EUROPEAN COMMISSION

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REGULATORY SCRUTINY BOARD OPINION

Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets (MiCA)

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EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB/

Opinion

Title: Impact assessment / A European framework for markets in crypto assets

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

Distributed ledger technology (DLT) underpins more and more financial products. Known broadly as "crypto assets", these come in many forms. DLT has applications both to digital money and to securities.

Some view crypto assets as an important financial innovation that can create growth and jobs. Others warn about a lack of investor and consumer protection, and see risks of fraud, facilitating crime, money laundering and undermining of financial stability. Sound regulation might manage these risks. International efforts are underway to co-ordinate regulation, in order to make it more effective in the global financial system.

This report assesses the case for an EU framework for markets in crypto assets. It discusses objectives and examines the impact of different policy options.

(B) Summary of findings

The Board notes the useful additional information provided in advance of the meeting and commitments to make changes to the report.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

(1) The report is not sufficiently clear about what political decisions are to be taken now and what will be decided later.

(2) The report is not sufficiently clear about how encompassing the new regulatory framework would be.

(3) The report is not sufficiently clear about how oversight and regulation of crypto assets would be organised between Member State and EU agencies.

(4) The report does not sufficiently explain how the initiative fits with related ongoing regulatory efforts in the EU and international contexts.

This opinion concerns a draft impact assessment which may differ from the final version.

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(C) What to improve

(1) The report should better justify and explain the evolutionary approach taken to regulate crypto assets. It should specify more clearly what the primary legislation will put in place, and what will be left to subsequent delegated acts.

(2) The report should specify more clearly what unregulated types of crypto assets it proposes to bring under regulatory oversight. It should be more explicit whether oversight and regulation is based on functional definitions, or if it excludes certain types of crypto assets (e.g. unknown issuers, certain permission-based DLTs, etc.) from the proposed regulatory coverage.

(3) The report should clarify how supervisory bodies (NCAs, ESMA or others) will ensure investor and consumer protection and address financial stability concerns. Particularly for crypto assets reaching a certain scale, the report should better explain the (division of) powers proposed for supervisory bodies. The report could illustrate, by way of constructed examples, how the system would work.

(4) The report should better explain how the new supervision framework will mitigate risks of fraud, theft, hacking and market abuse and how it will prevent illicit use. The report should assess the risks of peer-to-peer transactions escaping regulatory oversight. It should also assess the risk that unregulated crypto assets will still play a significant role after the implementation of this initiative.

(5) The report should put the initiative better into context with ongoing EU and international regulatory efforts. It should explain how the initiative will fit in the evolving international regulatory context. The report should better explain the coherence with the upcoming revision of the anti-money laundering legislation, which may address some of the concerns relating to crypto assets.

(6) The report should better reflect concerns relating to stable-coins reaching a certain scale. In particular, it should clarify how it would mitigate risks of financial instability and loss of monetary policy effectiveness, and how agencies would be able to withdraw authorisation in case of non-compliance.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables. The report should identify, as far as possible, both substantive compliance costs and administrative costs, both as one-off and running costs.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Directive/regulation establishing a European framework for markets in crypto assets

Reference number	PLAN(2020/6125)
Submitted to RSB on	30 April 2020
Date of RSB meeting	27 May 2020

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

1. SUMMARY OF COSTS AND BENEFITS

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
Direct benefits		
Efficiency gains	EUR 220 to 570 million per year[1] (in the area of remittances) EUR 270 to 540 million per year[2] (in the area of cash equity markets) Up to EUR 4 billion per year[3] (in the area of reporting) N/A - In the range of several billion EUR (in the areas of clearing, settlement, collateral management and other intermediary functions) €15 to 19 billion per year[4] (estimate of banks' infrastructure cost savings in relation to cross-border payments, securities trading and regulatory compliance – captures parts of other efficiency gains)	The efficiency gains will only fully manifest themselves after several years following implementation. They can only be broadly estimated given the high degree of uncertainty as concerns technological developments and market reaction / uptake. The figures presented indicate the magnitude of possible savings and are based on a range of assumptions. Actually realised costs savings may deviate substantially (both up and down). There will also be positive impacts due to increase competition and innovation that are not accounted for in these figures (e.g. smart contracts based on DLT systems; they hold the potential to greatly lower legal costs across various economic activities)
Reduced costs of issuance	20-40% lower costs than for comparably sized IPOs[5]	Anecdotal evidence suggests that the current costs of ICOs is considerably lower than for comparable IPOs. The estimated figure reflects additional compliance costs that will arise due to the imposed regulatory framework.
Reduced fraudulent activity	Cannot be estimated with any reasonable degree of accuracy. One study found that global costs of fraud in crypto markets amounted to as much as USD 4.3 billion in 2019[6].	Fraudulent activity is estimated to affect 5% to 25% of current ICO offerings[7]. The imposed transparency requirements and supervisory oversight should substantially

[1] Based on stakeholder input and Commission market analysis and estimates on average crypto transaction costs – Savings would range between €220 – 570 million. This figure assumes a market uptake of 30% and does not account for potential competition effects with and within other payment channels.
[2] Goldman Sachs, Cboe Global Markets and European Commission calculations.
[3] Figure based on Commission Fitness Check of EU Supervisory Reporting Requirements – This figure represents the maximum cost saving potential assuming fully automated reporting systems throughout all areas of the financial system enabled by DLTs.
[4] Banco Santander, Oliver Wyman, Anthemis Group, InnoVentures, FinTech 2.0 Pap
[5] ICO costs are estimated to amount to ± 3 -5% of funds raised versus 10-15% for an IPO. The application of the envisaged regime however would imply additional costs. Funding costs ultimately will depend on various factors, including choices made by the issuing entity in terms of intermediaries, legal support etc.
[6] Chainanalysis - State of crypto crime

		reduce this figure in the European market.
Increased market integrity	Cannot be estimated with any reasonable degree of accuracy.	Stakeholders have frequently flagged issues related to market integrity. Low liquidity and concentrated holdings make many some crypto assets particularly susceptible to manipulative market behaviour. Given that there is currently no supervisory oversight in place, it is not possible to estimate the financial damage incurred. The enforcement of market integrity rules however clearly results in direct benefits for all market participants.
Reduced financial stability risks	Cannot be estimated with any reasonable degree of accuracy.	The regulation of global stablecoins will address associated risks in relation to financial stability. It is not possible to estimate this benefit given that there are currently no stablecoins in the market that would pose a potentially systemic risk.
Indirect benefits		
Increased innovation	-	The initiative will create a regulatory level playing field. This will facilitate innovation as market participants are exposed to direct EU-wide competition. The foreseen STO pilot regime will furthermore enable market participants to develop new products, services and market solutions.
Safeguarding monetary sovereignty	-	Global stablecoins hold the potential to undermine monetary control. This risk depends crucially on the setup of respective tokens. The framework will ensure that tokens minimise such risk and provide supervisors with sufficient tools to monitor and enforce respective regulatory requirements.

II. Overview of costs – Preferred option							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Newly regulated crypto assets	Direct costs	-	Parts of the arising compliance costs may be passed on to consumers	EUR 35.000 – 75.000 per whitepaper[8] EUR 2.8 – 16.5 million compliance costs for currently	EUR 2.2 – 24.0 million[10] on-going compliance costs	± EUR 140,000 per NCA[11]	EUR 350,000 - 500,000 per annum per NCA[12] EUR 150.000 – 250.000 per regulated

[7] Catalini, Christian and Joshua S. Gans (2018), Initial Coin Offerings and the Value of Crypto Tokens, MIT Sloan Research Paper No. 5347-18; Rotman School of Management Working Paper No. 3137213, (http://dx.doi.org/10.2139/ssrn.3137213)

[8] Includes legal costs beyond drafting of the whitepaper.

				unregulated entities[9]			platform[13]
	Indirect costs	-	-	-	-	-	-
Security tokens / pilot regime	Direct costs	-	-	Minimal compliance costs for incumbents New entrants will face one-off compliance costs similar to MTFs	Supervisory fees for operators of exchanges with costs comparable to current MTFs.	New input layers and training will imply small one-off costs	EUR 150.000 – 250.000 per regulated platform[14] (supervisory practices can be copied from traditional financial markets)
	Indirect costs	-	-	-	-	-	-
Regulation of Stablecoins	Direct costs	-	Parts of the arising compliance costs may be passed on to consumers	Issuers will need to develop a whitepaper as other crypto-assets issuers Costs are expected to considerably exceed those faced by other issuers, given more stringent ruleset and requirements as concerns operational setup	Regular reporting and operational requirements will place significant costs on issuers compared to the baseline Costs will depend strongly on the type of stablecoin	Significant one-off costs will be placed on supervisors for training and the setup of monitoring tools	Costs will depend strongly on the amount and type of stablecoins supervised
	Indirect costs	-	-	-	-	-	-

[10] Id.
[11] One NCA has indicated that the cost of supervision (including staff, training, IT infrastructure and dedicated investigative tools) is estimated at €500,000 per annum. The legislator in another Member State has estimated recurring costs at €347.500 per annum and non-recurring costs at €137,564.
[12] Id.
[9] Based on stakeholder input and Commission estimates on costs and number of entities falling within the regime – Upper and lower bound figures vary greatly due to uncertainty as to the number and type of entities, market reaction and scope of the regime.
[13] European Commission estimate - figure presented assumes need for 1-2 FTE supervisors
[14] European Commission estimate - figure presented assumes need for 1-2 FTE supervisors