



# Latest Policy Developments for DLT



International Association for  
Trusted Blockchain Applications

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*Prepared exclusively for INATBA Members.*

## Content

- I. EU Policy Developments
  - a) **MiCA**: Compromise Text in Council.
  - b) **Digital Euro**: Commission response to MEP question
  - c) **FinTech**:
    - a. French Authority concludes FinTech review
    - b. UK Government publishes response to the Kalifa review
  - d) **DLT Pilot Regime**:
    - a. Council agrees extension of scope
  - e) **E-Privacy**: Rules update still blocked
  - f) **EIDAS**: Pushed back again
  - g) **Cloud**: European companies present cloud policy ideas
- II. US Policy Developments
  - a) Treasury
  - b) Securities and Exchange Commission (SEC)
  - c) The Federal Reserve (Fed)
  - d) Office of the Comptroller of the Currency (OCC)
  - e) Commodity Futures Trading Commission (CFTC)
  - f) Congress
  - g) Internal Revenue Service (IRS)
  - h) Federal Deposit Insurance Corporation (FDIC)
  - i) State Update (New York)
  - j) Digital Dollar Developments



## Highlights: INATBA Policy Work

On 21 May, ~60 INATBA Members met with the the European Commission Directorate General for Informatics (DG IT) to discuss updates on **DG IT's work on the European Interoperability Framework evaluation and strategy**. Call participants shared INATBA Members' work on interoperability, including the Paper on Standards for Governance and Interoperability, work with EU Digital SME Alliance, and further input on the members' proposal to align the EIF to the WEF toolkit.

INATBA is pleased to share progress on its policy work with the European Commission's Digital Finance Package. Starting in Q4 2020, INATBA laid out five key priority policy issues that have been addressed by the public MiCA Task Force as well as internal initiatives like the DFP Task Force. Over the last 7 months we have been conducting extensive stakeholder and public affairs work to secure support and amendments on these policy issues. We are delighted to note that the most recent Presidency Compromise Text shows **positive results on 4 of the 5 issues central to INATBA's priorities**.

Join INATBA on Thursday, 27 May, for a **presentation from the INATBA Government Advisory Body**. Gerard de Graaf, Director for Digital Transformation at the European Commission's DG Connect. De Graaf will be discussing the GAB's work streams for the remainder of the year.

Join INATBA on Wednesday, 2 June, for a **presentation from the European Commission on their blockchain strategy**. This event was suggested by an INATBA Member during the 6 May Member's Gathering. Pēteris Zilgalvis, Head of Unit, Digital Innovation and Blockchain at the European Commission's DG CONNECT, and Lukas Repa, European Commission Senior Policy Officer, will be discussing updates to the Commission's blockchain plans and what the future holds for the region's blockchain adoption.

## 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 10<sup>th</sup> May to 21<sup>st</sup> May 2021.

During these past two weeks, the Council of the EU edged closer to a compromise on MiCA, with the latest non-public document addressing industry concerns in key areas. The same Working Party is also aligning to expand the scope of the DLT Pilot Regime slightly. Elsewhere, there was the decisions to possibly delay the e/Privacy rules due to different opinion in Trilogues and a delay in the review for eIDAS,

In the US, calls for more regulation on the crypto and blockchain industry continue to ramp up driven not only by retail consumer protection concerns, but also by financial institutions such as JPMorgan Chase and Goldman Sachs entering the market. Still, industry leaders are for more support from the Biden administration, pointing out, for example, that the new SEC Chair Gary Gensler has a greater understanding of the industry than previous administrators. Industry is less optimistic about Treasury Secretary Janet Yellen. It is also notable that it's now May and President Biden has not yet put forward his pick to head the OCC or CFTC.

# EU Policy Developments

## MiCA: Full Presidency Compromise Text

A full non-public version of the Presidency Compromise Text for the Markets in Crypto-Assets regulation (MiCA) was seen in the w/c 17 May, with some promising amendments for issuers and crypto-assets service providers (CASPs).

INATBA laid out five key priority policy issues and from Q4 2020 onwards. Over the last 7 months, we have been conducting extensive work to secure support and amendments on the identified policy issues. We are delighted to note that the most recent Presidency Compromise Text **shows positive results on 4 of the 5 issues central to INATBA's priorities.**

Issues central to INATBA's priorities have evolved as follows:

- i. The current version is amended so that MiCA only applies to utility tokens than can be transferred between holders. Tokens that represent the purchase of *existing* goods or services are out of scope as are non-fungible tokens.
- ii. Regarding Decentralised Finance, the text touches upon the importance of control in identifying an issuer, leaves tokens which are not offered to the public of out scope for most requirements, and further states that the crypto asset services that are neither provided nor controlled by a service provider are not in scope of MiCA either.
- iii. On capital raising, Member States are given the right to exempt offers up to EUR 8M, up from EUR 1M.
- iv. On transitional requirements, Asset Referenced Tokens (ARTs) will be able to be offered while waiting for authorisation once MiCA enters into force.

Regarding E-Money Tokens (EMT) issuers, the compromise proposal introduces several changes to align the provisions of the E-Money Directive and the role of E-Money Institutions. Additionally, new requirements have been added to the content for the white papers of EMTs. Regarding Asset-Reference Tokens (ARTs), certain provisions have been added to clarify the possible threat that an ART can pose to monetary sovereignty when widely used as a means of exchange. Issuers will be required to reduce the levels of activity in these circumstances, below the significance threshold.

## Digital Euro: Commission responds to MEP question

On 23 April, the European Commission (Commission) published a [response](#) by Mairead McGuinness (Commissioner for Financial Stability, Financial Services and Capital Markets Union), to a [question](#) tabled by Member of European Parliament (MEP) Milan Uhrik (SK, NI) on the possibility of introducing an

electronic (cryptocurrency) alternative to the current 'paper' euro. The Commissioner's response draws on the ongoing work between the Commission and ECB, which are reviewing numerous options. If introduced, the digital euro would be a complement and not a substitute of cash. Additionally, the Commission will analyse potential impacts on the financial sector apart from the analysis that the ECB will carry out in the upcoming months. The Commission noted that there is a need to analyse the impact on issues such as monetary policy, money laundering, data privacy, and competition with other payment solutions. This also includes considerations around distribution, interoperability, and its international use.

## FinTech: French Authority concludes FinTech Review

On 29 April, the French Competition Authority (Autorité de la concurrence) [announced](#) the conclusion of a 15-month long study of the FinTech sector. The Autorité found that technological innovation and changes in regulations have enabled the arrival in the payments sector of new players, FinTechs and BigTechs, which have developed, alongside traditional banking players, innovative payment methods for consumers, and new diversified services. In its opinion, the Autorité warned that Big Tech companies' data advantage, their control of key infrastructure such as phones' Near Field Communication chips, and the pre-installation of their apps could have an impact on competition in the payments space. While that poses a threat to traditional banking businesses, the antitrust agency said it would keep a close eye on banks to ensure they did not use their own control of accounts and data to shut out fintech challengers.

## FinTech: UK Government publishes response to Kalifa Review

On 26 April, the UK Government published its [response](#) to the Kalifa Review of UK Fintech. The review, which was published earlier this year, made a number of recommendations aimed at Government, regulators, and industry across five areas: Policy and Regulation, Skills and Talent, Investment, International Attractiveness and Competitiveness, and National Connectivity. The Government has set out the numerous actions, by several different bodies, that it plans to take in response, which included the following: i) the creation of a Centre for Finance, Innovation and Technology; ii) Revamping the Listings regime ; iii) developing further Regulation for digital finance; iv) creating a regulatory sandbox as well as a regulatory scalebox; v) creating a 'scale-up visa stream' and implementing new initiatives to increase international competitiveness; and finally, vi) working to better enable data-sharing across-sectors

## Council takes onboard DLT Pilot Regime extension of scope

According to a non-public Council Presidency Compromise, the discussions around broadening the scope of the MiCA Regulation to include as eligible securities sovereign bonds, UCITS and AIF units have been taken onboard as it was proposed during the last Council Working Group on MiCA. This means that these financial instruments can be traded on a DLT Multilateral Trading Facility (MTF) within the regulatory sandbox aka the pilot regime. These securities would fall under the issuance size threshold for convertible bonds which is set to €500 million or less in the Regulation.

## E-privacy rules update still blocked

Draft EU rules on privacy in communication networks are unlikely to move forward soon as national governments and the European Parliament still hold very different views on key issues, including companies' use of metadata, data retention, and Internet users' consent for tracking cookies. The next trilogue on the proposal for a Regulation is reportedly scheduled for 20 May 2021.

## EIDAS pushed back again

The European Commission's proposal for eIDAS review has been pushed back from 26 May to 2 June, according to the latest [College agenda](#). The proposal was originally scheduled to be published on 21 April, and subsequently moved to 26 May. The proposal could introduce an EU-wide digital ID system intended to be used as an alternative to digital ID schemes that already exist online.

## Cloud market: European companies present cloud policy ideas

The CEOs of 27 European companies on 12 May their [recommendations](#) to bolster the European cloud market to the European Commission, ahead of the bloc's launch cloud and edge computing initiatives. In the document, European companies including Airbus, Atos, Nokia, OVHCloud, SAP, Siemens, and Orange outlined their investment priorities for the alliance, including low-carbon technology for cloud services, cybersecurity and 5G, data centers and edge infrastructure. They wrote that there are a lack of alternatives to U.S. companies in cloud services.

### **Looking Ahead**

26 May 2021	<ul style="list-style-type: none"> <li>Working Party on Financial Services</li> </ul>
27 May 2021	<ul style="list-style-type: none"> <li>Working Party on Financial Counsellors</li> </ul>
27 May 2021	<ul style="list-style-type: none"> <li>Committee on Economic and Monetary Affairs</li> </ul>
28 May 2021	<ul style="list-style-type: none"> <li>Working Party on Financial Services on MiCA</li> </ul>
02 June 2021	<ul style="list-style-type: none"> <li>Coreper II</li> </ul>



# US Policy Developments

## Treasury

Treasury Secretary Janet Yellen [acknowledged](#) that the U.S. doesn't have a framework to regulate cryptocurrencies adequately and she hinted that there may be more interagency collaboration on the topic. She voiced concern that there is no framework that's "quite up to the task of putting in place a regulatory framework that we need" for cryptocurrencies. She also stated that there are issues around money laundering, Bank Secrecy Act, use of digital currencies for illicit payments, consumer protection and the like.

On May 20, Treasury [said](#) the Biden administration's proposal to strengthen tax compliance includes a requirement for transfers of at least \$10,000 of cryptocurrency to be reported to the Internal Revenue Service.

In May, the Department of the Treasury's office of foreign assets control has [asked](#) information on potential sources of commercial online tools that could be used to track transactions involving Bitcoins and other virtual currencies. Capability statements are due May 25.

## Securities and Exchange Commission (SEC)

In Gary Gensler's first Congressional hearing as SEC Chair, Gensler [stated](#) that SEC's authority is restricted to securities and products or asset managers that may invest in crypto. He also said the Congress could help protect cryptocurrency investors by drafting some laws around crypto exchange regulation, noting the current, limited jurisdiction of the SEC. Gensler also raised concerns that there was not a market regulator around these crypto exchanges, which is a concern of his since investor protections is one of Gensler's priorities. Gensler still did not specify what regulations around crypto could look like.

In a CNBC interview recently, Gensler [said](#) there needs to be authority for a regulator to oversee crypto exchanges, similar to equity and futures. "To the extent that something is a security, the SEC has a lot of authority. And a lot of crypto tokens — I won't call them cryptocurrencies for this moment — are indeed securities."

The crypto and blockchain industry are all continuing to closely watch the [Ripple v. SEC](#) case as potentially providing clarity for the industry. Gensler can either choose to continue on with the case or settle or provide further regulatory clarity.

On May 11, an SEC [staff statement](#) called bitcoin is a "highly speculative" asset. The note warned investors in mutual funds that trade bitcoin futures may be taking on more risk than they realize. The note has implications for bitcoin ETFs, which crypto proponents have been hoping to see for years. There are currently 10 crypto ETF proposals sitting before the SEC, and the agency is reviewing four currently. SEC staffers will "closely monitor" mutual funds' bitcoin positions with an eye toward ensuring investor protection.

## The Federal Reserve (Fed)

The Federal Reserve is contemplating [new rules](#) for granting “master accounts” to “FinTechs” — firms that offer high-tech payment services but aren’t eligible for ordinary bank charter. This would impact crypto firms applying for bank charters and was praised by many pro-crypto advocates such as Sen. Cynthia Lummis (R-WY). For now, the guidance is just a proposal and has not yet taken effect and will be available for public comment for 60 days.

During a House [hearing](#) with bank regulators, the Federal Reserve’s Vice Chairman of Supervision, Randal Quarles reiterated that the Fed is looking into ways to regulate cryptocurrencies, but that federal agencies need time to think through what the best regulatory approach would be before creating a framework for oversight.

A May 2021 [Federal Reserve survey](#) of market contacts found brokerage firms, investors, political advisers and academics increasingly see cryptocurrencies and stablecoins as a potential threat to the stability of the existing financial system. Notably, the Fed’s own staffers made no mention of cryptocurrencies in their analysis of the risks and the topic was not mentioned in the previous report.

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

The new acting head of the OCC, Michael Hsu, has largely been [silent](#) on the topic of crypto over his career, but in a May 18 statement to Congress indicated he will be much more cautious on crypto and blockchain than the previous head. He stated that he has asked staff to review a number of the actions taken over the last few years, including the agency’s interpretive letter saying banks are allowed to hold crypto assets. Hsu also told lawmakers that regulators need to better coordinate how they police technological innovation in finance, warning that agencies lack a clear strategy. Lastly, Hsu voiced concern over providing national charters to FinTechs and indicated that he believed banks engaging in crypto-related activities were engaging in “risky behavior”.

During a House [hearing](#) on May 19, Hsu said that the OCC, Federal Reserve, and OCC are considering creating an interagency effort to create a unified framework and set of definitions for cryptocurrency. Hsu’s testimony focused on what he sees as “fragmented” regulation the asset class has faced from federal regulators.

Hsu’s remarks come a [day](#) after the OCC announced that Chief Counsel Jonathan Gould, who signed many of the agency’s pro-crypto letters, would be departing the regulatory agency.

Hsu’s previous experience centers around the banking system and he has no background with crypto or blockchain. It is unknown if Biden will nominate him to be the permanent Comptroller as he still has not indicated who he may nominate.





## Commodity Futures Trading Commission (CFTC)

Without a Biden-nominated head of the agency, the CFTC has largely been quiet on the topic of crypto and blockchain in the past weeks. Regarding regulatory clarity, the CFTC is [watching](#) the Ripple v. SEC lawsuit as it will help to establish the scope of the SEC's authority in the digital assets space", said CFTC Commissioner Dawn Stump.

## Congress

The U.S. Senate [passed](#) a Democratic-backed measure to nullify the Office of the Comptroller of the Currency's "true lender" rule. The "true lender" provided legal certainty for lending partnerships between federally chartered banks and third parties. The measure was passed through the Congressional Review Act (CRA), a 1996 law that gives lawmakers a window of time to overturn agency regulations issued in the final months of an outgoing presidential administration. The House Financial Services Committee has already signaled similar disapproval of the OCC's recent charters.

During the third [House hearing](#) on the Game Stop market volatility, Reps. McHenry (R-NC-10), Huizenga (R-MI-2) Davidson (R-OH-8), Gottheimer (D-NJ-5) and Budd (R-NC-13) expressed support for the crypto and blockchain industry. However, Rep. Sherman (D-CA-30) stressed that crypto is only appealing to two groups: narco-terrorist and tax evaders.

The Chairman of the influential Senate Banking Committee, Sen. Sherrod Brown (D-OH) sent a [letter](#) on May 19 raising concerns over the volatility of cryptocurrency and the lack of regulations on the industry. The Ranking Member of the committee, Sen. Pat Toomey (R-PA), said he doesn't yet see a need for regulating cryptocurrencies.

Rep. Tom Emmer (R-MN-6) reintroduced his [Safe Harbor for Forked Assets Act](#) on May 16. The proposed legislation would prohibit the Internal Revenue Service (IRS) from leveraging penalties related to forked assets until it issues further guidance for taxpayers.

The Congressional Blockchain Caucus on May 12 sent a [letter](#) to Chairman Richard Jones of the Financial Accounting Standards Board (FASB) urging the establishment of appropriate accounting standards for companies with digital asset holdings.

Sen. Cynthia Lummis (R-WY), the first Senator to own Bitcoin, has added an amendment to the ["Endless Frontier Act"](#), which would add distributed ledger technology to the list of the U.S.'s priorities.

The new Ranking Member of the House Financial Technology Task Force is Rep. Warren Davidson (R-OH-8), who is considered one of the most pro-crypto, pro-blockchain members of the House.

## Internal Revenue Service (IRS)

The IRS is [increasing](#) efforts to tax crypto and has begun considering cryptocurrencies property, and has issued tax guidance accordingly. In early May, a court in northern California has ordered Kraken to provide information on users who traded more than \$20,000 between 2016 and 2020 to the IRS. This came shortly after a federal judge in Boston approved an IRS summons to the payments company Circle and its affiliates to turn over customer records to the agency.

## Federal Deposit Insurance Corporation (FDIC)

The (FDIC), one of the federal banking regulators in the U.S. and one of two entities that provide deposit insurance to federally regulated institutions, is taking a look at how banks are exploring digital currencies.

The head of the agency on May 11, Chair Jelena McWilliams, [said](#) the federal agency is about to publish a request for information to learn how banks are currently interacting with the cryptocurrency sector, how they might interact with crypto in future and what, if anything, the FDIC should be doing. The general public has until mid-July to respond and the document asks questions about use cases for digital assets, compliance management, deposit insurance, supervision, and other issues.

## State Update (New York)

New York is continuing its efforts to [double-down](#) on crypto enforcements as New York state Attorney General Letitia James has moved to shut down automated crypto trading app Coinseed for allegedly continuing to defraud its users even as it faced pressure on multiple legal fronts. The action follows allegations of fraud against the app in February.

## Digital Dollar Developments

The policy case for a digital dollar has not yet been made, according to Boston Federal Reserve president [Eric Rosengren](#). He said that the Boston Fed was involved in two central bank digital currency (CBDC) research projects, but that it was not clear whether the US needed a CBDC in the light of improvements to the Fed's payment systems. He also discussed how the Fed will launch a real-time payment system within two years that will have synergies with its research on a digital dollar. The system, known as FedNow, "will provide many of the use cases frequently associated with potential digital currencies, including facilitating digital commerce in dollars".

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