

Update on the FATF recommendations on Virtual Assets and EU initiatives

Dr Diane Bugeja

2 September 2019

CAMILLERI PREZIOSI
— ADVOCATES —

FATF's updated guidance on Virtual Assets

Timeline of FATF publications on VCs

June 2014

VCs: Key definitions & potential AML/CFT risks

October 2018

2 new definitions (VA and VASP) & adoption of Recommendation 15

June 2015

Guidance for a risk-based approach to VCs

July 2019

Issuance of Interpretative Note on Recommendation 15 & updated guidance for a risk-based approach to VCs and VASPs

Recommendation 15: New technologies

Countries and financial institutions should identify and assess the money laundering or terrorist financing risks that may arise in relation to:

- a) the development of new products and new business practices, including new delivery mechanisms; and
- b) the use of new or developing technologies for both new and pre-existing products.

In the case of financial institutions, such a risk assessment should take place prior to the launch of the new products, business practices or the use of new or developing technologies. They should take appropriate measures to manage and mitigate those risks.

New definitions

Virtual asset (VA)	a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes
Virtual asset service provider (VASP)	any natural or legal person and as a business conducts one or more of the following activities or operations for or on behalf of another natural or legal person: <ul style="list-style-type: none">• exchange between virtual assets and fiat currencies;• exchange between one or more forms of virtual assets;• transfer of virtual assets;• safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets;• participation in and provision of financial services related to an issuer's offer and/or sale of a virtual asset

N.B: the scope of the definition includes both virtual-to-virtual and virtual-to-fiat transactions or financial activities or operations

Recommendations

Risk-Based Approach & National Co-ordination

- _ Countries should apply a risk-based approach to ensure that measures to prevent/mitigate ML/TF risks are commensurate with the risks identified in their respective jurisdictions
 - _ undertake an NRA specifically in the context of VAs
 - _ distinguish between the risks associated with different types of VAs and different activities undertaken by VASPs
- _ National co-operation and co-ordination with respect to AML/CFT policies
- _ ML & TF offences (as well as sanctions / confiscation / freezing measures) to extend to any type of property that directly represents the proceeds of crime, including in the context of VAs

Recommendations (cont.)

Licensing or Registration

- _ Countries should designate one or more authorities that have responsibility for licensing and/or registering VASPs
- _ VASPs should be required to be licensed/registered in the jurisdiction(s) where they are created and should be required to meet appropriate licensing and registration criteria set by relevant authorities
- _ Competent authorities should take the necessary action to prevent criminals from holding or being the beneficial owner of, a significant or controlling interest or holding a management function in a VASP
- _ Countries should take the necessary action to identify persons carrying out VA activities without the requisite licence or registration

Recommendations (cont.)

Supervision or Monitoring & Preventative Measures

- Countries should adopt effective systems for AML/CFT supervision or monitoring of VASPs
- VASPs should comply with AML/CFT laws in relation to CDD, record-keeping, adoption of EDD measures (for higher risk relationships/transactions, PEPs and non-reputable jurisdictions), risk assessments, reliance, policies & procedures, STR filings, ongoing monitoring, etc.
- In cases where a VASP carries out an occasional transaction, the designated threshold above which VASPs are required to conduct CDD is USD/EUR 1,000
- Application of the FTR to wire transfers or VA transfers carried out by VASP, so as to include beneficiary information, wallet number and other details required therein

EU developments

EBA Report with advice for the European Commission on crypto-assets (Jan 19)

Issues

- Typically crypto-assets fall outside the scope of EU financial services regulation and specific services relating to crypto-asset custodian wallet provision and crypto-asset trading platforms do not constitute regulated activities under EU financial services law
- Divergent approaches to the regulation of these activities emerge

Risks

- These factors give rise to potential issues, including regarding consumer protection, operational resilience, market integrity and the level playing field.

Way-forward

- Holistic & activities-based approach
- Focus on access points to the traditional financial system & consumers
- Coordinated international response
- Future-proofing

EBA Report with advice for the European Commission on crypto-assets (Jan 19)

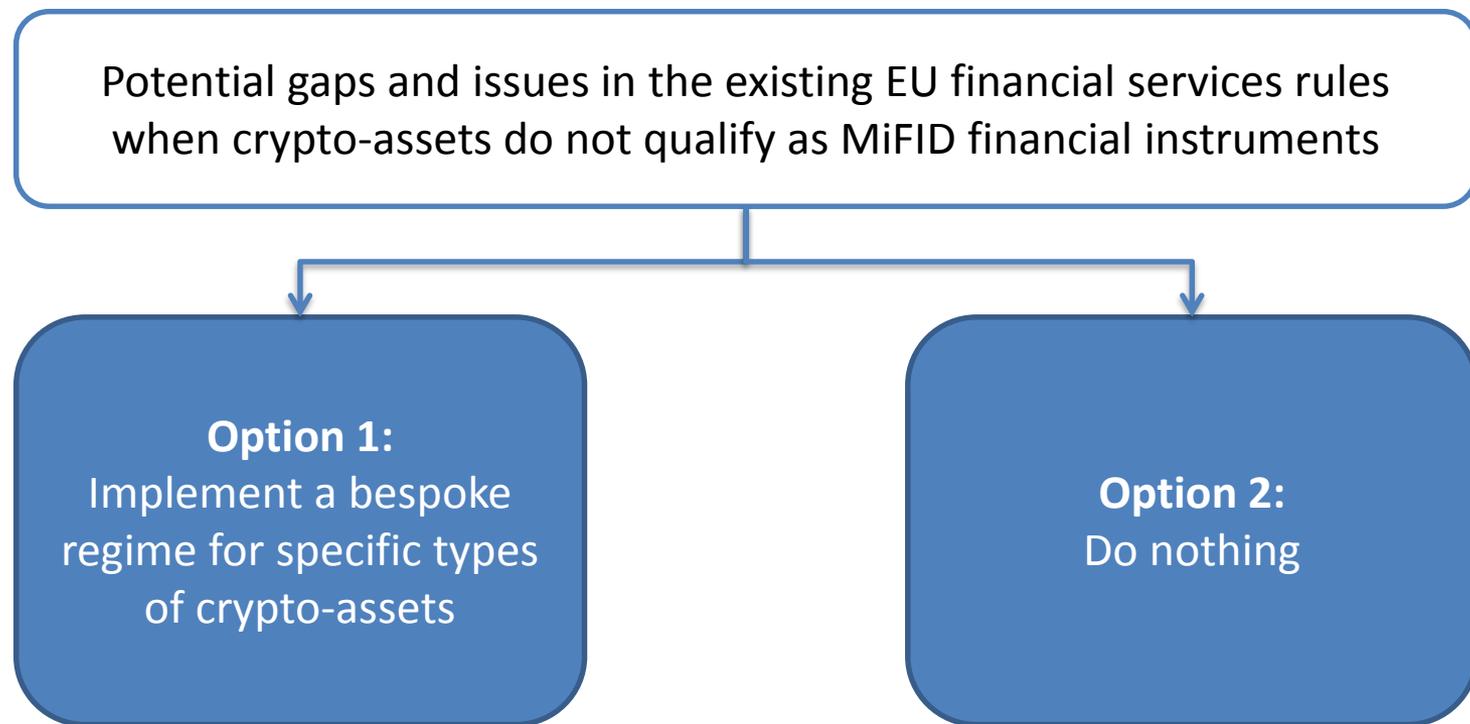
AML/CFT

- EU Commission should have regard to the latest FATF recommendations
- EU Commission should assess the need for an extension to the EU regulatory perimeter with regard to crypto-asset activities

Institutions' activities involving crypto-assets

- Institutions should have in place appropriate arrangements to mitigate the operational & reputational risks involved
- Supervisory powers should be sufficient to monitor these activities and take appropriate action
- EU Commission should consider the applicability of existing prudential framework to crypto-assets and clarify the accounting treatment

ESMA Advice: ICOs and crypto-assets (Jan 19)



EU next steps: Joint ESMA/EBA letter (August 2019)

- _ EBA and ESMA are engaging with the FSB, BCBS, FATF and CPMI-IOSCO
 - _ This is intended to help inform a common approach at international level, for example on matters such as the prudential treatment of banks' exposures to crypto-assets and the regulatory treatment of crypto-asset exchanges and trading platforms
- _ EBA and ESMA will launch shortly a new stocktaking exercise of national regimes applicable to crypto-assets
 - _ This exercise will include a specific block of questions relating to the regulatory treatment of stablecoins in light of their increasing prominence

Thank you



Diane Bugeja

Senior Associate, Corporate & Finance

T (+356) 21238989

E diane.bugeja@camilleripreziosi.com

Technical Excellence, Practical Solutions

CAMILLERI PREZIOSI

ADVOCATES

 **INTERLAW**
An International Association of Independent Law Firms