Latest Policy Developments for DLT

International Association for
Trusted Blockchain Applications

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Prepared exclusively for INATBA Members.

Content

Highlights: INATBA Policy Developments

Happy New Year to all INATBA Members! Please find highlights from our policy work over the past year in our Executive Director Marc Taverner's new year in review blog post.

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 10th December to the 24th December 2021.

In the EU, these last weeks the legislative activities and relevant political developments have winded down significantly, with the main European stakeholders stopping the ongoing negotiations for the Christmas break. However, some interesting documents have been circulated regarding the upcoming presidencies of the Council of the European Union and their plans moving forward. Also, the recently published proposal on the fight on the use of shell entities mentions the use of crypto assets as a potential way of avoiding taxes. Finally, the EU Ambassadors have endorsed a provisional political agreement on the DLT Pilot Regime as reached on 24 November between the Council and the European Parliament.

As 2021 ends, the crypto industry is wrapping up a busy year climaxing over a particularly contentious fight over the inclusion of the controversial crypto tax provision in the infrastructure bill. Lawmakers and regulators used the final weeks of the year to continue to act on crypto, with the Senate Banking Committee holding a short hearing on stablecoins and a group of Senators writing letters to the Treasury Department about guidance on the crypto tax provision. Crypto will continue to be an important topic for Congress in the new year since the same Congress is returning, allowing them to pick up where they left off. In 2022, expect hearings concerning stablecoins, a central bank digital currency (CBDC), and the broader industry.

Agencies slowed down their work on crypto at the end of December but will continue work in the new year. This month Chairman of the Securities and Exchange Commission (SEC) Gary Gensler discussed crypto exchanges, and two pro-crypto regulators at the SEC and CFTC announced their plans to step down. Key releases that will shape crypto regulation in the new year include the significantly delayed Federal Reserve- MIT report on a central bank digital currency (CBDC) and the Office of the Comptroller (OCC) review of the crypto work under former Acting Comptroller Brian Brooks.

EU Policy Developments

DLT Pilot Regime: Council endorses provisional agreement

On 21 December, during a COREPER II meeting EU Ambassadors endorsed the provisional political agreement, reached on 24 November, between the Council Presidency and the European Parliament's negotiators on a Pilot Regime for Market Infrastructures Based on Distributed Ledger Technology.

Fair taxation: Inclusion of crypto assets

On 22 December, the European Commission published its proposal to end the misuse of shell entities for improper tax use. The proposal aims to ensure that shell companies in the EU that have no or minimal economic activity are unable to benefit from any tax advantages, thereby discouraging their use. This proposal falls under the wider Commission agenda on tax evasion and avoidance. The text touches upon the role of crypto-assets and its use in tax avoidance practices. Futhermore, crypto-assets are considered “relevant income” under Article 4 of the legislative proposal with crytpo-asset service providers being included as undertakings that dont meet the indicators of minimum substance for tax purposes.

In 2022 the Commission will present another transparency proposal which is expected to equip tax administrations with the necessary information to cover crypto assets.

Council Presidency: Trio Programme

The Trio Presidency Programme encompasses the 18-month period from 1 January 2022 to 30 June 2023 of the French, Czech, and Swedish Presidencies. They have recently published a document focusing on a number of well-known political priorities such as the digital and green transitions, as well as economic sovereignty and an industrial, trade, and competition policy fit for the current age. It strikes a careful balance between committing to actions that strengthen the role of the EU on the global stage and in areas such as digital technologies and sustainability, while remining committed to promoting multilateralism and cooperation in priority areas. In Financial Services, among other topics, the programme prioritizes the enhancement of EU’s strategic autonomy in economic and financial matters, to contribute to the CMU, support sustainable finance, and actions to ensure a sustainable and digital long-term growth. They wish to also support a robust and innovative digital ecosystem for businesses, excellence in research in the field of new technologies and digitalisation of SMEs, and fostering the development of blockchain technologies. The presidency will also communicate and begin the preparatory work on digital skills and education. One of the main objectives is to improve access to, sharing, pooling and re-use of data, whilst creating a level playing field to foster innovation, competitiveness and cultural diversity. It will also work towards achieving a more innovative digital finance sector, reinforcing the fight against money laundering and financing of terrorism, developing sustainability in corporate governance, and ensuring consumer protection.

AML: EBA updates its guidelines

On 16 December 2021, the EBA [published](#) its final Guidelines setting out how prudential supervisors, anti-money laundering and countering the financing of terrorism (AML/CFT) supervisors and financial intelligence units (FIUs) should cooperate and exchange information in relation to AML/CFT, in line with provisions laid down in the CRD.

On the same day, the EBA also published its [Guidelines](#) on risk-based supervision of credit and financial institutions' compliance with AML obligations. The EBA decided to update and strengthen these Guidelines in light of the findings from its ongoing work to review competent authorities' approaches to AML/CFT supervision. These findings suggest that some competent authorities found the implementation of the risk-based approach to AML/CFT supervision challenging.

The findings, and these Guidelines, could be viewed in light on the AML Package currently being negotiated by the EU, and how it might apply to crypto asset servcie provider. In particular, related to the debate in Council on whether CASPs should be in scope for the single EU AML Authority.

CBDC: Cross-border wholesale CBDC experiment

On 8 December 2021, the Bank for International Settlement (BIS) Innovation Hub, Bank of France and Swiss National Bank successfully concluded [Project Jura](#) – a cross-border wholesale Central Bank Digital Currency (CBDC) experiment. The project explored settlement of tokenised euro commercial paper and foreign exchange transactions. Jura studied a new approach for central banks to allow access to CBDCs for regulated non-resident financial institutions. Tests were conducted in a near real-life setting and met current regulatory requirements. This is part of a part of a series of wholesale CBDC experiments initiated by the [Banque de France in 2020](#). However, Sylvie Goulard, Deputy Chief of the Banque de France, said that the success of this test does not bring the creation of a digital euro any closer.

Looking Ahead

5 January 2022	• Coreper II

US Policy Developments

Congress

On December 14, 2021, the Senate Banking Committee convened a hearing titled "Stablecoins: How Do They Work, How Are They Used, and What Are Their Risks?". The Committee discussed stablecoins regulation, the impact stablecoins have on the un-and-underbanked, and the risks vs. benefits of stablecoins. The hearing witnesses were a mix of academics and industry players who gave insights into what will be discussed during the likely more comprehensive hearing in the new year with the stablecoins company executives from the companies that Senate Banking Committee Chairman Sherrod Brown (D-OH) sent letters to in November.

The witnesses for the December hearing included Alexis Goldstein, a frequent Democratic witness who was highly skeptical of fintech and crypto; Jai Massari, partner at Davis Polk & Wardwell, LLP; Dante Disparte, Chief Strategy Officer and Head of Global Policy at Circle; and Professor Hilary Allen.

The two academic experts argued that stablecoins do not provide significant strides in helping the un-and-underbanked and financial literacy, as one would still need a bank account and an account at a cryptocurrency exchange to access and use stablecoins. The same witnesses and a few Democratic Senators shared their views that stablecoins cannot be regulated in the same way that banks are regulated. They noted that stablecoins are different from traditional banks and that the same bank regulations can't overlay on top of stablecoin issuers and argued that over-regulation can prevent innovation.

Dante Disparte, the only industry witness, pointed to the benefits of the stablecoin payment process: inexpensive fees, predictability, consistent high speed, and the exchange goods and services. He also spoke about the ongoing and future innovation within the payment process and its ability to create more efficiencies and opportunities for individuals.

Senate Banking Ranking Member Pat Toomey (R-PA) was highly complimentary of stablecoins during the hearing, touting their potential to make faster and less costly payments. Afterward, he released a blueprint for future legislation on the topic. However, unless Sen. Toomey finds a bipartisan cosponsor, the legislation's success is unlikely, with two influential Senators, Senate Banking Chair Sherrod Brown (D-OH) and Senator Elizabeth Warren (D-MA) critical of the coins.

On December 14, a bipartisan group of Senators led by Sen. Toomey penned a letter to the Treasury Department asking for public rulemaking on the crypto tax provisions in the infrastructure bill. The letter requests Treasury to give guidance on the term "broker" by the end of the year, although the law won't take effect until 2024. So far it looks unlikely the Treasury Department will respond by end of year.

The delays over President Joe Biden's signature economic plan bill is a temporary victory for crypto investors who were facing the possibility of higher capital gains taxes if it was enacted. The plan passed with two measures limiting tools that investors can currently use to lower their taxes—restrictions that already apply to stocks and other securities. Biden's spending bill hit a roadblock when moderate Sen. Joe Manchin (D-WV) announced his opposition after months of negotiations. While there is still a chance a scaled-back version is passed in the new year, it is unclear if the crypto measures will remain. While the language is stalled, it is difficult for an idea to go away once proposed.

Treasury

Nellie Liang, the Treasury Department undersecretary for domestic finance and frequent crypto commentator for the department, discussed stablecoins during an interview last week. Liang called stablecoins a “potential big risk” and said regulators need lawmakers to take action to protect investors -- and the wider financial system -- from risks posed by stablecoins. She stressed that if Congress does not pass legislation, the regulators will act despite a in lack sufficient oversight powers. However, regulators do not want to act without Congressional action.

Securities and Exchange Commission (SEC)

Securities and Exchange Commission (SEC) Commissioner Elad Roisman announced his departure from the agency by the end of January. He has concurred on several pro-crypto actions with “Crypto Mom” Commissioner Hester Pierce over the past year and his departure will leave Pierce as the lone Republican commissioner.

SEC Chair Gary Gensler hired Senate Banking Committee Chair Sherrod Brown (D-OH)’s former senior staffer Corey Frayer to focus on crypto policy. Frayer is expected to play a key role in the SEC’s crypto policy, but his appointment is already causing waves due to Brown’s outspoken skepticism on the topic.

During one of SEC Chair Gensler’s latest interview with the Wall Street Journal, he restated he believes crypto oversight falls under the SEC’s jurisdiction and called for more robust investor protections. Gensler highlighted that many exchanges do a lot more than trading and reiterated calls for them to register with the agency or fear enforcement action. He went on to call trading platforms one of the two “big challenges” the SEC faces in asserting its regulatory control of the cryptocurrency industry.

Federal Reserve (Fed)

Federal Reserve Chairman Jerome “Jay” Powell, during a conference on December 15, said that he doesn’t view cryptocurrencies as a “financial stability concern.” However, he argued cryptocurrencies are speculative assets. Powell also discussed the consumer concerns of crypto, highlighting the risks for people who do not understand crypto. He also supported the views expressed in the President’s Working Group’s (PWG) report on stablecoins, which called on Congress to quickly pass new legislation that would require stablecoins to be issued by insured banks.

Commodity Futures Trading Commission (CFTC)

The Senate confirmed Rostin Behnam as Commodity Futures Trading Commission (CFTC) Chairman on December 15. During the confirmation process, Behnam called for Congress to give the CFTC more powers to regulate crypto and in the new year is expected to push back again the SEC Chair Gensler for more oversight of the industry.

Pro-crypto CFTC Commissioner Dawn Stump announced earlier this month that she does not want to serve another five-year term at the commodities regulator after her term expires in April 2022. It’s unclear when she plans to leave – and who could replace her- and if her replacement will hold the same pro-crypto insight.

Financial Stability Oversight Council (FSOC)

The Financial Stability Oversight Council (FSOC), which consists of 15 members and chaired by Treasury Secretary Janet Yellen, said it would take action on stablecoins if Congress fails to pass comprehensive legislation to regulate the tokens. The group emphasized that digital assets are among the top concerns for the group. Any real action from FSOC is unlikely since they typically move slow due to their inter-agency group coordination.

Looking Ahead

January 4	• American Enterprise Institute (AEI): “Blockchain in the Beltway, crypto at the Capitol: A technology juggernaut and its policy implications”
January 13	• CATO: “New Technology and Old Rules: Constructing a Crypto Regulatory Framework – A Path Forward”
TBD	• Fed-MIT report on crypto, central bank digital currency (CBDC), and stablecoins

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