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Euroclear SA/NV

Response to BCBS's Consultative Document

"Second consultation on the prudential treatment of cryptoasset exposures"

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Introducion

Euroclear supports the work done by the Basel Committee on Banking Supervision in assessing the risks linked to the introduction of DLT and cryptoassets in the banking system, and how to mitigate them. This work will be critical not only to safeguard financial stability but also to maintain a competitive environment by ensuring a level playing field and limiting the possibility for regulatory arbitrage.

DLT and the tokenisation of financial instruments can introduce new risks in the market and it is important to create a global framework on how these risks should be managed and compensated. However, in order not to stifle innovation and allow capital market players to reap the benefits and opportunities brought by this new technology, these rules should not be unduly strict. We thank the Basel Committee for this consultation which will help in finding a balanced approach.

Response to the consultation

We generally support the GFMA, FSF, FIA, IIF, ISDA, BPI, ICMA and ISLA Association response[1] to this consultation. From this response, we would like to particularly stress the importance of the below points.

Infrastructure risk add-on

Association response point III, pages 29-37

Euroclear supports the strong concern raised by the Associations about the indiscriminatory application of an infrastructure risk add-on for Group 1 cryptoassets, which may significantly hinder the development of DLT solutions in the regulated capital market.

In the provision of its services, CSDs follow and apply strict regulatory requirements and global standards. Those requirements and guidance have been drafted to ensure that those systemic financial market infrastructures provide their core services in a way that ensures financial stability and protect against systemic risk, whatever the technology used.

Following an extensive legal analysis, we confirmed that European legislations can be considered as technology neutral when a private permissioned blockchain with a centralized validation mechanism is used. This includes the EU transposition of the CPMI-IOSCO Principles for Financial market Infrastructures, i.e. the CSD regulation. The EU legal framework would however not allow other forms of DLT such as public permissionless blockchains or distributed validation mechanism[2].

With an infrastructure risk-add on as foreseen by the Committee, the business case justifying the development of regulatory compliant DLT platforms by CSDs may be jeopardized because made uneconomical compared to the use of other technologies. This could therefore hinder the transition of the EU regulated market to a DLT environment, despite the significant advantages it could eventually bring, both in term of safety and efficiency.

While a risk add-on may be envisaged for cryptoassets held on DLT models that would not comply with existing legislations, it seems unjustified to apply it to DLT models that fulfil all applicable regulatory requirements and therefore do not add new unforeseen risks.

[1] The Global Financial Markets Association (GMFA), the Futures Industry Association (FIA), the Institute of International Finance (IIF), the International Swaps and Derivatives Association (ISDA), the International Securities Lending Association (ISLA), the Bank Policy Institute (BPI), the International Capital Markets Association (ICMA), and the Financial Services Forum (FSF)

[2] This analysis was made without considering the European Regulation on a pilot regime for market infrastructures based on distributed ledger technology (i.e. DLT Pilot Regime) due to its temporary nature and limited scope.

Classification of crypto-assets

Association response point VI.A.1.(a), page 41

It is our understanding that the term "tokenised traditional assets" includes native digital securities. However, as this term is not precisely defined and could be interpreted in a way that it implies the existence of an underlying traditional asset, it should be clarified that native securities token are considered as tokenised traditional assets and therefore accepted in Group 1.

About Euroclear

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