

The Consumer Voice in Europe

CRYPTO-ASSETS

BEUC response to the Commission's consultation



Contact: Jean Allix - financialservices@beuc.eu

BUREAU EUROPÉEN DES UNIONS DE CONSOMMATEURS AISBL | DER EUROPÄISCHE VERBRAUCHERVERBAND

Rue d'Arlon 80, B-1040 Brussels • Tel. +32 (0)2 743 15 90 • www.twitter.com/beuc • www.beuc.eu

EC register for interest representatives: identification number 9505781573-45



Co-funded by the European Union

Ref: BEUC-X-2020-037 – 13/05/2020

Why it matters to consumers

Since the creation of Bitcoin in 2009, the world has seen the emergence of a multitude of crypto-assets, in the form of payment tokens, investment tokens and utility tokens. Many of these technology-driven products are currently unregulated, while they raise consumer protection issues (such as the risk of losing your investments, risk of fraud, liability), and in some cases, serious concerns about the stability of the financial system. Proper regulation and supervision of crypto-assets, including clear consumer protection rules, is crucial in order to maintain consumer trust.

Summary and Recommendations

The European Commission published a [consultation](#) on a potential EU regulatory framework for crypto-assets in December 2019.

This position paper sets out BEUC's position on various issues raised in the consultation document. The main focus is on payment-related questions. BEUC's key views and policy recommendations can be summarised as follows:

- Many crypto-assets are currently unregulated, raising huge consumer protection concerns, such as the risk of losing your investments, risk of fraud, liability;
- Crypto-assets products or services are very different. Without a precise taxonomy, the applicable rules are unclear;
- Investment tokens like Bitcoin are not currencies, and should not be denominated as virtual currencies;
- Consumer protection rules for each kind of crypto assets need to be clarified;
- A bespoke EU legal regime is indispensable for crypto-assets that are not currently covered by EU financial services legislation, in particular for investment tokens;
- Libra could be a private electronic money if it is properly regulated;
- Stablecoins should be regulated as e-money. For that, the existing definition of e-money should be modified, the existing-money directive cancelled, and all the provisions integrated into the Payment Services Directive (PSD2);
- Stablecoins and Central Bank Digital Currency (CBDC) should not lead to the disappearance of cash.

What are crypto-assets?

Crypto-assets are assets (e.g. currencies, securities or stocks) which are based on two technologies: distributed ledger technology (DLT) and cryptography¹.

In the world of crypto-assets, a commonly used term is 'token'. Tokens are not a new concept; tokenisation is synonymous with securitisation ('titrisation' in French). Securitisation was at the origin of the 2008 financial crisis as bad loans were 'securitised' into attractive financial products. Tokens are assets which have been transformed by using DLT and cryptography. Tokens and crypto-assets are in fact synonymous².

Difference between crypto and digital assets

Crypto-assets are different from digital assets (for example, the funds that the consumer has on his/her bank account). For digital assets, there is no cryptography and no decentralised ledger. It is therefore logical not to have exactly the same rules for the two categories.

Nevertheless, two principles should apply:

1. Technological neutrality. The ordinary consumers have no idea which technology is behind the service they are using. Digital or crypto is not the concern of the consumer. It is the regulator's duty to ensure that the service expected by the consumer is provided. Consumers should have the same rights and protection whatever the technology used.
2. Activity-based approach. The main weakness of the Commission's consultation questionnaire was the fact that many questions were mixing various categories of crypto-assets, making it very difficult to answer some questions as the activities are very different from one crypto-asset to another.

Crypto-assets taxonomy

The European Commission notes in its consultation that there is a wide variety of crypto-assets in the market, and that there currently is no accepted way of easily classifying them in the EU. A lack of any comprehensive classification of crypto-assets results in uncertainty as to whether they fall within the scope of relevant EU financial services legislation (such as the Markets in Financial Instruments Directive (MiFID II)). For crypto-assets that are currently not covered by EU financial services legislation, the absence of applicable rules could leave consumers exposed to substantial risks. In addition, without EU regulation, there is a risk that EU Member States will introduce diverging and conflicting regulatory regimes.

Classification is a very important issue for this discussion. Even if crypto-assets are based on DLT and cryptography, the products available are very different. There are very few similarities between a stablecoin (see below) and an ICO (Initial Coin Offering³). Therefore, taxonomy⁴ is a very important exercise for further discussions.

¹ More information about distributed ledger technology and cryptography can be found in the annex to this paper.

² The European Commission's newly-created EU Blockchain Observatory and Forum published a report in April 2019 entitled, 'Tokenization of physical assets and the impact of IoT and AI'. In February 2020, it published a study on legal aspects, including consumer protection issues.

³ An Initial Coin Offering (ICO) is an operation by which a company, a start-up or a developer collects funds for investment by creating itself crypto-assets. At the origin those crypto-assets were denominated "coins".

⁴ The question of taxonomy is discussed in length in a recent (February 2020) publication of the EU forum called "Blockchain and the future of digital assets".

Various types of crypto-assets

The consultation distinguishes between three different categories of crypto-assets: payment, investment and utility tokens⁵. The various crypto-assets can be compared to their equivalent in the physical world. Payment tokens and investment tokens are clearly two very different animals: the former is used as a currency, while the latter is used as a share or a security in the physical world. When it comes to utility tokens, they are neither a payment nor a share. To some extent utility tokens can be compared to some kind of subscription to a service or a voucher in the physical world.

Payment tokens

Payment tokens include 'virtual currencies', used as means of payment or exchange. An EBA [report](#) provided advice to the European Commission on crypto-assets, particularly on payments.

Bitcoin cannot be considered as money or currency. Bitcoin is an investment token which can be used as a means of exchange, in that case it is some kind of barter.

We are opposed to classing crypto-assets such as Bitcoin as a virtual currency. That is because Bitcoin is an *investment token* which can be used as a means of exchange, in that case it is some kind of barter. Bitcoin does not have the two other characteristics of a currency (unit of account and store of value), does not have a legal statute of currency and is not guaranteed by any public authority⁶.

BEUC proposal: give up the word 'currency' and simply use 'payment/exchange token' as proposed by the EBA in its [report](#) on crypto-assets (January 2019).

Unfortunately, the 5th Anti-Money Laundering Directive ([AMLD5](#)) defines Bitcoin as a virtual currency (article 3.18), but states at the same time that it does not possess a legal statute of currency or money. To avoid ambiguity, the investment tokens which are used for payment should not be called virtual currency as they are not currencies. Therefore, investor protection rules should apply to Bitcoin (see below).

As for payment tokens, there is the complex issue of Deposit Guarantee Schemes [Directive](#), i.e. to know in which cases these tokens are covered by the Directive which guarantees that the consumer will not lose their money if the bank collapses. Again, the comparison has to be made with the physical world. The Deposit Guarantee Schemes Directive covers the various kinds of deposits, but stablecoins covered by e-Money Directive are not deposits according to the current wording of this directive. Investment tokens should be covered by specific legislation on investor protection. Despite what has been considered in some countries (e.g. Japan), crypto-assets like Bitcoin are not currencies, but investments.

Investment tokens

Investment tokens are a form of asset, share or security with a profit right attached to it, meaning that the owner will receive dividends. The most known are Initial Coin Offerings (ICOs)⁷.

⁵ More information about tokens [here](#)

⁶ In a [lecture](#) given in February 2018, Yves Mersch, the ECB board member in charge of payments, demonstrated that Bitcoin cannot be considered as money or currency.

⁷ The European Securities and Markets Authority (ESMA) published [advice](#) in 2019 recommending the European Commission to adopt bespoke legislation for crypto-assets that currently fall outside the scope of relevant financial

BEUC proposal: a bespoke EU regime is needed for crypto-assets that are currently not covered by EU financial services legislation. Where crypto-assets do not currently qualify as financial instruments under MiFID II, consumers could be exposed to significant financial risks, due to an absence of applicable financial rules (such as key investor protections offered under MiFID II). Without an EU framework, there is a risk of divergent national approaches to crypto-asset regulation.

BEUC believes that a bespoke EU regime is needed for crypto-assets that are currently not covered by EU financial services legislation.

Initial Coin Offers are typically marketed to consumers on the web and through social media. Given the significant investor protection concerns associated with initial coin offers and other crypto-assets, there is merit in establishing specific requirements on their marketing. EU policymakers

and supervisors should consider introducing restrictions on the marketing of initial coin offers and security tokens through social media. Crypto-asset trading platforms where consumers can buy those crypto-assets should also be regulated.

Utility tokens

The third category is a 'utility' token. Utility tokens give users future access to a given product or a service, while the money paid allows start-ups to raise enough capital to actually develop their product or service. Consumers who buy a utility token can redeem their tokens for a specific product or service in future. Utility tokens are not supposed to be investments by design; however, people often treat them that way and buy these tokens with the hope that their value will increase along with the demand for the company's product or service.

Hybrid tokens

Some tokens can be used for two different functions at the same time: a utility token used as a payment token, an investment token such as Bitcoin used as a payment token.

As mentioned previously, Bitcoin should not be classed as a payment token but as an investment token, even if they can be used sometimes as a means of exchange.

Stablecoins and global stablecoins

History

Stablecoins are crypto-assets usable as a means of payment and store of value. They are designed to minimise price volatility by linking to a 'stable' asset or basket of assets. A stablecoin can be pegged to a cryptocurrency, fiat money, or to exchange-traded commodities (such as precious metals or industrial metals).

Stablecoins are a major innovation in the e-money area. The first experience was [Digicash](#) in the 1980s. This innovation collapsed for fraud reasons. The next step were projects such as [Proton](#) in Belgium or [chipknip](#) in the Netherlands. These projects had a short life due

services legislation, such as MiFID II. Several EU Member States (including France and Malta) have begun to introduce specific regulatory regimes for crypto-assets (See Appendix 5 of the ESMA consultation). A number of other countries (such as [Belgium, as well as the UK](#)) have implemented or are consulting on rules on banning the sale to retail consumers of derivatives referencing crypto-assets. At the same time, ESMA and national competent authorities have [warned](#) consumers about the potential risks of investing in Initial Coin Offers. The EBA has also published a [report](#) with advice to the European Commission related to crypto-assets in particular for payments.

mainly to innovations in the field of telecommunication: it became less expensive to use a debit card with authorisation than an e-money card.

In a payment scheme such as Proton, for security reasons, the electronic monetary unit (EMU) could be used only once for a full payment circuit. Created by the issuer, downloaded from the ATM to the consumer's card, the EMU was transferred to the retailer's device. The retailer has to send it back to the issuer where the EMU was destroyed. An important advantage of stablecoins for consumers will be that the EMU will be able to circulate for many transactions without being sent back to the issuer after each transaction. Consumers will be able to receive, for example, stablecoins on the payment instrument they are using (e.g. card, mobile etc.)

The Libra debate

In June 2019, Facebook together with several financial and non-financial companies [announced](#) the launch of a private global electronic money based on a Blockchain technology, that would allow instant payments (person-to-person transfer, including across border; in-store and e-commerce payments) at a lower cost than existing solutions.

To reassure regulators and supervisors, Facebook stated that Libra will not compete with traditional currencies, but mainly wants to serve populations currently excluded from the financial system and facilitate worldwide transfer of funds.

Is Libra a crypto-currency, crypto-asset, stablecoin, global stablecoin or electronic money? In an extensive [report](#) published in October 2019, the G7 working group on stablecoins made a clear distinction between the different types of new instruments based on the Distributed Ledger Technology. The report considers that Bitcoin is a highly speculative crypto-asset. The report states that stablecoins created by a central issuer and related to an asset or funds have at least two features of a currency (means of payment and store value). The report also mentions three categories of stablecoins, depending on the links with the issuer, in particular, the face value of the unit. If the Libra Association is actually considered as a central issuer and the unit has a face value, in this case, Libra could perhaps be regulated by Directive 2009/110/EC on electronic money.

Libra: a global stablecoin

But the main issue raised by the G7 report is the difference between a stablecoin and a global stablecoin. A global stablecoin is a stablecoin with a high reach among several jurisdictions. Libra could be a worldwide private currency to the detriment of existing public currencies. To simplify, it is enough to imagine that all cross-border payments are made in Libra, even if Libra is based on the dollar and other fiat currencies. The US Federal Reserve would lose its monetary and financial powers. This is why when the project was presented all regulators around the world stressed that Libra cannot go live until monetary and financial stability risks are addressed. Therefore, many forums are discussing the possible legislation for global stablecoins. Public authorities are also discussing the aspect of supervision. Which regulator will guarantee the solvency of the Libra system?

If Calibra (digital wallet for Libra) becomes a bank and launches other financial services based on Libra, the banks, insurance companies and other traditional financial institutions have enough to worry about. One could imagine that consumers, especially young people, open a current account at Calibra, take out credit, insurance, etc. Note that among the companies and associations that launched Libra there are no banks. It's worth mentioning that since Libra was announced, several companies (PayPal, Visa, MasterCard, etc.) have left the project.

Libra for consumers?

What could Libra mean for consumers? Libra seems especially interesting if the transaction is done in two different currencies or if, and especially if, the consumer does not have a

bank account (i.e. financially excluded people). This category of people seems particularly targeted by Libra. The usefulness of Libra for the majority of European consumers who are financially 'included' is not obvious and is difficult to estimate.

But for consumers the most important question is probably that of data protection (privacy, security). Facebook is already collecting an extraordinary amount of data. What happens if personal data on social media is used in combination with Libra payments data?

In a position [paper](#) issued in July 2019, Euroconsumers (Test-Achats, Altroconsumo, DECO Proteste, OCU, Proteste) asked 10 questions to Mark Zuckerberg, asking the Facebook CEO whether Libra 'is really about creating value for consumers'. Another interesting and critical [position](#) was issued by Finance Watch. They also launched a petition to ban Libra⁸.

The global stablecoin issue

Global stablecoins present two kinds of risks to consumers. The first category includes: legal certainty (i.e. that it is a valid payment instrument), safety and efficiency of the payment scheme, and all aspects related to fraud and cybersecurity.

The second category refers to the following questions:

- Competent authority: what is the competent authority in case something goes wrong?;
- Privacy: If stablecoins are provided by companies which are dominant in the digital world, there is a huge risk that data collected through stablecoins will be used for other activities than payments. Even if a stablecoin looks anonymous, it is always possible for the master of the chain to access all the steps of the chain. Stability: what happens if the system decides to favour a currency against another? That is the risk of a global private currency;
- Cash: there is a huge risk that physical cash will disappear to be replaced by stablecoins (see below point 4.5).

Stablecoins, e-money and consumer protection


Are stablecoins covered by the E-money Directive (EMD)? For consumers, it is very important to know if this kind of payment is regulated. As indicated in the definitions at the end of the Commission's questionnaire, there are various categories of stablecoins. This definition is copied from the EBA [report](#) of January 2019 (page 7). The main point is by which assets the stablecoin is backed. The EBA's definition gives three examples - real assets, funds, or other crypto-assets. It is quite strange not to have a reference to fiat currency.

⁸ In April 2020, Facebook updated the proposal and announced several changes:

- Calibra asked the Swiss authority for a payment activity licence. It remains to be seen if this license will allow Calibra to issue Libra in the EU;
- Despite a Swiss license, the offices of Calibra will be located in Ireland where Facebook has recruited 50 people for the development of the project;
- The most important change: Libra will not be based on a multicurrency basket but on each individual currency. This means that there will not be one Libra but several Libra, based on each currency: one Libra-dollar, one Libra-euro, etc. This solution has the advantage of clarifying the issue of supervision and applicable legislation.

Redeemability and capital requirement

It is necessary to differentiate between issuance and redeemability on the one side, and capital requirements on the other side. Article 11 of EMD on issuance and redeemability at par value is fundamental for consumers whatsoever the nature of the products by which the institution is backed. The result of at par value will be that the consumer will receive the exact amount corresponding to the legal currency they bought the tokens with. This value is not related to the volatility of the asset on the financial market.



The nature of the asset backing the stablecoin affects the issue of redeemability and thus whether a particular stablecoin is covered by EMD2.

It is quite clear in the definitions of EMD2 that e-money is an 'avatar' of fiat currency. Article 2 of EMD2 indicates that the electronic money is issued on receipt of funds but without giving a definition of funds. A definition of funds exists in PSD2 (article 4.25) which provides that 'funds' means banknotes, coins, scriptural money or e-money. But this definition of PSD2 cannot be used here as e-money is defined by funds backed by e-money, so not logically possible. But recital 13 states that the specific character of e-money is to be a surrogate for coins and banknotes.

The nature of the asset backing a stablecoin affects the issue of redeemability and thus whether a particular stablecoin is covered by EMD2; it is the case only if the stablecoin has the capacity to permanently destroy the token by reimbursing fiat currency to the holders.

Definition of e-money

Another issue is the problem of definition which is given by the EMD2. It is stated that "‘electronic money’ means electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions as defined in point 5 of Article 4 of Directive 2007/64/EC, and which is accepted by a natural or legal person other than the electronic money issuer”.

This definition has raised a lot of discussion and the interpretation is different from one country to another. *Stricto sensu* any payment with a debit card linked to a classic bank account could be considered as e-money, as a payment account is electronically stored monetary value. This problem was illustrated again in January 2020 when banks once again asked the EBA to clarify what exactly e-money is according to the EMD2 definition (Euro Banking Association: "the definitions of e-money provided by the Europeans authorities are not clear enough..."). The definition in EMD1 had the advantage of clarity by indicating that the support of the e-money is an electronic device, not a classic bank account. There is no major difference between a prepaid card linked to a dedicated account and a debit card linked to a payment account.

The specific nature of stablecoin is that the electronic monetary units (the payment token) are circulating from one electronic device to another electronic device. This should be reflected in the definition.

The solution should be to repeal the EMD2, insert in PSD2 the definition of e-money from EMD1 and include some specific provisions in the PSD2. The redeemability rule has to be maintained till that kind of funds based on fiat currency are not considered as deposit.


Stablecoins, e-money and PSD2

PSD1 had already indicated in its recital 9 that e-money issued according to the rules of EMD1 was also covered by PSD1: This Directive should lay down rules on the execution of payment transactions where the funds are electronic money, as defined in Article 1(3)(b) of Directive 2000/46/EC. This Directive should, however, neither regulate issuance of

electronic money nor amend the prudential regulation of electronic money institutions as provided for in Directive 2000/46/EC. Therefore, payment institutions should not be allowed to issue electronic money.

It was clear from this recital that consumer protection rules included in PSD1 apply to EMD1 transactions.

At the time of preparation of PSD2, it was discussed whether it was useful to keep a separate directive for e-money. The decision was to keep it, one reason being that some Member States had still not implemented the E-money Directive.



From the consumer perspective, a stablecoin is a means of payment which should be covered by the rule regarding e-money and PSD2. Authorizing stablecoins without the 'at par' principle should not be possible.

But two quite clear recitals were introduced in PSD2 (recital 24 and 25): PSD2 recital 24: It is necessary to specify the categories of payment service providers which may legitimately provide payment services throughout the Union, namely, credit institutions which take deposits from users that can be used to fund payment transactions /.../electronic money institutions which issue electronic money that can be used to fund payment transactions/.../, payment institutions /../.The application of that legal framework should be confined to service providers who provide payment services as a regular occupation or business activity in accordance with this Directive.

PSD2 recital 25: This Directive lays down rules on the execution of payment transactions where the funds are electronic money as defined in Directive 2009/110/EC. This Directive does not, however, regulate the issuance of electronic money as provided for in Directive 2009/110/EC. Therefore, payment institutions should not be allowed to issue electronic money.

From these two recitals it can be deduced that the PSD2 rules apply to e-money and thus to stablecoins which are covered by the definition of the EMD, the existing, or a new one.

Conclusion with regard to regulatory framework for stablecoins

From the consumer perspective, the circulation of electronic monetary units (pure payment tokens) should be based on the 'at par' principle with fiat currency. If an electronic monetary unit is worth one euro, this means that at the end of the process the consumer should receive as many euros as they have units. Other tokens which do not apply this rule, cannot be considered as means of payment and therefore should not be covered by PSD2.

For the sake of clarity, the definition of e-money should be modified to take into account that it's electronic monetary units which are circulating from one device to the other (EMD1). As general rules on payments apply, it would be convenient to integrate e-money provisions in the PSD2.

From the consumer perspective, a stablecoin is a means of payment which should be covered by the existing rule regarding e-money. Authorizing stablecoins without the 'at par' principle should not be possible.

Stablecoins and cash

From the consumer perspective, an important issue related to stablecoins is the risk of the disappearance of cash. Banks are closing their branches and ATMs, making access to cash more and more complicated for consumers. When access is still possible, it is becoming more and more expensive.

For the time being, the banks' aim is to force consumers to use cards and shift to a cashless society. For consumers it could become less expensive to open an account with a stablecoin

provider and pay using the stablecoin, in particular for P2P payments on social networks but also in shops. Each consumer could open an account in the stablecoin company, even if the funds are not considered as deposit (EMD2 recital 13). It is what happened in China with Taobao, the predecessor of Alipay. The big difference with the current situation is that Taobao was authorised to pay interest to account holders, which is prohibited by EMD2 (article 12). For the time being, the consumer does not pay a fee for each card payment if it is in the same currency but has to pay for the management of the bank account and the payment card. Stablecoins could easily be less expensive.

But stablecoins do not fulfil several criteria related to cash, like anonymity or possibility to make payments in case of a collapse of the electronic infrastructure. Another issue here is that the management of virtual cash (electronic monetary units) would be in the hands of the private sector, contrary to real cash which is a public good. This is why we support the idea of the Central Bank Digital Currency (CBDC).

Next steps

This position paper is based on the answers to the Commission's [consultation](#) on crypto-assets. Two other public consultations are important for a future legislative text on crypto-assets: the [consultation](#) on a retail payments strategy for the EU, and the [consultation](#) on a new digital finance strategy for Europe. BEUC is following closely these three files and will provide comments when new initiatives and policy document are issued by the Commission.

END

ANNEX

What is Distributed Ledger Technology?

DLT is a technology that allows information to be stored and transmitted in a transparent, secure manner and without a central control body. It looks like a large database which contains the history of all the exchanges made between its users since its creation.

There are various types of DLT, the most well-known is Blockchain, as it was the first on the market with the creation of Bitcoin (2008). A key feature of Blockchain is the use of 'blocks', while other DLT store the information in other ways.

DLT can be used for the transfer of assets (currency, securities, stocks, etc.), to better trace products (e.g. the meat you buy in a supermarket) or to automatically execute contracts (e.g. a 'smart' insurance contract, where your car is automatically blocked if you have not paid your insurance premium).

An important feature of the DLT is its decentralised architecture, meaning it is not hosted by a single server but by some of the users. For Blockchain there is no intermediary, so everyone can check the validity of the chain. The information contained in the blocks is protected by cryptographic processes, which prevent users from modifying them. For example, a supermarket cannot mislead consumers about the origin of the meat it is selling.

What is cryptography?

Cryptography is the conversion of data into private code using algorithms and mathematics that prevents third parties from reading the message. Cryptographic 'literature' often uses the name 'Alice' for the sender and 'Bob' for the recipient. Cryptography is not something new, during the Second World War it was heavily used (e.g. the Enigma machine code cracked by Alan Turing).



This publication is part of an activity which has received funding under an operating grant from the European Union's Consumer Programme (2014-2020).

The content of this publication represents the views of the author only and it is his/her sole responsibility; it cannot be considered to reflect the views of the European Commission and/or the Consumers, Health, Agriculture and Food Executive Agency or any other body of the European Union. The European Commission and the Agency do not accept any responsibility for use that may be made of the information it contains.