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 NORTON ROSE FULBRIGHT

Global Blockchain Business Council

Fintech Updater – November and December 2019



EU, UK and US regulatory developments

FinTech	
EU	<p>Council of EU and European Commission draft joint statement on stablecoins</p> <p>The Council of the EU (Council) has released a note (13571/19) from its Presidency addressed to it, which annexes a joint statement of the Council and the European Commission (Commission) on stablecoins.</p> <p>In particular, the joint statement provides that “the Council and the Commission state that no global stablecoin arrangement should begin operation in the European Union until the legal, regulatory and oversight challenges and risks have been adequately identified and addressed.”</p> <p>The joint statement was adopted on 5 December 2019.</p> <p>Date: 6 November 2019</p>
EU	<p>Commission speech on state of play of crypto-assets</p> <p>The Commission has published a speech by Valdis Dombrovskis, European Commissioner for Financial Stability, Financial Services and Capital Markets Union, following the final Economic and Financial Affairs Council (ECOFIN) meeting under the Finnish Presidency.</p> <p>Among other things, ECOFIN announced the endorsement of a joint statement with the Commission on stablecoins. Mr Dombrovskis describes that a number of Member States, such as France, Germany and Malta, have introduced national crypto-assets regimes. However, he states that most would agree with the advice of the European Supervisory Authorities (ESAs) that crypto-assets markets go beyond borders and, therefore, a common European framework is required.</p> <p>The Commission will move to implement the ESAs’ advice on crypto-assets and will launch a public consultation before the end of 2019. In addition, the Commission will launch a public consultation on the digital operational resilience of the financial sector, for example against cyber-attacks.</p> <p>Date: 5 December 2019</p>
EU	<p>ECB paper on exploring anonymity in central bank digital currencies</p> <p>The European Central Bank (ECB) has published its latest in focus paper which explores anonymity in central bank digital currencies. The paper discusses a proof of concept for anonymity in digital cash (referred to as ‘central bank digital currency’) that has been developed by the European System of Central Banks.</p> <ul style="list-style-type: none"> The main thing that the prototype shows is that, in a simplified environment typical of a proof of concept, distributed ledger technology (DLT) can be used to balance an individual’s right to privacy with the public’s interest in the enforcement of anti-money laundering / countering the financing of terrorism (AML/CFT) regulations. It provides a digitalisation solution for AML/CFT compliance procedures whereby a user’s identity and transaction history are hidden from the central bank and intermediaries other than that chosen by the user. <p>Date: 17 December 2019</p>
EU	<p>Commission inception impact assessment on a legislative proposal for digital operational resilience framework for the</p> <p>The Commission has published an inception impact assessment on a proposal for a regulation on digital operational resilience for the financial services sector.</p> <p>The impact assessment has been published alongside a public consultation requesting feedback on how the financial services sector can be improved to be more secure and resilient to cyber-attacks.</p>

	<p>financial services sector</p>	<p>The consultation welcomes input from stakeholders in four main areas:</p> <ul style="list-style-type: none"> • requirements on ICT and security risk management in the legislative acquis applicable to the financial sector; • incident reporting requirements; • digital operational resilience testing framework; and • oversight of ICT third party providers to the financial institutions. <p>At this stage, the Commission is considering several policy options to achieve its objective. One option would be to have targeted amendments to EU financial services legislation (such as the possible revision of the directive on security of network and information systems) and a general yet bespoke legal framework addressing the digital operational resilience for all regulated entities, applying across the different financial sectors taking into account, where relevant, specific needs arising for financial services sectors.</p> <p>The deadline for comments to the impact assessment is 16 January 2020 and the deadline for comments on the consultation is 12 March 2020. The Commission intends to adopt a proposal for a regulation establishing digital operational resilience for the financial services sector by Q3 2020.</p> <p>Date: 19 December 2019</p>
<p>EU</p>	<p>European Commission consults on an EU framework for markets in crypto-assets</p>	<p>The Commission has launched a public consultation on the future EU framework for markets in crypto-assets. Launched in parallel with a public consultation on a digital operational resilience framework for financial services, both consultations are initial steps towards the implementation of the new Commission's President, Ursula von der Leyen, objective for Europe to grasp "<i>all the potential of the digital age and strengthens its industry and innovation capacity, within safe and ethical boundaries</i>". The consultation paper on crypto-assets consists of three substantive parts, which cover: (1) Classification of crypto-assets, (2) Crypto-assets that are not currently covered by EU legislation; and (3) Crypto-assets that are currently covered by EU legislation. Key points to note:</p> <ul style="list-style-type: none"> • Classification of crypto-assets <p>The Commission acknowledges that while there is a wide variety of crypto-assets in the market, there is no commonly accepted way of classifying them in the EU – including the lack of a single and broadly accepted definition thereof. To this end, and for the purpose of this consultation, the Commission defines a crypto-asset as "<i>a digital asset that may depend on cryptography and exists on a distributed ledger</i>". The Commission further notes that the lack of any comprehensive classification of crypto-assets leads to uncertainty in the markets, as to whether (and potentially which) such assets fall within the scope of EU financial services legislation by means of being MiFID II financial instruments. It therefore seeks stakeholder views on, among others, the usefulness, means and features of any such future crypto-assets classification.</p> <ul style="list-style-type: none"> • Crypto-assets not covered by EU legislation <p>The Commission notes that while crypto-assets can bring about significant economic benefits in terms of "<i>efficiency improvements and enhanced system resilience</i>", they can also cause potential challenges for their users. To this end, the Commission seeks stakeholder views on, among others, the importance of specific benefits related to crypto-assets and also specific risks related thereto. In this context, the Commission differentiates between "<i>stablecoins</i>" and "<i>global stablecoins</i>", and seeks views on potential risks stemming from both types of crypto-assets.</p> <p>More broadly, the Commission seeks views whether a bespoke EU regime for crypto-assets would "<i>enable a sustainable crypto-asset ecosystem</i>" and whether the use of crypto-assets in the EU would be "<i>facilitated by the greater clarity as to the prudential treatment of financial institutions' exposures to crypto-assets</i>". The consultation document includes specific questions focused on service providers related to crypto-assets, and in</p>

		<p>particular the issuance of crypto-assets, trading platforms, exchanges, provision of custodial wallet services for crypto-assets and other service providers. The Commission notes that such activities and services providers remain – with some exceptions – outside the European (and national) legislative and regulatory framework and considers that “<i>regulation may be necessary in order to provide clear conditions governing the provisions of these services.</i>”</p> <ul style="list-style-type: none"> • Crypto-assets covered by EU legislation <p>The Commission considers “<i>security tokens</i>” as crypto-assets “<i>issued on a DLT and that qualify as transferable securities or other types of MiFID financial instruments</i>” and activities concerning such security tokens qualifying as MiFID II investment services/activities, for which authorisation is required. In summarising trends concerning security tokens, the Commission admits “<i>the limited evidence available at supervisory and regulatory level</i>” and that “<i>existing requirements in the trading and post-trade area would largely be able to accommodate activities related to security tokens via permissioned networks and centralised platforms</i>”. The consultation document includes detailed questions designed to assess legislation applying to security tokens and including, but not limited to, MiFID II, Market Abuse Regulation, Short Selling Regulation, Prospectus Regulation, Central Securities Depositories Regulation, EMIR and UCITS.</p> <p>This consultation process is a first step for the Commission to prepare potential initiatives in the area of crypto-assets regulation in the EU and further consultation may take place over the coming months. The current consultation remains open until 19 March 2020.</p> <p>Date: 19 December 2019</p>
<p>UK</p>	<p>FCA call for input on open finance</p>	<p>The FCA has launched a call for input exploring opportunities and risks arising from open finance.</p> <p>The FCA refers to ‘open finance’ as the extension of open banking-like data sharing and third-party access to a wider range of financial sectors and products. Following the success of open banking in increasing innovation and competition in banking and payment services, the FCA is considering the potentially transformative benefits that could come from open finance.</p> <p>The FCA’s vision for open finance is one in which:</p> <ul style="list-style-type: none"> • consumers and businesses can grant access to their data to trusted third-party providers and in return gain access to a wider range of financial services and products, have greater control over their data, engage with their finances, and are empowered to make better financial decisions; • increased use of open finance spurs greater innovation, benefiting consumers by providing a broader range products and services that better suits their needs; and • widespread use of new services improves the financial health of consumers and businesses in the UK. <p>Annex 1 sets out use cases for open finance in different financial services sectors, including investments, pensions, insurance, consumer credit and mortgages.</p> <p>The deadline for comments to the call for input is 17 March 2020. The FCA intends to publish a feedback statement in 2020.</p> <p>Date: 17 December 2019</p>
		<p>In the summer of 2015, the New York State Department of Financial Services (DFS) finalised its regulatory framework for virtual currency firms planning to conduct virtual currency business activities in the State. Since 2015, the DFS has granted 24 virtual currency licences and charters involving virtual currency transmission. However, in response to calls from certain regulated virtual currency licensees (VC licensees) to list new virtual currencies (coins) in addition to those included in their initial applications to the DFS, and in order to provide efficiency and reflect the realities of an evolving market, the</p>

US

New York State Department of Financial Services calls for comments on recently proposed guidance regarding adoption or listing of virtual currencies

DFS is reviewing its virtual currency regulations and their implementation.

To that end, and in order to enable VC licensees to offer and use new coins in a timely fashion, the DFS has issued the following [two proposals](#), for which it is seeking comments from all interested parties:

1. A proposed DFS webpage that will contain a list of all coins that are permitted for the virtual currency business activities of VC licensees, without prior approval of the DFS, which may be updated from time to time, as long as such listed coins have not been subject to any modification, division, or change after their listing on the DFS webpage. The coins currently contemplated for the list include Bitcoin, Bitcoin Cash, Ether, Ether Classic, Gemini Dollar, Litecoin, Paxos Standard, and Ripple.
2. A proposed model framework for a coin-listing or adoption policy that can be tailored to a VC licensee's specific business model and risk profile to create a firm specific coin listing or adoption policy (**company coin-listing policy**) that, once approved by the DFS, will enable the licensee to self-certify the listing or adoption of new coins in addition to those that may be listed on the DFS webpage under proposal 1 above. It is noteworthy that under this proposal, if a company coin-listing policy is approved, no prior DFS approval is required before the licensee can start using or offering the self-certified new coins; rather, the licensee only needs to provide prior written notice to the DFS of its intent to offer and use such coins.

Under the proposed model framework for the creation of company coin-listing policies, a VC licensee's coin-listing policy should consist of robust procedures that comprehensively address all steps involved in the review and approval of virtual currencies in connection with the virtual currency business activities of the licensee. A company coin-listing policy should, at a minimum, contain and be based on the following attributes:

1. Governance
 - a board of directors or internal committee which approves the coin listing policy and reviews each new coin
 - conflicts of interests must be considered and addressed
 - minutes and records must be kept for each new coin application
2. Risk assessment
 - address creation, issuance, usage, and design of any new coin
 - consider operational, market, legal, and regulatory risk
3. Monitoring
 - periodically reevaluate each coin
 - employ control measures and process for de-listing coins

Under the two proposals, the DFS retains the right to object to the adoption or listing of any self-certified coin before and after the listing goes into effect and may require the coin be delisted. The deadline for any comments is 27 January 2020.

In December 2019, a group of US congressmen introduced a new Bill called the [Cryptocurrency Act of 2020](#), which, if voted into law, will provide a wide-sweeping regulatory framework for digital assets including cryptocurrencies. The purpose of the proposed new legislation is to clarify which Federal agencies are responsible for regulating the different types of digital assets and to require those corresponding agencies to notify the public of any Federal licenses, certifications, or registrations required to create or trade in such digital assets.

The three different digital asset-types identified in the Bill are: crypto-currencies, crypto-commodities, and crypto-securities. The Bill goes on to identify three agencies – which include the Commodity Futures Trading Commission (**CFTC**), the Securities and Exchange Commission (**SEC**), and the Financial Crimes Enforcement Network (**FinCEN**) – as the Federal Digital Asset Regulator or Federal Crypto Regulator.

Each agency is defined as the sole US Government agency with authority to regulate the following digital asset categories:

US

**Congress
considers Federal
Crypto Regulators
in new
Cryptocurrency
Act of 2020**

- CFTC: crypto-commodities
- SEC: crypto-securities
- FinCEN: crypto-currencies

In addition to each Federal Crypto Regulator having to maintain a public record of all licenses, certifications, and/or registrations required to create or trade in digital assets, FinCEN must also work with the Secretary of the Treasury to establish rules similar to financial institutions in order to trace cryptocurrency transactions.

Below, a breakdown of how each term is defined in the Bill is listed.

Crypto-Commodity: means economic goods or services that have:

- full or substantial fungability;
- the markets treat with no regard as to who produced the goods or services; and
- rest on a blockchain or decentralized cryptographic ledger.

Crypto-Currency: means representations of US currency or synthetic derivatives resting on a blockchain or decentralized cryptographic ledger. The types included in this definition are:

- such representations or synthetic derivatives that are reserve-backed digital assets that are fully collateralized in a correspondent banking account, such as stablecoins; and
- synthetic derivatives that are determined by decentralized oracles or smart contracts; and collateralized by crypto-commodities, other crypto-currencies, or crypto-securities.

Crypto-Security: means all debt, equity, and derivative instruments that rest on a blockchain or decentralized cryptographic ledger. However, there is an exception for a synthetic derivative that is operated as, and is registered with the Department of the Treasury as, a money services business and is operated in compliance with all Bank Secrecy Act and all other Federal anti-money laundering, anti-terrorism, and screening requirements of the Office of Foreign Assets Control and the Financial Crimes Enforcement Network.

Reserve-Backed Stablecoin: means a digital asset that is a representation of currency issued by the United States or a foreign government that rests on a blockchain or decentralized cryptographic ledger, and is fully backed by such currency on a one-to-one basis and fully collateralized in a correspondent banking account.

Synthetic Stablecoin: means a digital asset, other than a reserve-backed stablecoin, that is stabilized against the value of a currency or other asset, and rests on a blockchain or decentralized cryptographic ledger.

Much speculation exists around the reasoning behind this newly proposed legislation, but the most obvious explanation is US lawmakers preparing the regulatory framework for the introduction of Project Libra, Facebook's developing digital asset.

A round of voting sessions to approve this bill will be held in the first few weeks of January 2020.

International developments

G20

There has been no reported activity.

Financial Stability Board (FSB)

FSB plenary meeting November 2019

The FSB has issued a [press release](#) outlining the discussions held during its plenary meeting in New York.

In relation to Fintech developments, members endorsed an augmented framework for monitoring potential financial stability in cryptoassets markets to take into account 'global stablecoin' systems. The FSB intends to publish a consultative report on regulatory issues of stablecoins in April 2020. It will also publish in the coming weeks initial reports on market developments and potential financial stability implications from the entry of BigTech firms into finance and from third-party dependencies in cloud services.

Date: 7 November 2019

FSB publishes reports on financial stability risks stemming from BigTechs and cloud service providers

The FSB has published two reports on [financial stability implications of BigTech in finance](#) and [third party dependencies in cloud services](#).

In its report on BigTech firms, the FSB writes that a number of BigTech firms have grown their businesses rapidly over the last decade. Some of these large firms have grown to be of comparable or even of a larger size than some financial institutions. On their operations, there is a difference between BigTech's activities in advanced economies, where BigTechs tend to focus on payment services and activities complementing those of existing financial institutions, and emerging economies, where BigTechs are more prone to provide classic financial services such as lending, asset management and insurance. The FSB considers that BigTechs provide certain benefits to the financial services sector through their potential for innovation, diversification and efficiency within the sector, and have the potential to improve financial inclusion as well as access to finance for SMEs. Yet, the FSB feels that BigTechs may also pose a risk to financial stability. This includes risks stemming from leverage, maturity transformation and liquidity mismatches, as well as from operational risks that could arise as a result of shortcomings in governance, risk and process controls. In countries where BigTechs are significant providers of financial services, financial stability risks are high. Other risk sources considered by the FSB include the scale and complexity of linkages between BigTech and financial institutions through which propagation of risk could be channelled. All these risks raise a number of issues for policymakers. Although many of the activities of BigTechs are regulated through general financial services legislation, the question should be asked whether additional, tailor-made regulation is required. Furthermore, the FSB states that regulators and supervisors might also consider whether the increasing interlinkages between BigTechs and financial institutions might affect the viability of their business models.

The second report, on third party dependencies in cloud services, also assesses considerations on financial stability. The FSB writes that while cloud services may present a number of benefits over previously used technology for storing data, operational incidents at third-party service providers may affect the operations of financial institutions and result in data breaches. Furthermore, by using a third party cloud provider, supervisors may find it more difficult to assess whether the third party is acting in line with relevant laws and regulations as contractual limitations on the rights of access, audit and information for financial institutions and supervisors may restrict their ability to access critical data if necessary. Furthermore, potential concentration in third-party service provision could be harmful to financial stability in the event of a large-scale operational failure. The FSB recommends to standard-setting bodies to assess the adequacy of regulatory standards and supervisory practices for outsourcing arrangements, the ability to coordinate and cooperate and share information among supervisors when considering cloud services used by financial institutions, and the current standardisation efforts to ensure interoperability and data portability in cloud environments.

Date: 9 December 2019

FSB 2020 work programme

The FSB has published its [work programme](#) for 2020. The FSB's work programme is split across five areas:

- addressing new and emerging vulnerabilities in the financial system: including more detailed work on FinTech, global stablecoins, cross-border payment systems and cyber resilience;
- finalising and operationalising post-crisis reforms: including building resilient financial institutions, ending

too-big-to-fail (**TBTF**) and developing a safer derivatives market;

- implementation of reforms: including the monitoring of the implementation of the G20 reforms, peer reviews and financial benchmarks;
- evaluating the effects of reforms: ongoing evaluation work is centred completing the evaluation of the effects of the TBTF reforms for banks, and the launch of an evaluation of the effects of money market fund reforms; and
- strengthening outreach and the effectiveness of the FSB process: in 2020 the FSB will review the organisation of its work on non-bank financial intermediation and on implementation monitoring.

An indicative timeline of FSB publications planned for 2020 can be found in the Annex to the work programme.

Date: 17 December 2019

Bank for International Settlements (BIS)

There has been no reported activity.

International Organisation of Securities Commissions (IOSCO)

IOSCO statement on study of emerging global stablecoin proposals

IOSCO released a [statement](#) on a study of stablecoin initiatives with a potential global reach (**Global Stablecoins**).

IOSCO's FinTech Network (the **Network**), which is chaired by the FCA and was established in May 2018 to facilitate exchanges among IOSCO members on their experiences relating to FinTech developments, conducted the study.

The Network conducted an assessment for the IOSCO Board on how IOSCO principles and standards might apply to Global Stablecoins. This revealed that Global Stablecoins can include features that are typical of regulated securities, meaning that IOSCO principles and standards may apply to Global Stablecoins depending on how they are structured, including those related to disclosure, registration, reporting and liability for sponsors and distributors.

The Network came to the conclusion that a case-by-case approach is necessary to establish which IOSCO principles and standards, and national regulatory regimes, would apply. Therefore, a detailed understanding of how the particular proposed Global Stablecoin is expected to operate is needed, including the rights and obligations it confers on participants and the continuing obligations of the sponsor.

The IOSCO Board considered the study at its Madrid meeting on 30 October 2019. The Board agrees with the recent G20 [press release](#) that Global Stablecoins with potential systemic footprints give rise to a set of serious public policy and regulatory risks. In light of this, it urges international collaboration, so that the risks related to Global Stablecoins can be identified and mitigated, and the potential benefits realised.

IOSCO will participate fully in the Financial Stability Board's follow-up work on Global Stablecoins, working closely with other standard setting bodies to guarantee a coordinated response. It also encourages those seeking to launch Global Stablecoins to engage openly and constructively with all relevant regulatory bodies, in jurisdictions they may be seeking to operate.

Date: 4 November 2019

IOSCO consults on conflicts of interest and DLT relating to debt capital raising

IOSCO has published a [consultation paper](#) with proposed guidance addressing potential conflicts of interest and associated conduct risks that stem from market intermediaries in the debt capital raising process.

The proposed guidance consists of eight measures relating to the pricing of debt securities and related risk management transactions, the quality of information available to investors and the allocation of debt securities.

Additionally, the consultation seeks comments on the use of DLT in bond issuances and potential benefits and risks of using the technology.

The deadline for comments to the consultation is 16 February 2020.

Date: 16 December 2019

Committee on Payments and Market Infrastructures (CPMI)

CPMI report on wholesale digital tokens sets out possible future of transaction settlement

The CPMI has published a [report](#) on wholesale digital tokens, focussing on their potential for use as a means of settling wholesale transactions.

The report acknowledges that the development of this technology is in its nascent stages, and so there remain a multitude of choices for private sector developers to make when looking to apply the use of digital tokens to wholesale transaction settlement.

The report discusses some potential design choices and includes a list of non-exhaustive questions that token developers may need to consider. These considerations include: availability; issuance and redemption; access; underlying assets/funds and claims; transfer mechanism; privacy and regulatory compliance; and interoperability.

Date: 12 December 2019

Basel Committee on Banking Supervision (Basel Committee)

Basel Committee report on open banking and APIs

The Basel Committee has published a [report](#) on open banking and application programming interfaces (APIs).

In the report, the Basel Committee focuses on aspects of open banking related to customer-permissioned data sharing where the customer initially grants permission to a third party to access their data, either directly, or through the customer's bank.

The Basel Committee has observed that traditional banking is evolving into open banking and open banking frameworks are being adopted across numerous jurisdictions, with variations present in terms of stage of development, approach and scope. Section 3 of the report provides a global legal and regulatory overview of developments in open banking, highlighting how some jurisdictions require banks to share customer-permissioned data and require third parties to register with a particular regulatory or supervisory authority. Other jurisdictions have taken a facilitative approach by issuing guidance and recommending standards, whereas remaining jurisdictions follow a market-driven approach and currently have no explicit rules or guidance on the sharing of customer-permissioned data by banks with third parties.

Date: 19 November 2019

Basel Committee paper on designing a prudential regime for crypto-assets

The Basel Committee has published a [discussion paper](#) seeking views on a range of issues related to the prudential regulatory treatment of crypto-assets. The deadline for comments on the discussion paper is 13 March 2020.

The responses to the discussion paper will inform the Basel Committee's development of a prudential treatment for crypto-assets at large, including for crypto-assets that are issued by regulated financial institutions, or that make use of stabilisation tools. The Basel Committee is continuing to assess the appropriate prudential treatment for such types of crypto-assets, and will consult on any specific measures.

Should the Basel Committee decide to specify a prudential treatment of crypto-assets, it will issue a consultation paper detailing its proposals and seek further input from stakeholders. Any specified treatment would constitute a minimum standard for internationally-active banks. Jurisdictions would be free to apply additional and/or more conservative measures if warranted. As such, jurisdictions that currently prohibit their banks from having any exposures to crypto-assets would be deemed compliant with any potential global prudential standard. More generally, the discussion paper should not be interpreted as an endorsement or support by the Basel Committee for any specific existing or planned crypto-asset.

Date: 12 December 2019

Financial Action Task Force (FATF)

FATF speech

The FATF has published a [speech](#) by its Executive Secretary, David Lewis, at the 7th International Anti-Money Laundering and Compliance Conference.

Key messages in the speech include:

- evaluation and follow-up processes will continue to be at the centre of what the FATF does. This year the FATF started a Strategic Review. This will look at what works best and what could be improved in the future. At its heart will be identifying and building on activity that promotes both effective and efficient anti-money laundering measures;
- next year FATF will develop and publish best practices for the financial investigation of illegal wildlife trafficking and how to prevent and detect this through the financial system;
- the FATF has just completed a public consultation on its first ever guidance for the use of digital ID. The final guidance is expected to be published in the coming months; and
- whilst continuing to monitor the use of virtual assets by criminals and terrorists, the FATF is now working on the implications of stablecoins. It will be updating G20 Finance Ministers and Central Bank Governors on the FATF policy recommendations for dealing with stablecoins and the risks and opportunities from financial innovation more generally.

Date: 12 December 2019