Updated the Crypto Assets Regulation and establishing a pilot regime for distributed ledger technology


This briefing provides an initial analysis of the strengths and weaknesses of the European Commission’s impact assessment2 (IA) accompanying the above-mentioned proposals, submitted on 24 September 2020, and referred to the European Parliament’s Committee on Economic and Monetary Affairs (ECON). On the same day, the Commission published its digital finance package, including a communication on a digital finance strategy for the EU,3 both proposals on crypto assets and distributed ledger technology (DLT), two proposals on digital operational resilience,4 and the retail payments strategy for the EU. These initiatives are included in the Commission’s 2020 work programme. The aim of the digital finance package is to remove fragmentation in the digital single market, adapt the EU regulatory framework to facilitate digital innovation, promote data-driven finance and address challenges and risks relating to digital transformation, including enhancing the digital operational resilience of the financial system.

Use of the (new) digital ledger technology is growing and represents new opportunities for the financial industry, as well as risks, as the impact assessment (IA) explains. The financial sector is the largest user of ICT in the world and, according to a study requested by Parliament’s Committee on Economic and Monetary Affairs (ECON), there were over 5,600 crypto assets in existence globally in 2020, with a total market capitalisation of more than US$250 billion.5 The fintech industry represents operators providing various services and products, such as cashless payments, peer-to-peer (P2P) lending platforms, robotic trading, robo-advice, crowdfunding, and virtual currencies.

The markets in crypto assets (MiCA) proposal intends to adapt to the latest technological trends in the fintech sector and to address the problem that all crypto assets do not fall within the existing markets covered by financial services legislation in the EU (so known as MiFID II).6 The proposal covers stablecoins, a new sub-set of crypto assets, the issuers of which ‘seek wider adoption by incorporating features aimed at stabilising their value and by exploiting network effects’ (IA, p. 3). The DLT proposal is intended to address the provisions in existing EU legislation that may inhibit the use of new technology in the financial services, in order to allow markets in crypto assets, as well as the tokenisation of traditional financial assets.

The European Parliament resolution of 8 October 2020 on digital finance7 welcomed both crypto asset proposals but regretted that the digital finance package did not do enough to address the money laundering, terrorism financing and criminal activity associated with crypto-assets.
Problem definition

According to advice from the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) that the Commission received in connection with the drafting of the new legislation, ‘[M]ost crypto-assets fall outside the scope of the EU financial services legislation and therefore are not subject to the provisions on consumer and investor protection and market integrity, among others’ (IA, p. 2). Such crypto assets include stablecoins (i.e. payment tokens and utility tokens), which will be governed by the new proposal. Moreover, transferable securities are governed by MiFID II, but the application of their classification differs across Member States.

Regarding technological development, the requirements of the existing legislation do not address the use of the DLT and its legal, technological and operational specificities (IA, p. 14). In accordance with Tool #14 of the Better Regulation Guidelines (BRG) Toolbox, the IA provides a clear, well-evidenced outline of the problems at stake, their scale and drivers, and the consequences if the situation stays unchanged. The IA explains that there is no EU-wide regulatory approach to crypto assets, and that some Member States, namely, Germany, France and Malta have adopted their own rules governing the sector.

The current situation regarding stablecoins is the following: out of the 54 existing stablecoins, 24 are currently operational, with a market capitalisation almost tripling from €1.5 billion in January 2018 to more than €4.3 billion in July 2019. Global, cross-border stablecoins, issued by large technology or financial firms are gaining market prominence. Depending on their design, regulation of stablecoin arrangements can be very difficult under current EU legislation, because a large number of stablecoins do not grant claim or redemption rights against the issuer, and fall outside the EU legislation (IA, pp. 19-20).

The IA explains the following problems the proposals aim to address:

- regulatory obstacles to and gaps in the use of security tokens and DLT in EU financial services legislation;
- consumer or investor protection risks and risks of fraud for unregulated crypto assets;
- market integrity risks for unregulated crypto assets;
- market fragmentation and risks to the level playing field;
- financial stability and monetary policy risks posed by stablecoins and global stablecoins.

The IA describes the problem drivers as follows: lack of certainty as to how the existing EU rules apply to those crypto assets that can be governed by them, and absence of rules and diverging national rules regarding crypto assets that are not yet governed (pp. 11-13).

Subsidiarity / proportionality

The IA addresses subsidiarity in a dedicated chapter, in accordance with the BRG (p. 29). The legal basis for both proposals is Article 114 of the Treaty on the Functioning of the European Union (TFEU), under which the EU has competence regarding the establishment and functioning of the internal market. The IA explains in general terms that the proposals uphold the principle of subsidiarity, justifying the need for EU action, and touches upon EU added value, taking into account more
specifically the cross border nature of the problems, i.e. the need to ensure financial stability and a high level of investor protection.

The IA explains that for crypto assets governed at EU level, amending the existing EU financial services regulation is the legal way forward, so as to allow for a wider use of DLT at EU level (IA, p. 29). For unregulated crypto assets, EU-level action is considered necessary to avoid differing national approaches, putting at risk the level playing field when it comes to investors and consumer protection (in terms of operational requirements on service providers and disclosure requirements placed on issuers), as well as market integrity and competition. By way of example, market players, such as market infrastructure owners, issuers or other service providers may prefer to concentrate in those Member States that have more flexible rules regarding the use of DLT, or in Member States with a more restrictive definition of 'financial instruments', to avoid application of the full financial services framework (IA, pp. 18 and 30).

However, the IA does not discuss proportionality, nor does it take it into account as a criterion in the comparison of options, contrary to the BRG requirements. General information about upholding the proportionality principle is included in the explanatory memorandums of both proposals.

The deadline for national parliaments' subsidiarity checks for both proposals was 1 February 2021. The Czech Chamber of Deputies expressed several concerns in its reasoned opinion.

Objectives of the initiative

As part of the fintech action plan, both proposals aim generally to achieve:

1. **legal clarity** on if and how EU financial services legislation applies to crypto assets;
2. **innovation and fair competition**, by creating an environment conducive to issuing crypto assets and providing related services;
3. consumer and investor protection of a high quality and market integrity;
4. **financial stability and monetary policy risk management** (IA, pp. 30-31).

The specific objectives for both proposals are defined as follows:

1. **to remove regulatory hurdles** to the issuance, trading and post-trading of security tokens (for crypto assets qualifying as financial instruments under the MiFID II, while respecting technological neutrality);
2. **to increase sources of funding** for companies through increased initial coin offerings (ICOs) and securities tokens offerings (STOs);
3. **to limit the risks of fraud, money laundering and illicit practices in crypto-asset markets** and
4. **to allow EU consumers and investors to access new investment opportunities or new types of payment instruments**, competing with existing ones to deliver fast, cheap, and efficient payments, in particular for cross-border situations (IA, p. 31).

The operational objectives, defined in terms of the deliverables of specific policy actions, required by the BRG are not presented in the IA, and this choice is not substantiated. In accordance with the Better Regulation Guidelines (BRG) and Tool #16 of its Toolbox, operational objectives are typically identified for the preferred option, as they are option specific. The general and specific objectives appear to comply broadly with the required 'SMART' criteria of being specific, measurable, achievable, relevant and time-bound.

Range of options considered

The IA presents the required minimum of at least two policy options in addition to the baseline (BRG and the Tool # 17), based on types of crypto asset: two policy options for crypto assets that are not currently regulated in the EU, three options for crypto-assets qualifying as financial instruments under MiFID II, and three options for stablecoins. **Under the baseline** (no-change scenario), consumer and market integrity issues would likely persist for crypto assets currently falling outside
EU legislation (IA, p. 26). The benefits offered by crypto assets will be missed (such as alternative cheap and fast means of payment, funding services for SMEs, benefits linked to a decentralised data economy). However, the IA could have gone into more depth regarding who would suffer from the missed benefits: investors, consumers, SMEs, companies involved in trading, wallet providers, the general public, etc.

Global stablecoins may become a largely accepted means of exchange and used as a store of value within a short time span, causing risks to financial stability, monetary policy transmission and monetary sovereignty. The market for financial instruments falling under existing EU legislation might never develop meaningfully without a clear regulatory framework. According to the IA, DLT systems offer many benefits in the areas of issuance, trading and post-trading, but without clear regulation this technological potential may not materialise. (IA, p. 28). The EU’s financial sectors and EU investors may face a competitive disadvantage if the regulatory challenges relating to DLT are resolved in other third-country jurisdictions (IA, p. 29). The IA also mentions the limited size of the current crypto asset market, with the exception of stablecoins, which are expected to grow quickly in scale. However, the IA could have usefully provided a general overview of the possible size of the market and types of companies acting in it.

Table 1 – Summary of the options assessed; preferred options highlighted in light blue

<table>
<thead>
<tr>
<th>Types of crypto-assets</th>
<th>Policy options</th>
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<tr>
<td><strong>Option 1: Opt-in regime:</strong></td>
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<td>A voluntary opt-in regime(^{11}) regulating crypto asset issuers and service providers (trading platforms, exchanges, wallet providers) as opposed to specific crypto assets, based on four pillars:</td>
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<td>• <strong>Issuers</strong> of crypto assets would gain a passport regime in order to operate in the single market, with a requirement to disclose clear, accurate and non-misleading information in a form of technical documentation (white paper); issuers would be obliged to establish themselves as legal entities.</td>
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<td>• <strong>Services</strong> – trading platforms, brokerages and exchanges,(^{12}) and custodial wallet providers would have specific requirements applied to each of them. For example, capital and reporting requirements, as well as an obligation to keep records of transactions and liability towards customers for the crypto assets given in custody – for service providers. For exchanges and trading platforms – obligation to provide a certain level of pre- and post-trade transparency. For trading platforms – obligation to ensure fair and orderly trading, and for wallet providers – minimum conditions for their contractual relationships with consumers.</td>
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<td>• <strong>Consumer protection and market integrity</strong> – crypto asset providers would have to follow certain measures to ensure consumer protection, for example, suitability checks or issuing risk warnings. Market abuse measures concerning crypto assets traded on a secondary market could be built into the proposal.</td>
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<td>• <strong>Supervision</strong> of issuances of crypto assets and of related services – service providers will be supervised by national competent authorities, which may issue or withdraw authorisations, carry out investigations, impose administrative sanctions and cooperate together.</td>
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<tr>
<td>The European Central Bank’s financial action task force (FATF) issues international recommendations on unregulated crypto assets with respect to money laundering measures; these would be taken into account under this option.</td>
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**Option 2: Full harmonisation regime**

A mandatory EU framework for the issuance of crypto assets and related services, based on the same four pillars and requirements as in Option 1 above, applying to all issuers.
and crypto asset service providers, who would be obliged to publish an information document. FATF recommendations would be taken into account.

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<th>Option 1: <strong>Non-legislative measures</strong></th>
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<tr>
<td>The Commission and European Securities Market Authority (ESMA) may issue communications and guidelines to provide guidance regarding:</td>
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<td>- which crypto assets qualify as transferable securities or other financial instruments under MiFID II;</td>
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<td>- conditions for platforms trading crypto assets to qualify as trading venues or investment firms under MiFID II;</td>
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<td>- application of the <strong>Prospectus Regulation</strong> to security token offerings;</td>
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<td>- application of post-trading rules to central securities depositories (CSD) using DLT and 'more widely in a DLT context', in particular the rules set out in the <strong>Central Securities Depositories Regulation</strong> (CSDR) and <strong>Settlement Finality Directive</strong> (SFD) (IA, p. 35).</td>
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<th>Option 2: <strong>Targeted amendments to sectoral legislation</strong></th>
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<td>Legislation governing the securities lifecycle, such as issuance (Prospectus Regulation), trading and provision of investment services (MiFID II and MiFIR), and settlement activities (CSDR and SFD) would entail limited changes with the aim of removing obstacles to the use of DLT from primary and secondary legislation and addressing some new risks raised by the use of DLT. This option would also address regulatory challenges regarding the use of permission-based and centralised trading platforms (not permission-less or decentralised trading platforms).</td>
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<th>Option 3: <strong>Pilot/experimental regime for creating DLT market infrastructure for security tokens</strong></th>
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<td>This regime would create a new type of market infrastructure for the trading and settlement of crypto assets qualifying as financial instruments (security tokens) under MiFID, allowing some innovative business models, for example, admission of unregulated participants (retail investors), use of permission-based and permission-less DLT. Additional requirements addressing new cyber risks arising from the use of the DLT should apply, as well as requirements to ensure an appropriate level of investor protection, robust infrastructure, trading transparency and financial stability. Market operators should request authorisation from the national competent authorities (NCAs).</td>
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<th>Option 1: <strong>Bespoke legislative measures on stablecoins/global stablecoins</strong></th>
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<td>Measures refer to three types of stablecoin: stablecoins backed by other crypto assets, stablecoins backed by real assets or funds, and algorithmic stablecoins, with further requirements applying to real asset-backed stablecoins which are reaching global scale and widespread adoption. Such requirements would apply to management of the reserve, and the issuer would need authorisation from a European supervisory authority (ESA), which would hold the right to refuse on grounds of risk to financial stability and monetary policy transmission. The IA sets out more specific requirements for each type of stablecoin under this option.</td>
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<tr>
<th>Option 2: <strong>Bringing stablecoins and global stablecoins under the Electronic Money Directive II (EMDII)</strong></th>
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<td>The following definition of a stablecoin would be added in the directive: any crypto asset that aims to maintain a stable value. An obligation to all issuers of stablecoins to give their users a claim on the issuer would be introduced, in accordance with the Financial Stability Board’s (FSB) recommendations. However, concerns are expressed in the IA that the existing legislation, i.e., EMDII and the Payment Services Directive II...</td>
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(PSD II) may no longer be fit for purpose regarding mitigation of risks to consumer protection.

Option 3: Measures limiting the use of stablecoins and global stablecoins
New legislation would provide a definition of stablecoins, and specify which activities were not available in the EU: any issuance of stablecoins and any offer of services and activities involving stablecoins in the EU or by an entity incorporated in the EU (such as wallet providers, exchanges or trading platforms).

Source: Author on the basis of the information provided in the impact assessment, pp. 31-39.

Annex 5 to the IA (p. 94) describes the discarded option as required under the BRG. This option entailed the creation of a new category of crypto asset in the list of financial instruments covered by MiFID II, i.e. payment and utility tokens. The ESMA Securities and Markets Stakeholder Group was in favour of this regarding both payment and utility tokens. However, there were several considerations that led to the option being discarded, not least that not all NCAs supported this course of action. Moreover, the IA argues that the creation of a new crypto asset category would create confusion and regulatory arbitrage between the existing categories and the new one, e.g. investment tokens with features similar to those of traditional transferable securities, but issued on a DLT. Many crypto assets differ from traditional financial instruments and MiFID II would not apply.

The options were compared against the criteria of effectiveness, efficiency and coherence, but not against proportionality, which is required by the BRG. The preferred option is a combination of various options:

- for unregulated crypto assets: option 2 offering full harmonisation;
- for financial instruments under MiFID II: a combination of all three options;
- for stablecoins and global stablecoins: a combination of options 1 and 2.

An entire option – option 3 for financial instruments that fall under MiFID II – is used to form a separate proposal regulating the growing use of DLT. The options are described in an overall balanced way, although more detail would have been useful, for example, on money laundering rules. It would also have been useful to have a clearer, systematic overview of how the preferred option fits into the wider regulatory context of financial instruments. The IA could have given clearer details on how the Electronic Money Directive and Payment Services Directive will be updated, as the preferred option for stablecoins envisages. The options reflect the problems described and match the objectives in a logical way.

Assessment of impacts

The IA discusses the economic impacts and briefly touches upon innovation and environmental impacts as the main impacts to be assessed for better comparison of the policy options. Regarding economic impacts, the IA discusses and quantifies compliance costs, administrative burden, and consumer protection across the options, without, however, providing a clear structure of what types of impacts it aims to discuss.

The IA explains that the compliance costs for all crypto asset issuers and service providers under option 2 for unregulated crypto assets will probably not increase, as the regulatory standards are described as proportionate to the risks raised by the activities (IA, p. 42). The IA provides an annexed summary of quantified costs and benefits for the preferred options only (IA, pp. 84-87). The quantifications show the following picture: one-off costs per white paper (crypto-assets white paper for issuers of crypto assets – minimum requirements are included in the Annex to the MiCA proposal, and will become a mandatory self-reporting system) are estimated at €35 000-75 000, and direct compliance costs for currently unregulated entities are estimated at €2.8-16.5 million. The IA predicts cost reduction for business arising from use of DLT, which saves costs compared with traditional trading activities, with new entrants facing one-off costs similar to multilateral trading facilities (MTFs). For example, for the EU cash equity market alone, the cost reduction is estimated at
€540 million per year owing to the widespread application of DLT (IA, pp. 22 and 86). Regarding payment tokens and stablecoins, the compliance costs will considerably exceed those faced by other issuers due to more stringent rules and requirements regarding operational setup; issuers also need to develop a whitepaper for the stablecoins (IA, p. 86).

The quantifications provided in the IA for the supervisory costs for each Member State (including staff, training, IT infrastructure and dedicated investigative tools) are estimated from €350 000 to €500 000 per year, with one-off costs estimated at €140 000 (IA, p. 86). ‘However, this would be partially offset by the supervisory fees that NCAs would levy on crypto-asset service providers and issuers’ (Explanatory memorandum of the MiCA proposal, p. 9).

Regarding benefits, the IA quantifies the following efficiency gains: €220-570 million per year in the area of remittances; €270-540 million per year in the area of cash equity markets; up to €4 billion per year in the area of reporting; several billion in the areas of clearing, settlement, collateral management, and other intermediary functions; and €15-19 billion per year in bank infrastructure cost savings in relation to cross-border payments, securities trading and regulatory compliance (this includes other efficiency gains (IA, p. 84).

Regarding innovation impacts, the IA mentions that some options (for example, option 3 for crypto assets qualifying as financial instruments under MiFID II) are more advantageous to innovation, without providing more qualitative appreciation or quantitative details. Also, more detail could have been provided on how the DLT will promote innovation regarding crypto assets, instead of assuming that innovation will happen and that it is beneficial per se.

The IA describes the environmental impact as not significant, except in crypto-mining, where huge amounts of computing power are used for the mining nodes to discover the next mathematical puzzle (‘proof of work’ mechanism). As use of DLT becomes more widespread, the ‘proof at stake’ mechanism (market participants have to demonstrate ownership of a pre-defined crypto asset) is becoming more widely available as an energy efficient mechanism to validate transactions (IA, p. 63).

The issues of money laundering, terrorism financing and criminal activity raised by Parliament in its October 2020 resolution were touched upon only briefly in the IA (p. 53).

SMEs / competitiveness

The IA contains a dedicated chapter on impacts on SMEs, discussing an overall beneficial outcome, for example, through availability of non-bank sources of funding for SMEs, and initial coin offerings (ICOs) providing opportunities for start-ups to raise substantial amounts of funding at the early stages of their development (IA, p. 62). The white paper requirement will impose new costs on SMEs, estimated at around €35 000 per document. Small offerings below a certain threshold and crypto assets distributed to a small circle of users will be exempt from this. The MiCA proposal provides concrete thresholds that will apply if the total consideration of the offering of crypto assets is less than €1 000 000 over a period of 12 months. Issuers of stablecoins will not be subject to authorisation by a national competent authority (NCA) if the outstanding amount of stablecoins is below €5 000 000’ (Explanatory memorandum, p. 9).

In its crypto assets resolution Parliament warns that ‘the presence of ‘Big Tech’ firms in the FinTech markets has the potential to harm fair competition and innovation’. Fair competition is one of the general objectives of the proposal, and the IA generally assesses impacts on competition positively on account of innovation, i.e. use of DLT. Possible market problems linked to the big players are not touched upon however.
Simplification and other regulatory implications

According to the Explanatory memorandum of the MiCA proposal, the new 'EU framework would significantly reduce the complexity as well as the financial and administrative burdens for all stakeholders, such as service providers, issuers and consumers and investors' (p. 4). The IA provides calculations for reduced financial and administrative burdens for the industry (see assessment of impacts chapter above), but states that the NCAs' costs will be partially offset by the fees levied from the industry. The IA could have discussed simplification, as well as the coherence of the two proposals with the wider, related EU legislation in more detail.

Monitoring and evaluation

The IA deals with monitoring and evaluation indicators in a dedicated, albeit limited chapter featuring a non-exhaustive list of key indicators to be collected against general objectives (p. 64). The IA explains that the data can be collected via public sources and licenced databases, and Member States, NCAs, the ESMA and service providers will provide data as well. After a three-year period, the Commission should produce a report on the pilot regime for DLT market infrastructures, in cooperation with the ESMA. Moreover, '[T]he ESMA will evaluate and report to the Council and Parliament on the pilot regime at the latest after a five-year period' (Explanatory memorandum of the DLT proposal, p. 4). The monitoring requirements are taken up in the proposals.

Stakeholder consultation

A public stakeholder consultation on the two proposals took place from 19 December 2019 to 19 March 2020 and triggered 198 contributions and several confidential email responses, that the IA did not include in the consultation statistics summary (IA, p. 73). The IA identifies the following groups of affected stakeholders: issuers of crypto assets, crypto asset users and investors, crypto asset service providers, NCAs or other supervisors, incumbent operators of market infrastructures, and other market participants, such as asset managers and institutional investors (IA, pp. 81-84). The majority of respondents to the public consultation were from the industry (105 responses, percentage of SMEs not indicated), EU citizens (39 responses), public authorities (21 responses), academic and research institutions (10 responses), and NGOs (9 responses). Most responses came from the fintech industry, technology experts, and the banking sector.

The design of the options was based on the recommendations of the FATF, EBA and ESMA. It is not really clear from the IA if the majority of stakeholders support the preferred set of options. The IA claims this approach was supported in the public consultation without providing details on which stakeholder groups supported it. The Explanatory memorandum of the MiCA proposal states that 'Most stakeholders, including crypto-asset service providers, have been overall supportive, underlining once again that the sector is very much looking for legal certainty in order to develop further' (p. 7).

Supporting data and analytical methods used

The IA is based on a wealth of reports, analyses, and recommendations from governing and supervisory authorities both within the EU, such as the EBA and ESMA reports, and international authorities setting standards in the financial capital markets, such as the FSB and the Organisation for Economic Cooperation and Development (OECD), and is also based on numerous reports and studies of international banks and think tanks, as well as a European Parliament study on cryptocurrencies and blockchain (IA, pp. 71-72). The Commission's services based the IA on an external study. The sources of supporting data are mostly referenced and publicly available. It should be noted that the regulatory framework for the fintech industry is very fragmented, with various pieces of legislation covering differing areas of the industry. Given this comprehensive background information, the IA could possibly have included more data to illustrate the crypto assets landscape both in the EU and internationally to describe the types of impacts in a more detailed way, especially regarding the impacts on SMEs. The cost/benefit analysis includes
quantified data and is clearly presented in a dedicated table, with limitations indicated, for example, the fact that regulatory costs for businesses dealing with stablecoins will depend on the type of stablecoin (in Annex 3).

**Follow-up to the opinion of the Commission’s Regulatory Scrutiny Board**

The Regulatory Scrutiny Board (RSB) issued a positive opinion with reservations on 29 May 2020. In its opinion, the RSB recommended that the IA be further improved in several important respects. The Board found that the report did not explain in sufficient detail how the initiative ties in with related ongoing regulatory efforts in the EU and international context, what political decisions are to be decided now and which can be decided at a later stage, how encompassing the new legislative framework will be, and how oversight will be shared between the Member States and the EU regulatory authorities. The IA, as well as the explanatory memorandums of both proposals, indicate only that the RSB recommendations were taken on board in the final version of the IA, without indicating however where these changes were made and how. Indeed, it appears that the improvements are fragmented, as the EU and international regulatory context, the sharing of responsibilities between the Member States and EU regulatory authorities, and what decisions and requirements will be left to delegated acts could have been better explained.

**Coherence between the Commission’s legislative proposal and the IA**

Although the proposals’ provisions generally appear to follow the recommendations expressed in the IA, there are elements in the proposals that the IA does not discuss, such as scope (see Article 2 of the MiCA proposal). The MiCA proposal explains which entities this proposal does not apply to, whereas the IA assessment elaborates only partially on any such exemptions. The MiCA proposal (p. 9) gives an overview of the new staff requirements for the supervisory authorities, such as 18 full-time equivalents (FTEs) for EBA, whereas the IA gives only a very limited overview without giving clear numbers. Indeed, the preferred option is reflected in the MiCA proposal, limiting ‘the scope of the Regulation to crypto-assets that do not qualify as financial instruments, deposits or structured deposits under EU financial services legislation’ (Explanatory memorandum of MiCA proposal, p. 10). Regarding the pilot regime for DLT, the new DLT proposal establishes harmonised requirements for market participants applying for permission to establish a DLT-based market infrastructure (Explanatory memorandum of the DLT proposal, p. 5).

The IA gives a complete overview of the current problems regarding crypto assets. The place of the two crypto assets proposals in the wider, rather complex regulatory context, including the international framework, could, however, have been better explained regarding crypto assets, financial instruments and money-laundering legislation. Aside from the recommendations issued by the FATF, the EBA and the ESMA and taken on board in the IA and the proposals, it is not clear from the IA which stakeholder groups taking part in the public consultation supported the preferred option, especially regarding SMEs and civil society. The policy options offered are well linked to the problems and objectives. The preferred option is a mix of various options, and in the case of the crypto assets already governed by MiFID II, all three preferred options are selected as the course of action to be pursued in the proposal, and option 3 is transferred into another, new legislative proposal, i.e. on DLT. Comments for improvement from the Regulatory Scrutiny Board appear to have been addressed only partially, without indicating where the improvements have been made in the IA. Finally, the variety and availability of quality background information and research provides a solid basis for the IA analysis, which could have expanded more on the proportion of SMEs in the industry, and how the exemptions in the MiCA proposal could affect them.
ENDNOTES

1 Distributed ledger technology (DLT) is a means of saving information by means of a distributed ledger, i.e. a repeated digital copy of data available at multiple locations (IA, p. 67).

2 Both proposals have the same impact assessment, attached to each proposal with a different number.

3 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a digital finance strategy for the EU, COM(2020) 591.


7 European Parliament resolution of 8 October 2020 with recommendations to the Commission on Digital Finance: emerging risks in crypto-assets – regulatory and supervisory challenges in the area of financial services, institutions and markets (2020/2034(INL)).

8 A Parliament study for the ECON committee of 2018 concluded 'that there is no generally accepted definition of the term cryptocurrencies available in the regulatory space' (p. 25).

9 Stablecoins are a form of payment token typically backed by real assets or fiat currencies (any legal tender designated and issued by a central authority, World Bank); there also exist algorithmic stablecoins. Stablecoins are issued with the aim of maintaining price stability. (IA, pp. 19 and 68).

10 For a subsidiarity check on the DLT proposal, see also the IPEX page.

11 This regime would not apply to crypto assets that qualify as 'financial instruments' under MiFID II or as 'electronic money' under the Electronic Money Directive II (IA, p. 32).

12 Fiat to crypto and crypto to crypto (IA, p. 32).

13 Here the IA does not explain more about the DLT context.

14 The recommendation is quoted, but no reference provided in the IA.

15 The IA gives some data from 2017, when the amount raised by ICOs reached around €15 million, and a start-up can usually expect an investment of €1.3 million from venture capital funds.

16 Carried out by Spark Legal Network, Michèle Finck, Tech4i2 and Datarella for the Commission’s Directorate-General for Communications Networks, Content and Technology, Directorate F: Digital Single Market, Unit F3: Digital Innovation and Blockchain.

17 The RSB opinion on the DLT proposal features exactly the same content.