



12.10.2020

NOTICE TO MEMBERS

Subject: Petition No 0421/2020 by Jonathan Levy (US) on the need to set up a crypto assets fund for crypto crime victims

1. Summary of petition

The petitioner indicates that the victims of crypto crime are defrauded of thousands of millions of euros annually. He points out that the European Parliament has already called for measures to regulate crypto assets and observes that, to date, no crypto asset funding has been set aside to compensate the victims of directly related criminal activities. The petitioner is therefore seeking the introduction of a regulatory scheme to compensate victims. He is acting on behalf of the victims of crypto crime (fraud, piracy and extortion) illegally targeting or making criminal use of crypto assets. Victims have attempted to recoup their losses in different ways such as legal proceedings in national courts, criminal complaints to national authorities, bank transfers, credit card reversals and block chain tracking.

None of these remedies has been successful owing to the multi-jurisdictional nature of the crypto-currency transaction.

Similarly, the petitioner notes that neither the Commission nor the European Ombudsman have declared themselves competent in this matter. He urges the European Parliament to act directly to help the victims of crypto-active crimes as part of its EU strategy for the creation of a genuine single market for digital financial services.

2. Admissibility

Declared admissible on 14 July 2020. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 12 October 2020

On 24 September 2020, the Commission put forward a comprehensive proposal on crypto-assets¹. This proposal endeavours to provide legal certainty for crypto-assets, high levels of consumer protection and market integrity within crypto-asset markets as well as ensuring financial stability.

This new proposal will be complementary to the already implemented 5th Anti-Money Laundering Directive² in helping to tackle these issues. Creating legal certainty for crypto-assets may assist victims to seek redress through existing channels by removing the doubts sometimes surrounding crypto-assets. Additionally, bringing transparency requirements to issuers of crypto-assets will help mitigate the risks of fraud, while operational requirements for key crypto-asset service providers is vital to limit the amount of hacks.

This proposal fully reflects updates in the international recommendations from the Financial Action Task Force, and prepares the ground for more substantive changes to the EU money laundering framework in 2021.

Fraud, theft (hacking) and extortion involving crypto-assets are criminal activities and matters of criminal law, which should be pursued through national law enforcement agencies and national channels. Certain specific compensation schemes exist at national level, for example investor compensation schemes and, in some Member States, other financial services compensation schemes, but these remain national, even if they tackle in part issues covering multiple jurisdictions (consumers in many Member States are often compensated directly from the first port of call - their bank - in matters of online fraud).

The examples mentioned by the petitioner (fraud, hacking, extortion) are not specific to crypto-assets, and regardless of whether the loss incurred concerns crypto-assets, fiat money or other value, investors or consumers have to seek redress through national law enforcement and existing channels. The Commission does not have the competence to set up a compensation fund for victims of financial crime. Furthermore, most losses suffered - through for example fraudulent initial coin offerings (ICOs) or hacks of cryptocurrency exchanges - occur outside of the EU.

In addition, the Commission would like to inform the Committee on Petitions that EU rules exist on compensation for victims of violent, intentional crime. The 2004 Directive on compensation³ facilitates access to compensation for victims of violent, intentional crimes that took place in other Member States but also in their Member State of residence⁴. Depending on the circumstances of a particular case, it cannot be excluded that certain types of crime involving crypto-assets (for instance extortion) may constitute violent, intentional crime that may fall under the EU rules on compensation. It is up to the competent national authorities to decide in individual cases.

¹ COM(2020) 593 final.

² Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (Text with EEA relevance), *OJ L 156*, 19.6.2018, p. 43–74.

³ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, *OJ L 261*, 6.8.2004, p. 15–18.

⁴ See recent judgment of the Court of Justice of the European Union in case C-129/19, *Presidenza del Consiglio dei Ministri v BV*, in particular points 55, 56.

Conclusion

The Commission suggests that the petitioners continue to pursue their respective cases through national law enforcement agencies and seek compensation through existing channels or with the legal persons responsible for their loss. EU rules on compensation may be applicable in cases of intentional violent crime.