

## EU Regulation



### **The EU Commission have released plans for cryptocurrency regulation.**

Increasingly there is a call from regulators to have the ability to treat cryptocurrency more like fiat money. The latest plans are from the European Commission which has set a directive for the European Parliament and European Council to make amendments to Directive (EU) 2015/849 and Directive 2009/101/EC. This is in order to ‘further step up the fight against the financing of terrorism’. The directive asserts that “gaps still exist in the oversight of the many financial means used by terrorists, from cash and trade in cultural artefacts to **virtual currencies** and anonymous pre-paid cards. This proposal seeks to address those gaps while avoiding unnecessary obstacles to the functioning of payments and financial markets for ordinary, law-abiding citizens and businesses, so balancing the need to increase security with the need to protect fundamental rights, including data protection, and economic freedoms.”

### **The 4AMLD (4th Anti-Money Laundering Directive):**

The Commission proposes to amend Article 2 of the 4AMLD to add to the list of obliged entities **virtual currency exchange platforms** as well as custodian **wallet**

providers.

“In respect of designing providers of exchange services between virtual currencies and fiat currencies as obliged entities, the proposed amendments respect the proportionality principle. In order to **allow competent authorities to monitor suspicious transactions with virtual currencies**, while preserving the innovative advances offered by such currencies, it is appropriate to define as obliged entities under the 4AMLD **all gatekeepers that control access to virtual currencies**, in particular exchange platforms and wallet providers.”

## **Were exchanges, wallets and stakeholders consulted?**

According to the directive, yes:

“As concerns terrorist financing, **consultations were held with: ... relevant virtual currencies market players: exchange platforms, wallet providers, a representative group of virtual currency stakeholders;**”

It would be interesting to know who was consulted, if any representatives from those contacted wish to let us here at UKcryptocurrency.com know your views please get in touch [hi@ukcryptocurrency.com](mailto:hi@ukcryptocurrency.com)

## **What will Exchanges and Wallets have to do?**

“Extending the scope of the 4AMLD to virtual currency exchange platforms was duly analysed from the perspective of the rights to private life and the protection of personal data. AML/CFT legislation requires obliged entities to **know their customers** – as well as certain other persons who are not always their customers (e.g. beneficial owners) – and to **assess their** associated money laundering and terrorist financing (ML/TF) **risks**. For that purpose, obliged entities need to **collect, process and record personal data, and sometimes to share such data with public authorities (such as FIUs) or with private entities within the same group.** “

“... due account was taken of the need to respect the freedom to conduct a business, and while there will be an impact on market players becoming obliged entities and currently not performing any customer due diligence (CDD) on their customers, **the ability to operate a virtual currency exchange platform is not affected by the proposed amendments.** “

## **What about self identification?**

“With regard to improving the detection of suspicious virtual currency transactions, six regulatory options were examined. The option retained consists of a combination of means, namely (i) bringing virtual currency exchange platforms and (ii) custodial wallet providers under the scope of the Directive, while (iii) allowing more time to **consider options as regards a system of voluntary self-identification of virtual currency users.**“

## **Why does the commission feel that there is a need for regulation?**

“The Impact Assessment ... addresses the following issues: ... Suspicious transactions made through virtual currencies are **not sufficiently monitored by the authorities, which are unable to link the transactions to identified persons**“

## **What impact will this have on cryptocurrency?**

According to the commission “...**positive effects for consumers are expected** as a result of the proposed rules on designating virtual currency exchange platforms as obliged entities. **Reducing anonymity surrounding virtual currencies will contribute to increasing trust of their good-faith users**“

However it is likely that there will be cryptocurrency advocates who feel very differently, particularly those users who strongly identify with the crypto-anarchist movement who typically believe that there should be less not more governmental oversight.

In the end it is impossible to predict the effect that this will have, but we are sure to hear increasingly loud views around this issue as time goes on. The similarity between the desire for reduced anonymity for cryptocurrency and the efforts of the FBI to demand apple decrypt encrypted iPhones is clear, and provides a useful way to imagine the type of future debates that will take place.

## **What else is included?**

Of note are the following things that the commission assert:

- “The credibility of virtual currencies will not rise if they are used for criminal purposes.” (7)
- “The inclusion of virtual exchange platforms and custodian wallet providers will not entirely address the issue of anonymity attached to virtual currency transactions, as a large part of the virtual currency environment will remain anonymous because users can also transact without exchange platforms or custodian wallet providers” (7)
- “national Financial Intelligence Units (FIUs) should be able to associate virtual currency addresses to the identity of the owner of virtual currencies.” (7)
- “It is ... essential to establish centralised automated mechanisms to access to information on the identity of holders of bank and payment accounts” (15)
- “Access to the registries and databases should be limited on a need to know basis.” (16)
- “it is essential to recognise secure electronic copies of original documents as well as electronic assertions, attestations or credentials as valid means of identity.” (17)
- “it is essential to lower the existing thresholds for general purpose anonymous prepaid cards and suppress the customer due diligence exemption for their online use”

## **The Fine Print**

Important official Amendments to Directive (EU) 2015/849 which most affect cryptocurrency:

in point (3) of Article 2(1), the following points (g) and (h) are added: “(g) providers engaged primarily and professionally in exchange services between virtual currencies and fiat currencies; (h) wallet providers offering custodial services of credentials necessary to access virtual currencies.”;

Article 3 is amended as follows: (c) the following point ... is added: ...” ‘virtual currencies’ means a digital representation of value that is neither issued by a central bank or a public authority, nor necessarily attached to a fiat currency, but is accepted by natural or legal persons as a means of payment and can be transferred, stored or traded electronically.”;

(22) in Article 65, the following second paragraph is added: “The report shall be accompanied, if necessary, by appropriate proposals, including, where appropriate, with respect to virtual currencies, empowerments to set-up and EN 39 EN maintain a central database registering users’ identities and wallet addresses accessible to FIUs, as well as self-declaration forms for the use of virtual currency users.”;

## Sources

[http://ec.europa.eu/justice/criminal/document/files/aml-directive\\_en.pdf](http://ec.europa.eu/justice/criminal/document/files/aml-directive_en.pdf)

Image: <http://bit.ly/1nMygQ7>