECOFIN

On 7 December, European Finance Ministers [met](#) for an ECOFIN meeting during which Member States (MS) discussed the European Commission's 20 July 2021 Anti-Money Laundering (AML) Package during a public hearing. MS comments were scarce. They welcomed the AML package proposals for an AML Directive (AMLD), Regulation (AMLR) and Authority (AMLA) and praised the work done by the Slovenian Presidency on the General Approach on the Transfer of Funds Regulation recast (TFOFR) reached on 29 November 2021. MS welcomed the proposal for AMLA. Latvia, Croatia, Italy and Spain called for the scope of AMLA's direct supervisory powers to be

extended to entities not only based on their size, but on their position in national markets and the risks they pose. Hungary indicated that the proposed supervisory powers were against the principles of proportionality and subsidiarity, and that AMLA would not have enough knowledge of internal markets to supervise effectively. Austria indicated its opposition to the 10 000 limit on cash transactions. Spain noted that the proposed harmonisation of the AML framework should not impact national frameworks with stricter requirements.

## AML: ECON-LIBE Joint Hearing

On 1 December 2021, the Economic and Monetary Affairs (ECON) and Civil Liberties, Justice and Home Affairs (LIBE) Committees of the European Parliament held a hearing on the Commission's 20 July AML Package. During the hearing, Raluca Pruna (Head of the Financial Crime Unit of DG FISMA), Mihails Kozlovs (European Court of Auditors), Joshua Kirschenbaum (non-resident fellow at the German Marshall Fund) and Burkhard Mühl (Head of the European Economic and Financial Crime Centre at Europol) provided their views on the AML Package.

Of particular interest, the ECR (centre-right) expressed caution regarding the proposed requirements for CASPs, with Rapporteur Assita Kanko (LIBE, ECR, Belgium) indicating that these should not have adverse effects on innovation and push the crypto industry out of the Union. On the left, Paul Tang (LIBE, S&D, Netherlands) expressed concern that most of the new requirements targeted CASPs and not Peer to peer (P2P). He argued that this would result in illegal flows being shifted from CASPs to the latter. He also noted that the use of algorithms by certain crypto currencies was not subject to a risk assessment by the Commission and highlighted the need to take action on these.

In his intervention, Mr Kozlovs focussed on the findings of the ECA's Special Report on AML. He highlighted the limited means currently available to the EU to ensure enforcement of its AML legislation and the fact that the Commission has not been prioritising identified risks effectively, leading to uncoordinated and sluggish responses to AML scandals. Mr Kirschebaum was overall positive of the Commission's package, and was echoed by MEPs when highlighting the need for AMLA's direct supervisory powers to be directed to entities based on a quantitative and qualitative assessment of the structural risks they pose. A more critical view of the AML Package was expressed by Europol representative Mühl. He noted the current lack of dissemination of information from national financial intelligence units to law enforcement, indicating that more than 80% of AML data flows originating in FIUs was not available to Europol. He indicated that the current package did not propose measures to strengthen collaboration with law-enforcement agencies.

## DeFi: BIS comments on Quarterly Review

On its December iteration, the Bank for International Settlements (BIS) [included](#) several pages on Decentralized Finance (DeFi) as part of a “special feature”. Overall the text does not provide any new insights and introduces the topic and the different applications of DeFi currently. However, it is of relevance that the BIS is including this topic in its quarterly review, highlighting the importance of the topic for global legislators and policymakers. Additionally, the text mentions possible policy considerations and conclusions, amongst them the risk for financial stability, the need for proper regulatory principles, the role of stablecoins and the difficulty to legislate over DeFi due to its nature.

### ***Looking Ahead***

14 December 2021	<ul style="list-style-type: none"><li>• European Parliament Plenary</li></ul>
15 December 2021	<ul style="list-style-type: none"><li>• European Parliament Plenary</li></ul>
16 December 2021	<ul style="list-style-type: none"><li>• European Parliament Plenary</li></ul>
21 December 2021	<ul style="list-style-type: none"><li>• Coreper II</li></ul>
12 January 2021	<ul style="list-style-type: none"><li>• Expert Group on Direct Taxation (crypto-assets)</li></ul>



# US Policy Developments

## Congress

On December 8, 2021, the full House Financial Services Committee held a hearing entitled "Digital Assets and the Future of Finance: Understanding the Challenges and Benefits of Financial Innovation in the United States." The hearing was the first time crypto CEOs testified on Capitol Hill.

The hearing primarily focused on fact-finding and ended without any major fights. Most of the members focused on stablecoins, referencing the recent President's Working Group (PWG) report on the topic. Specific legislation was not discussed nor were concrete plans for new legislation. While executives avoided answering defensively, they showed distaste for the Securities and Exchange Commission's (SEC) current industry handling. The executives mainly asked for greater regulatory clarity, especially regarding agency jurisdiction.

During the hearing, the partisan divide continued with influential Democrats showing skepticism towards the industry and Republicans primarily urging light regulation and support for innovation. Democrats rarely mentioned consumer or investor protections as the main concern, unlike previous hearings. Rep. Brad Sherman (D-CA) maintained his reputation as the most outspoken critic of crypto, while other members, including Reps. Tom Emmer (R-MN) and Anthony Gonzalez (R-OH) remained fierce industry proponents. There are certain Democrats, such as Rep. Bill Foster (D-IL) supporting the industry. Lawmakers from both parties and almost all witnesses discussed digital assets' ability to help the un-and-underbanked populations in a way the traditional financial system has not. Financial inclusion is a frequently cited benefit of digital assets and will continue to play a prominent role in future discussions.

The hearing marked the first time members of Congress substantively discussed Web3. House Financial Services Ranking Member Patrick McHenry (R-NC) and Rep. Gonzalez (R-OH) emphasized how Web3 can solve important problems such as remittances and financial inclusion. While members have a long way to go in understanding the topic, the hearing provided insight that members are aware of the technology.

Overall, members showed a higher level of understanding than previous hearings and a willingness to learn more. Similar to the Robinhood-GameStop hearings, there will be follow-up hearings with academics and regulators in the next few months.

While the Senate Banking Committee is expected to convene a similar hearing with CEOs of the major stablecoin issuers and exchanges, most likely early next year. Those executives will likely come from the companies Senate Banking Committee Sherrod Brown (D-OH) sent letters on November 24. Brown sent letters to Circle, Coinbase, Gemini, Paxos, TrustToken, Binance.US, the Centre Consortium (Coinbase and Circle jointly operate), and Tether. The letters asked for more information about their issuances, governance, consumer protection policies and requested responses by





December 3. None of the companies have responded to Brown so far. The letters came a month after Brown and other Democratic Senators called for Facebook to halt its new stablecoin project, indicating a growing focus on stablecoins.

For the time being, the Senate Banking Committee is hosting a hearing on stablecoins with academics on December 14. One witness is Alexis Goldstein from the Open Markets Institute, a frequent witness for Democrats on the topic. Goldstein is a crypto sceptic and struggles to point to the benefits of the technology.

Reps. Tom Emmer (R-MN) and Jim Himes (R-CT) pushed back against the President's Working Group (PWG) report on stablecoins, arguing regulating stablecoin issuers like banks would kill American competitiveness. Both members also raised concerns that lawmakers lack enough crypto education to regulate the industry.

House Financial Services Ranking Member Patrick McHenry (R-NC) released another letter in support of crypto, writing to both the Office of the Comptroller of the Currency (OCC) and Commodity Futures Trading Commission (CFTC) requesting a response on a range of issues. McHenry also reiterated concerns that over-regulation would hinder innovation.

Sen. Elizabeth Warren (D-MA), a frequent crypto critic, questioned the environmental impact of Bitcoin mining; specifically sending a letter on concerns to Greenidge Generation's (GREE) bitcoin mining operation in New York. Environmental concerns are increasingly becoming a concern of lawmakers and will play a role in legislative talks in 2022.

The topic of crypto regulation will continue in the new year as an anonymous survey done by Punchbowl of senior staffers on Capitol Hill had crypto regulation on the list of priorities for Congress in 2022.

## Treasury

During a rare public comment on crypto, Secretary Treasury Janet Yellen stated that she is undecided on if US should launch a digital dollar. She stressed that Congress would have to be a part of this decision, similar to calls from Federal Reserve Chair Jerome "Jay" Powell. Yellen said the Federal Reserve-MIT study on the topic is expected soon, and the Fed recognizes the need for consensus to move forward. She added that a CBDC has not been discussed in a "serious way" at the White House and that Congress will also need to weigh in.

During a Senate Banking Committee hearing, Secretary Yellen voiced optimism that stablecoins could lead to significant efficiencies and improve payments but require proper regulation. In response to a question from Senator Patrick Toomey (R-PA) about guidance from the Financial Action Task Force (FATF) regarding the regulation of crypto providers that never take custody or control of customers' assets, Yellen said that she agreed with updated Financial Crimes Enforcement Network (FinCEN) guidance and believed the FATF does, too.



## Securities and Exchange Commission (SEC)

During a recent event, Securities and Exchange Commission (SEC) Chair Gary Gensler and his Republican predecessor, Jay Clayton, reiterated that "types of crypto tokens fall in the SEC's domain." However, they did not provide further detail. They also repeated that while the technology offerings may be new, the old rules still apply, and Gensler also emphasized the need for more investor protections. Gensler frequently references how Clayton's stance aligns with his views on regulating crypto, highlighting a continuation of the SEC's policy.

In response to Senate Banking Ranking Member crypto-ally Pat Toomey's (R-PA) questions, Gensler doubled down on concerns about spot Bitcoin ETFs. Gensler repeated concerns about the lack of regulation of Bitcoin and that the SEC would not be influenced by other entities approving spot ETFs. Gensler did say he was comfortable with futures-based ETFs, because Bitcoin futures trade on highly regulated exchanges. Toomey's letter noted that other non-US entities are approving spot Bitcoin ETFs and that Americans are finding a way to access those. Gensler has yet to acknowledge similar questions from Rep. Tom Emmer (R-MN) on the topic of bitcoin ETFs.

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

The Office of the Comptroller of the Currency (OCC) dedicated an entire section on digital assets in the Semiannual Risk Perspective Report for the fall of 2021, outlining what the agency sees as the key and emerging risks for banks. While digital assets have been in the report before, their inclusion this year was more in-depth. The report mentions that digital assets can lead to "opportunities" for the banking sector and yet highlights the "risks" associated with the asset class. The OCC intends to provide more guidance for banks in the coming year, outlining how specifically banks can take up crypto offerings.

The nominee for OCC head, Saule Omarova, officially withdrew her nomination after facing a significant roadblock when five key moderate Democrat senators expressed their opposition to her nomination. This points Hsu in the drivers' seat at the OCC for the time being and possibly for a nomination to be permanent Comptroller.

## Commodity Futures Trading Commission (CFTC)

In a Financial Times interview, the Commodity Futures Trading Commission (CFTC) commissioner and crypto advocate Dawn Stump called for regulators to issue clear guidance on how crypto rules will be enforced before punishing firms for not following them. Stump has been outspoken on the lack of clarity for crypto firms from US regulators, particularly between the CFTC and Securities and Exchange Commission (SEC).



### ***Looking Ahead***

December 14	<ul style="list-style-type: none"><li>• The Senate Banking Committee is convening a hearing entitled, “Stablecoins: How Do They Work, How Are They Used, and What Are Their Risks?”</li></ul>
TBD	<ul style="list-style-type: none"><li>• Fed-MIT report on crypto, central bank digital currency (CBDC), and stablecoins</li></ul>



Contact details:

**Website**

[inatba.org](http://inatba.org)

**Contact**

[contact@inatba.org](mailto:contact@inatba.org)

**Join INATBA**

[membership@inatba.org](mailto:membership@inatba.org)