



Latest Policy Developments for DLT



International Association for
Trusted Blockchain Applications



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Prepared exclusively for INATBA Members.

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INATBA Policy Developments

The Identity Working Group of INATBA has started its advocacy outreach for eIDAS, the European Commission's proposal on establishing a framework for a European Digital Identity. Previously, the Identity Working Group worked on the Policy Positions and response to eIDAS. Please contact the co-chairs of the Identity Working Group for more information.

The Finance Working Group is focusing on the AMLR and the Travel Rule, pieces of legislation that will substantially affect crypto asset transfers across Europe. The SubWG2 is working on the initial and the in-depth output. SubWG1 has shifted its focus to DAC8 exclusively, with a bilateral expected to take place in early March with TAXUD. DAC8 will focus on taxation of crypto-assets. The group aims to provide as much valuable feedback to the policymakers before they finish and publish the document. 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 21st January until 04th February 2022.

In Brussels a new version of amendments regarding the Markets in Crypto Assets Regulation (MiCA) has been circulated, with no significant changes compared to the previously seen one. The European Banking Authority has officially launched its new platform on AML data regarding individual markets players and the measures taken by authorities. Finally, the European Parliament is worried about the online anonymity and privacy standards of the users.

The topic of crypto is poised for a busy year in the US with policymakers across the board engaging in crypto discussions. Currently, the focus of policymakers is on stablecoins with both the House Financial Services Committee and the Senate Banking Committee holding hearings on the President's Working Group (PWG) report this month. The hearings will lay the groundwork for legislation on stablecoins as members discuss releasing legislation on the topic within the coming weeks.

After months of silence from the administration, the crypto industry is also preparing for an upcoming White House executive order. The order is the first official executive level move by the Biden Administration in this area. It will broadly discuss the industry and assign agencies the responsibility for releasing their own reports. Although the order is expected to be vague, the call for more reports may help establish jurisdictional clarity as agencies engage in turf wars.

EU Policy Developments

MiCA: Update on amendments

On the week of 31 January, a non-public document of the latest amendments on the Markets in Crypto-assets (MiCA) regulation proposed by Members of European Parliament (MEPs) was circulated. According to the latest amendments INATBA's policy positions have been addressed as follows:

- On **activity-based definitions**, the new amendments don't change the additions seen in the last version of the text. Therefore, the European Parliament hasn't changed its position from the last information shared.
- On the **legal entity requirements for Decentralized Autonomous Organisations (DAOs)**, the new amendments mentions that the CASP should "*appoint a resident director and to have substantive management presence in the Union*". For the rest of the text, nothing has changed from the last position shared
- On **exemptions for credit institutions**, the text hasn't changed from the last version seen.
- Finally, on **capital raising thresholds**, the ceiling for projects using DLT/blockchain technologies still stands at EUR 5M within 12 months without a full prospectus, so no changes have been added on this point neither.

AML: New European Parliament timelines

More information has been shared on the timelines regarding the different files that make the Anti-Money Laundering (AML) framework proposal in the European Parliament. On the AML Authority (AMLA), there will be a shadow rapporteur's meeting on Tuesday 15th February which will count with an exchange of views with national authorities and experts from different European bodies working on AML issues. Additionally, on Wednesday 2nd March there will be another shadows' meeting this time with an exchange of views with academics, industry and NGOs.

Finally, there is further clarity on the timeline for the Transfer of Funds Regulation (TFOFR), the draft report is expected to be published in the upcoming days, as soon as next week. Following this presentation, the deadline for the introduction of amendments will be the 3rd March, and the vote in the Economic and Monetary Affairs Committee is expected for the 31st March.

Cyber Resilience: ESAs welcome ESRB recommendations

The European Supervisory Authorities (ESAs) published a [statement](#) welcoming the European Systemic Risk Board's (ESRB) [Recommendation](#) on systemic cyber risk, which calls on the ESAs to prepare for the gradual development of a Pan-European systemic cyber incident coordination framework (EU-SCICF). In addition, it proposes that EU financial firms should have stress tests of their resilience to cyber-attacks, with regulators deciding how much disruption they could tolerate at critical institutions. This aims to support an effective and coordinated response at EU-level in the event of a major cross-border cyber incident that could have a systemic impact on the Union's financial sector. This framework endorses the potential coordination roles of the ESAs as envisaged in the Commission's proposed Digital Operational Resilience Act (DORA).

e-IDAS: Parliament worries about online anonymity

On the 3rd of February, a [hearing](#) in Parliament's Industry Committee (ITRE) brought to light several points in the privacy field, with regards to the EU's plans to roll out a bloc-wide digital identity framework. This was particularly the case for the European Data Protection Supervisor Wojciech Wiewiórowski, who said that while the initiative will give citizens more control with regards to how their online data is used and for what purpose, there were concerns on how privacy standards could be ensured across the entire architecture. Furthermore, digital groups warned that the framework could pose risks for online anonymity.

AML: EBA's launch of its central database

On 31st January, the European Banking Authority (EBA) [launched](#) EuReCA, its central database for anti-money laundering and counter-terrorist financing (AML/CFT) with the aim of coordinating efforts by competent authorities and strengthen EU AML/CFT efforts. EuReCA will contain information on weaknesses in individual financial institutions (e.g lack of adequate AML/CFT policies or absence of transaction monitoring), while competent authorities will report the measures they have imposed to rectify those weaknesses. The EBA will use this information to inform its view on ML/TF risks and support competent authorities in their supervisory process.

Innovation: BIS Innovation Hub's Working Program

The Bank for International Settlements [published](#) the Working Programme for 2022 for its Innovation Hub. The document includes the main objectives and goals, the centres where the projects will be conducted and the partnerships. The Hub's project portfolio includes several interesting topics for this year, namely next generation cross border payments and payments infrastructures, decentralised finance, open finance, cyber security and Central Bank Digital Currencies (CBDC). In 2022, a new project will be launched for a platform for settling cross-border payments using



multiple wholesale CBDCs. Additionally, a projects on foundational digital infrastructures with direct application on cross border payments will continue its development during this year.

Looking Ahead

07 February 2022	<ul style="list-style-type: none"> • ECON Committee - Economic Dialogue with Christine Lagarde, President of the ECB
09 February 2022	<ul style="list-style-type: none"> • Coreper II
10 February 2022	<ul style="list-style-type: none"> • Working Party on Financial Counsellors
10 February 2022	<ul style="list-style-type: none"> • Coreper II
16 February 2022	<ul style="list-style-type: none"> • Coreper II
22 February 2022	<ul style="list-style-type: none"> • Working Party on Financial Counsellors
22 February 2022	<ul style="list-style-type: none"> • Financial Services Committee
23 February 2022	<ul style="list-style-type: none"> • Coreper II



US Policy Developments

White House

Bloomberg reported on January 21 that the Biden Administration would issue an executive order on a government-wide strategy for digital assets in early February. The order is expected to be vague and call for agencies to release reports in 2022 assessing the risks and opportunities related to digital assets. The order is also expected to emphasize illicit financing, anti-money laundering (AML), know your customer (KYC), and bring in law enforcement agencies like the Department of Justice (DOJ).

While executive orders are typically used as signals, this executive order is significant because it is the first indication that the Biden Administration is exerting leadership in the field. Additionally, the order will provide a more precise timeline for the release of the agencies' reports on crypto, with many agencies already in the process of drafting them.

Congress

In late January, members of the crypto industry expressed concerns in response to a House Democratic competitiveness [bill](#) that grants the Treasury Department increased authority over monitoring and freezing financial accounts. Critics of the provision claimed that the broad language would give unchecked power to the Treasury Department to ban crypto transactions and encroach on privacy.

Within a week of the alarm bells, the industry claimed victory when the provision's author, Rep. Jim Himes (D-CT), proposed a manager's [amendment](#) (an amendment that alters the entire original bill and, if passed, replaces the original text) that would narrow the financial crimes provision that would expand the Treasury Department's authority. Hime's new provision includes language that would require Treasury to take public comment as it implements the measure. The Senate passed its version of the competitiveness bill on a 68-32 vote last year. The House provision triggered backlash from digital currency advocates for a provision not included in the Senate version.

On January 24, 2022, Ranking Member of the House Financial Services Committee, Patrick McHenry (R-NC), sent a [letter](#) to Financial Services Committee Chairwoman Maxine Waters (R-CA) urging Waters to use future hearings on digital assets to review the current regulatory environment and to prioritize the related issues. The letter is just one of many McHenry has written on the topic of digital assets, demonstrating his leadership on the matter.



Following McHenry's letter to Waters, she [announced](#) the committee's hearing schedule for February, which included a hearing on stablecoins. The hearing on February 8 entitled, "Digital Assets and the Future of Finance: The President's Working Group on Financial Markets' Report on Stablecoins," will focus on the report [released](#) in November. The recommendation that stablecoin issuers should have deposit insurance is likely to be one of the main points of discussion. So far, only Nellie Liang, Treasury Department's undersecretary for domestic finance, has been [announced](#) as a witness. She has become the department's default spokesperson on the topic.

The battle over the crypto tax provision in the infrastructure bill continues with Rep. McHenry, along with Rep. Tim Ryan (D-OH)), and the original co-sponsors of the bipartisan Keep Innovation in America Act, sending a [letter](#) to Treasury Secretary Janet Yellen, asking her for additional clarification on the digital assets reporting requirements in the infrastructure bill. The Keep Innovation in America is a bipartisan [bill](#) introduced to fix the digital asset reporting provisions in the Infrastructure Investment and Jobs Act—providing clarity to the nascent digital asset ecosystem.

In [response](#) to the Federal Reserve study on a potential central bank digital currency (CBDC), Senate Banking Committee Ranking Member Pat Toomey raised privacy concerns over a Fed-issued central bank digital currency (CBDC). Specifically, Toomey asked the Fed to address how it protects consumer data. Along with Sen. Cynthia Lummis (R-WY), Toomey praised the Fed for recognizing the staying power of digital assets and contributing to ongoing discussions.

Sen. Warren is enlisting more Democrats in her fight against Bitcoin mining companies. Warren and seven other Democrats expressed concern about their power consumption and environmental impact in a [letter](#) to several crypto mining companies.

Securities and Exchange Commission (SEC)

Securities and Exchange (SEC) Commissioner Hester Pierce has made several public comments about crypto and digital assets during the past couple of weeks. Pierce has recently suggested that crypto trading platforms registering with the agency may provide a path to approval for Bitcoin ETFs. She argued that if crypto trading platforms were registered by the SEC, Gary Gensler would have a more difficult time arguing the markets weren't properly monitored. Pierce expressed her frustration that the SEC has not approved these ETFs while Canada has.

Pierce has stated in a recent interview that the rapid growth of nonfungible tokens (NFTs) warrants the SEC issuing guidance on the topic this year. Pierce discussed how a SEC guidance could educate the public about NFTs.



According to Commissioner Pierce, a recent 654-page SEC [proposal](#) could threaten DeFi. Pierce claims the proposal includes expansive language to force platforms that do not trade on registered exchanges to register as "communication protocol systems." The language suggests that it could include regulating DeFi platforms.

Commodity Futures Trading Commission (CFTC)

Commodity Futures Trading Commission (CFTC) Chairman Rostin Behnam [announced](#) the first key members of his team, including General Counsel Rob Schwartz. Schwartz has been with the CFTC for many years and is expected to be aggressive in determining and exercising the Commission's jurisdiction over crypto. As agencies continue to rely on enforcement actions to regulate the crypto industry, Schwartz's outlook on enforcement actions is impactful for companies.

Behnam said he would "tread carefully" before drafting new rules or policies on digital assets during a virtual event. Behnam stressed any work done on the topic would include input from Congress, other agencies, and other stakeholders. Behnam's remarks suggest he will not overhaul crypto trading regulations immediately, as Republican CFTC Commissioner Dawn Stump suggested in early January.

Chairman Behnam will have another opportunity to talk about the role of the CFTC on digital assets when he testifies at a Senate Agriculture [hearing](#) on his agency's oversight of digital asset markets on February 9. The hearing will also cover the House and Senate Agriculture committees' request for more information about what powers Behnam's agency needs to crack down on abuses in volatile cryptocurrency markets.

Federal Reserve (Fed)

On February 3, the Federal Reserve Bank of Boston and MIT's Digital Currency Initiative released their first research [report](#) on how a central bank digital currency (CBDC) might work from a technological standpoint. The report stresses that this is not a recommendation on the topic but purely gives recommendations on the technical implementation of a CBDC. However, the publication does discuss whether there can be a framework that would support a U.S. CBDC. The report explains that the Boston Fed was able to develop "a core processing engine" for a general-purpose CBDC capable of handling 1.7 million transactions per second and concludes that open-source software offers a meaningful way to "collaborate, experiment, and implement."

The Boston Fed and MIT partnership has been ongoing for nearly two years under the name Project Hamilton. Both parties indicated that challenges remain; however, they will continue research. In the second phase, researchers will focus more on



security and privacy and how the framework can be designed. Concerns over privacy with a Fed-issued CBDC have been raised by several Members of Congress and other research papers by leading authorities.

Treasury Department/Financial Crimes Enforcement Network (FinCEN)

The Financial Crimes Enforcement Network (FinCEN) is [reexamining](#) a controversial proposed rule that would impose know-your-customer requirements on un-hosted or self-hosted crypto wallets. Initially proposed in 2020 under former Treasury Secretary Steven Mnuchin, the rule would require crypto exchanges to collect information about anyone using their private wallet. In 2020, privacy concerns accounted for most of the pushback on the rule. Treasury and FinCEN are considering the rule for their "semiannual agenda of regulations" and could finalize the rule by September- if it is pursued at all. When FinCEN first proposed the [rule](#) in December 2020, more than 7,000 comment letters were sent in, and if revisited, the rule is expected to receive similar pushback.

State and City Updates (New York and Arizona)

New York state Senate on January 25, 2022 confirmed Governor Kathy Hochul's appointment of Adrienne Harris to serve as the state's insurance and banking regulator. Harris has been serving as acting superintendent of the New York Department of Financial Services since August 2021. Harris's confirmation process felt some pushback from progressives due to her background working at a fintech and is seen as a more fintech friendly nominee in a state with a history of strict fintech and crypto regulation and enforcement.

A bill was introduced in Arizona that would make bitcoin legal tender in the state. The bill, SB 1341, has only been introduced and will not gain much traction since the U.S. Constitution does not allow individual states to create their own state legal tender.

Looking Ahead

08 February 2022	<ul style="list-style-type: none"> The House Financial Services Committee will convene a hearing entitled, “Digital Assets and the Future of Finance: The President’s Working Group on Financial Markets’ Report on Stablecoins”
15 February 2022	<ul style="list-style-type: none"> The Senate Banking Committee will convene a hearing to examine the President’s Working Group on Financial Markets Report on stablecoins.



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