EBA reports on crypto-assets

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**The European Banking Authority (EBA) published today the results of its assessment of the applicability and suitability of EU law to crypto-assets. Typically, crypto-asset activities do not constitute regulated services within the scope of EU banking, payments and electronic money law, and risks exist for consumers that are not addressed at the EU level. Crypto-asset activities may also give rise to other risks, including money laundering. In light of these issues, the EBA recommends that the European Commission carry out further analysis to determine the appropriate EU-level response. The EBA also identifies a number of actions that it will take in 2019 to enhance the monitoring of financial institutions' crypto-asset activities and consumer-facing disclosure practices.**

Crypto-assets are a type of private financial asset that depend primarily on cryptography and distributed ledger technology as part of their perceived or inherent value. A wide range of crypto-assets exist, including payment/exchange tokens (for example, so-called virtual currencies (VCs)), investment tokens and tokens to access a good or service (so-called ‘utility' tokens). Recognising the rapid evolution in the use of crypto-assets, the EBA examines in the report:

* the application of current EU banking, payments, e-money and anti-money laundering laws to crypto-assets;
* crypto-asset custodian wallet providers and crypto-asset trading platforms, building on the EBA's July 2014 [Opinion on VCs](https://eba.europa.eu/documents/10180/657547/EBA-Op-2014-08+Opinion+on+Virtual+Currencies.pdf);
* credit institutions, investment firms, payment institutions and electronic money institutions' activities involving crypto-assets and regulatory and supervisory issues.

The relatively low level of crypto-asset activity currently observed in the EU does not appear to give rise to implications for financial stability. However, typically activities involving crypto-assets fall outside the scope of EU banking, payments and electronic money regulation and risks exist for consumers that are not addressed at the EU level. As a result of the development of national regulatory responses, divergences between the Member States are starting to emerge presenting risks to the level playing field. Market developments also point to the need for a further review of EU anti-money laundering legislation.

For these reasons, the EBA sets out in the report advice to the European Commission regarding the need for a comprehensive cost/benefit analysis, taking account of issues inside and outside the financial sector, to determine what, if any, action is required at the EU level at this stage. The EBA also advises the European Commission to take account of the October 2018 recommendations of the Financial Action Task Force (and any further standards or guidance) regarding, in their terminology, ‘virtual asset' activities, and to take steps where possible to promote consistency in the accounting treatment of crypto-assets.

Additionally, the EBA sets out a number of steps that it will take in 2019 to enhance the monitoring of institutions' crypto-asset activities and consumer-facing disclosure practices.

The EBA's Executive Director, Adam Farkas, said: "*The EBA's warnings to consumers and institutions on virtual currencies remain valid. The EBA calls on the European Commission to assess whether regulatory action is needed to achieve a common EU approach to crypto-assets. The EBA continues to monitor market developments from a prudential and consumer perspective.*"

Legal basis and background

The report has been prepared pursuant to Article 9(4) of the EBA's Founding Regulation which mandates the Authority to establish a Committee on financial innovation ‘which brings together all relevant competent national and supervisory authorities with a view to achieving a coordinated approach to the regulatory and supervisory treatment of new or innovative financial activities and providing advice for the Authority to present to the European Parliament, Council and the European Commission'.

On 20 December 2017, the European Supervisory Authorities (EBA, EIOPA and ESMA) received a letter from European Commission Vice President Dombrovskis requesting further work on crypto-assets. The March 2018 European Commission FinTech Action Plan and EBA FinTech Roadmap also envisage the need for further work in this area. To this end, the EBA has carried out in 2018 an assessment of the applicability and suitability of EU financial services law (within its sphere of responsibility) to crypto-assets, and the level of crypto-asset activity by credit institutions and investment firms (within the meaning of Article 4 of Regulation (EU) No 575/2013), payment institutions (within the meaning of Article 4 of Directive (EU) 2015/2366) and electronic money institutions (within the meaning of Directive 2009/110/EC). The EBA has also taken account of ongoing work at the international levels, for example, by the Basel Committee on Banking Supervision and the Financial Action Task Force.