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: 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 1st April until the 15th April 2022.

Before Brussels heads to the Easter break, the second half of the French Presidency of the Council of the European Union will be focused on finalising trilogue negotiations on key files such as the Markets in Crypto Assets (MiCA), the Digital Operational Resilience Act (DORA) and the Transfer of Funds Regulation (TFOFR). Additionally, Brussels is still very much focused on the ongoing war in Ukraine and has imposed a fifth package of sanctions on Russia involving crypto assets. The Digital Euro project continues to be a centre piece of the legislative discussions, with the European Commission publishing a consultation ahead of its legislative proposal later in 2023 and with the Member States and the Eurogroup discussing different policy options around the project.

As Congress is on recess for two weeks, legislative activity on Capitol Hill has slowed down. Still, Congressional attention continues to focus on issues related to stablecoins and, to a lesser extent, illicit finance. Among the most important developments over the past few weeks is the introduction of the Stablecoin TRUST Act by Senate, Banking, Housing, and Urban Affairs Ranking Member Patrick "Pat" Toomey (R-PA). Senator Toomey first teased stablecoin legislation in October 2021, and this marks the first stablecoin legislation from a member in a leadership position.

Last week several agency heads, including Treasury Secretary Janet Yellen and Acting Comptroller of the Currency Michael Hsu, delivered compelling speeches on digital assets and future regulation. While neither speech provided specifics on the direction of federal regulation, several states, such as California and New York, continue to move forward with state-level legislation as federal regulation lags.

EU Policy Developments

Sanctions: Prohibition on high-value deposits to crypto wallets

On 7th April the EU approved its fifth package of sanctions against Russia. The new sanctions include an extended prohibition on high-value deposits to crypto-wallets, and on the sale of banknotes and transferrable securities denominated in any official currencies of the EU member states to Russia and Belarus, or to any natural or legal person, entity or body in Russia and Belarus. The sanctions state that *"It shall be prohibited to provide crypto-asset wallet, account, or custody services to Russian nationals if the total value of crypto-assets of the natural or legal person, entity or body per wallet, account or custody provider exceeds EUR 10 000."*

Digital Euro: Eurogroup comments on privacy and Council conclusions

On 5th April, the Council of the European Union published its conclusion on the EU's economic and financial strategic autonomy. These conclusions highlight the increased international role of the euro, and more specifically how the digital euro will help in achieving this. Overall, the arguments raised by the Council have been known for some time, but they include now the specific mention for the development of the legislation around the project, and for it to be built on the core European values. On the Digital Euro project the Council highlights several aspects of its future implementation such as the need to take into account the implications of the Digital Euro on retail payments, financial stability and monetary policy. The Council stresses that the Digital Euro would complement cash once implemented. Also, it will complement private-sector initiatives, and it will help catalysing innovation in the financial services and economy. Finally, and to be successful, the Digital Euro will need a solid and ample support base, built on democratic values and with the intervention of the EU legislator.

Additionally, the European Central Bank published the presentation used during the last meeting of the Eurogroup. the presentation considered a range of policy options regarding privacy of the Digital Euro, and preliminarily closes in on a system where intermediaries would access transaction and user data to comply with Costumer Due Diligence /Know Your Client (CDD/KYC) requirements, while central banks would only access a limited amount of data. This is part of the investigative phase and all policy options remain open, as the ECB is asking for the input of Member States. This type of materials from discussions between key stakeholders are specially relevant since they indicate the policy options that are being considered.

Digital Euro: Consultation by the European Commission

On 5th April, the European Commission published its Targeted Consultation on the Digital Euro which complements the public consultation that was done be the European Central Bank (ECB). The consultation aims to collect more information on expected impacts in industries such as financial intermediation, payment services, and retail merchants, as well as for users of a digital euro. Questions asked in the consultation are around issues such as the impact on financial stability, privacy, availability to retail investors and the interaction of the digital Euro with cash. Unlike the ECB, the Commission will then have the power the propose legislative change needed for the digital Euro to become a reality. The consultation is open until 14 June 2022. A legislative proposal by the Commission is then expected to be published in Q1 2023.

AML: First trilogue on Transfer of Funds Regulation

On the week of 4th April a non-public document from the French Presidency (PCY) on the state of the Transfer of Funds Regulation (TFOR) ahead of the first trilogue, which will take place on 28th April, was seen. The second Trilogue is expected to take place on the 7th of June.

During a Council Working Group (CWG) on the 13th of April, the PCY sought Member States views on the European Parliament's position. While in overall agreement with the European Parliament's proposed scope, the French Presidency is seeking clarifications for the concepts of " ancillary infrastructure", "P2P crypto-asset transfers and transfers of crypto-assets by Crypto-asset service providers acting in their own name" – which are excluded from the TFOFR's scope. On unhosted wallets the Presidency notes that the European Parliament is taking a maximalist approach to Financial Action Task Force Recommendations. It is seeking Member State views on whether the European Parliament's proposed information verification regime is excessive, and if the obligation to flag transfers of more than EUR 1000 from an unhosted wallet to National Competent Authorities is relevant and/or should cover all crypto-transfers.

Crypto: IMF calls for the regulation of unsupervised crypto services

On 13th April, two senior IMF officials outlined their concerns in a blog, in addition to the relevant chapter on fintech and crypto from the Global Financial Stability Report. The two official warn that FinTechs might be small, but they can scale up within a very short period by servicing riskier clients than traditional lenders would. Also, they argue that digital banks have put more focus into lending money to people. But while a competitive market leads to better services, regulators need to be mindful that the fintech squeeze could eventually put banks with outdated technology out of business unless they modernize. The log entry calls for policies that target both FinTech firms and traditional banks proportionately. According to them, the opportunities that FinTech offers are fostered, while risks are contained.

DORA: First trilogue on the file

The French Presidency (FR PCY) reported to the Member States on the outcomes of the political trilogue meeting for DORA on 28th March. The work on the technical trilogues is almost over, and the main open issues that will be discussed at the next meeting will be on the scope, resilience testing, and oversight framework. There is still disagreement on these issues concerning the exclusion of auditors and medium-sized insurance intermediaries, whether to allow internal resilience testing, and the structure of the supervisory framework. The FR PCY has said that significant steps have been taken to reach a final agreement, and the next meeting is scheduled for 10th May 2022, and there is a possibility that this could be the last political trilogue meeting.

Taxation: ECON own report on taxation of crypto assets

On 4 April, the European Parliament's ECON committee published an own initiative (INI) draft report on the impact of crypto and blockchain on taxation. The INI report, led by MEP Lidia Pereira (EPP, PT), will have no immediate legislative consequences, but it calls the relevant actors in the field of taxation (Commission, Council and individual Member States) to take action to ensure effective and efficient taxation of crypto assets. The report calls on the EU to further negotiate international instruments on this matter. In particular, the definition of the tax base for crypto-assets should be a priority for EU legislators. The report points to the need of adapting the IT capacities of tax authorities through emerging technologies, such as DLT, AI, and data analytics, to facilitate tax compliance and increase the traceability and identification of taxable transactions in a globalised environment. Additionally, it invites the Commission to evaluate the creation of a new platform for training and best-practice sharing between national tax authorities in the field of combat against tax fraud and evasion in the digital economy, notably the use of crypto-assets. Finally, the report calls for amendments on the scope of the Directive on Administrative Cooperation (DAC8) to further assess if other categories of income and assets such as crypto-assets are to be included. The vote on the report is scheduled on 30th June 2022.

Looking Ahead

15 April 2022	• Deadline for feedback on eIDAS - Architecture and Reference Framework Outline
20 April 2022	• Coreper II
27 April 2022	• Coreper II
28 April 2022	• First Trilogue on TFOFR
29 April 2022	• Consultation Deadline: OECD Tax Transparency Framework for Crypto-Assets
6 May 2022	• Second MiCA Trilogue

US Policy Developments

Congress

Senate Banking, Housing, and Urban Affairs Ranking Member Patrick "Pat" Toomey (R-PA) introduced a discussion draft of the Stablecoin Transparency of Reserves and Uniform Safe Transactions Act of 2022, or Stablecoin TRUST Act, a comprehensive stablecoin regulation framework, on April 5, 2022. The bill offers stablecoin issuers the option of obtaining a newly created OCC license for stablecoin issuers, a state money transmitter license, or a traditional bank charter. The OCC-licensed issuers would also access the Federal Reserve's master account system. A disclosure regime would require these companies to obtain regular attestations, detail redemption policies, and specify what security backs the stablecoins they issue. Additionally, the bill enables insured banks to issue stablecoins and addresses state regulatory oversight of this segment of the crypto industry.

The bill formalizes several stablecoin principles Sen. Toomey released back in October 2021. During his press conference, Sen. Toomey noted that his bill supports innovation and encourages stakeholder feedback on the draft. The act is part of broader efforts to specify how the U.S.'s regulatory agencies could approach stablecoins issuers.

The Senate Republican Policy Committee (RPC) issued a policy paper, "Cryptocurrency Goes Mainstream," signaling the Republican Party is beginning to see crypto as a voting bloc. The RPC serves as the research arm of the Senate Republican structure. While the paper focuses on the benefits and opportunities of crypto, it also discusses its "nefarious purposes." The paper does not provide a broad endorsement of crypto nor next steps for the industry. The paper showcases the party leadership's position on the issue after the National Republican Congressional Committee (NRCC) became the first national campaign committee to accept contributions via crypto this summer. The Democratic Party has yet to communicate a unified stance on the industry.

Legislation on curtailing the possible use of digital assets to circumvent sanctions continues to be introduced, with Rep. Gregory Meeks' (D-NY) introduction of the Russia Crypto Transparency Act. The bill instructs the Treasury and State Department to present a report to Congress on how digital currencies could impact the effectiveness and enforcement of U.S. sanctions against Russian entities. Moreover, it authorizes the appointment of a Director of Digital Currency Security within the Office of Economic Sanctions Policy and Implementation at the Department of State, who will assist in developing sanctions enforcement mechanisms. The Russia Crypto Transparency Act is the only legislation aimed at curbing the use of crypto to bypass sanctions with bipartisan support, having support from both the Chairman and Ranking Member of the House Foreign Affairs Committee.

Treasury Department

On April 7, 2022, Treasury Secretary Janet Yellen, speaking on behalf of the Biden administration, delivered remarks on digital assets policy at American University in Washington, D.C. Yellen discussed how the White House Executive Order on Digital Assets balances supporting responsible development with risk management. She discussed the potential, growth, and risks of digital assets and how they reduce reliance on banks and credit cards. She noted that non-stablecoins cryptocurrencies might be further hindered by high fees and slower processing times than traditional payment methods. She did acknowledge the benefits and risks of stablecoins and central bank digital currencies (CBDCs). Additionally, she discussed how distributed ledger technology (DLT) could benefit other sectors and expand access.

Yellen emphasized that several of the tasks in the Executive Order build upon work already being done by the Treasury Department. Her remarks expanded on four key themes: 1) how the U.S. benefits from responsible innovation; 2) when regulation fails to keep pace with innovation, vulnerable people hurt the most; 3) sovereign money is the core of a well-functioning financial system, and that the U.S. benefits from the central role the dollar and U.S. financial institutions play in global finance; and 4) how the private and public sector in the U.S. needs to work together to ensure responsible innovation. Yellen also acknowledged the differing views about the role of government in crypto regulation.

Securities and Exchange Commission (SEC)

In a speech at the University of Pennsylvania Law School, SEC Chairman Gary Gensler stated that the SEC is working with the CFTC on regulating cryptocurrency exchanges. The coordination could lead to regulatory clarity for platforms. Gensler's speech comes after months of insisting that most crypto tokens are securities and that the SEC has leading authority in the space. Nonetheless, a growing chorus of Members have been pushing for the CFTC to take a stronger position in supervising crypto spot markets in recent months. CFTC Chairman Rostin Behnam has also argued that the CFTC should play a more prominent role in overseeing digital assets. Behnam argues the two most commonly traded digital assets - Bitcoin and Ether - are commodities and should be regulated by the agency. Chairman Behnam has asked for greater authority and a larger budget from Congress to better police the marketplace.

Office of the Comptroller of the Currency (OCC)

In a speech on stablecoins, Acting Comptroller of the Currency Michael Hsu called for bank-like regulation, echoing statements by other Biden administration officials. Hsu stated that the agency could not ignore the rapid growth of the stablecoin industry but disagreed with many officials by questioning whether long-term adoption is inevitable. He outlined three key policy considerations for the architecture of a USD stablecoin: stability, interoperability, and separability. He presented two approaches to regulating stablecoin issuers, a money market fund approach and a banking approach. Hsu explained the OCC seems to lean toward a banking approach, but with narrower, tailored regulatory requirements and supervisory requirements that prevent stablecoin issuers from being overburdened. Hsu's speech did not provide policy initiatives, but it did highlight the level of engagement and collaboration with other governmental bodies, including state banking supervisors.

Federal Deposit Insurance Corporation (FDIC)

The Federal Deposit Insurance Corporation issued a letter to banks under its supervision- the majority of U.S. banks- asking them to report “crypto-related activities.” The FDIC outlined several risks related to crypto assets, including safety, soundness, financial stability, and consumer protection. The FDIC noted the letter was prompted by unclear definitions and the rapidly evolving nature of the industry. According to the letter, the FDIC will review the information and ask further questions, if necessary, then issue "relevant supervisory feedback." The letter comes after the FDIC announced its intentions to release policy positions on crypto. Additionally, new Acting Chairman Martin “Marty” Gruenberg listed evaluating crypto risks as one of the agency's top priorities for 2022.

State and City Updates

A California Senate proposal to allow residents to pay state agencies with Bitcoin failed its initial legislative vetting, but there may be a revival this month. SB 1275's main opposition cited market volatility and reports of fraud, so its sponsor might consider narrowing it into a pilot project. Despite California headquartering many crypto companies, the state is comparatively behind many other states in introducing and passing crypto-related legislation.

The New York State Senate passed in its budget a provision for increase the authority of the Department of Financial Services (NYDFS) to oversee of the cryptocurrency industry, even as the state implements the strictest regulation for the industry. The NYDFS, the agency behind the infamously strict regulatory regime called the “BitLicense,” will develop a new “assessment” for crypto companies it oversees to bring the virtual asset industry into line with the traditional bank regulatory measures.

Looking Ahead

9 May 2022	• White House's Office of Science and Technology: Energy and Climate Implications of Digital Assets Feedback Requested

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