

Date June 2020

Subject Euronext Position for an EU framework for markets in crypto-assets

Introduction & Overview

1. In December 2019, the European Commission published a consultation on an **EU framework for markets in crypto-assets** in line with the new Commission's mandate to promote digital finance in the EU. This consultation will set the foundation for upcoming proposals on crypto-assets by the Commission expected in Q3 2020.
2. Euronext welcomes the Commission's approach to develop and promote the use of blockchain, whilst addressing the new risks this new technology may pose. In order to achieve this, we believe that **clarifications to the current EU regulatory framework should be prioritised** to accommodate the new emerging activities emanating from the crypto-asset sector.
3. In so doing, it will be essential to find a balance between encouraging the emergence of innovative offerings, whilst maintaining and safeguarding investor protection. Therefore, any legislative changes should be established on **key principles** upon which the EU can build a role in facilitating the development and implementation of financial technologies. The principles include the need for:
 - (i) The application of the **same rules for the same activities undertaken** based on the principle of technology neutrality (e.g. if a 'security token' qualifies as a financial instrument, then all applicable rules within the EU regulation should apply).
 - (ii) A risk-based approach in reviewing the existing regulatory framework, built on the principles of **proportionality and materiality**. Based on the technology used, this could allow for the creation of an EU Regulatory Sandbox to facilitate the uptake of innovative practices with small groups of customers, while ensuring a level playing field across the EU.
 - (iii) A **balancing** of the local (country) risks alongside the benefits of cross-border markets (i.e. scalability, interoperability and passporting of services), notably for the use of 'stablecoins'.
4. We believe that these principles will ensure respect of the existing regulatory protections in place for end investors, whilst fostering a level playing field in the EU. In line with these principles, Euronext supports the Commission's proposal to have an **EU definition of 'digital assets' and 'crypto-assets'**, to create an **EU classification of 'crypto-assets'**, which would then allow for the **creation of an EU level bespoke regime for 'crypto-currencies'**.

I. EU definition of 'digital assets' and 'crypto-assets'

5. **An EU level definition of 'digital assets' and 'crypto-assets'** is needed to allow for a proportional review of the legislative framework and respect of the principles mentioned above. Euronext agrees that the scope of the Commission's initiative should be limited to its definition of 'crypto-assets'¹, rather than its definition of 'digital assets'² as it represents the areas with the most immediate potential for distributed ledger technology (DLT) application and therefore in need of regulatory clarification and solutions.
6. Most importantly, from a financial market integrity and investor protection perspective, Euronext believes that the Commission's proposed definition of 'crypto-assets' should be strengthened to include **a clear differentiation between 'crypto-assets' that act as financial instruments (i.e. 'crypto-securities') and those that do not (i.e. 'crypto-currencies')**³. This clarification would help identify which regulations will apply to these different types of products and to the trading platforms where they are available.
7. **Therefore, a proposed classification of 'crypto-assets' should not be based on different technical features provided by cryptography and DLT technology but on the value of the assets represented.** This means that if a category of 'crypto-assets' represents a financial instrument as defined in MiFID II (i.e. transferable securities) then these assets should be treated as such instruments in compliance to the rules that are currently applied. If a hybrid 'crypto-asset' contains elements of a financial instrument (at any point of its life-cycle), it should fall under the financial rules for the respective financial instrument.

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'Crypto-assets' that act as financial instruments should be integrated in the MiFID II definitions of financial instruments under Annex I, Section C of the MiFID II (1)-(11) by including a category "crypto-securities" as a new point (12).

II. EU classification of 'crypto-assets'

8. Euronext believes that the **EU regulatory classification of the different features and functions of 'crypto-assets' should complement the Commission's proposed definition of 'crypto-assets' (i.e. digital assets that may depend on cryptography and exist on a distributed ledger)** and be implemented at EU level. This would allow regulators to distinguish its different forms in order to bring significant benefits to both financial market participants and consumers.
9. Euronext supports the **introduction and application of a harmonised regime**. On a general line, we would not favour the use of "soft law" (e.g. guiding principles) as, given the cross border nature of these offerings, supervisory convergence is key. Therefore, we welcome the fact that the Commission is considering potential regulatory requirements to address 'crypto-assets' currently not covered by EU legislation.
10. The classification of crypto-assets should enable:

¹ Digital assets that may depend on cryptography and exists on a distributed ledger

² Media that is formatted into a binary source

³ For clarity, the reference of 'crypto-securities' in this memo refer to "digital assets that may depend on cryptography, exists on a distributed ledger **and is considered as a financial instrument.**" 'Crypto-currencies' are referred as "digital assets that may depend on cryptography, exists on a distributed ledger **and is not considered as a financial instrument.**"

- (i) Uniform interpretation of qualifications and criteria on what constitutes different forms of ‘crypto-assets’, taking into account the technology related features (for example, in respect of transferability, how temporary lock ups, selling / contractual restrictions or utility rights can be exercised in the use of a ‘crypto-asset’).
- (ii) Identification of the specific class of security (share, bond or other) – by accounting for attributes such as ‘legal claim vs counterparty’

11. Euronext welcomes the EU’s proposed distinction between ‘payment tokens’, ‘investment tokens’, ‘utility tokens’ and ‘hybrid tokens’ because the various branches of ‘crypto-assets’ will result in these type of tokens. This is necessary to apply regulations based on the type of tokens, which differ based on their functionality (e.g. ‘investment tokens’ pose risks to investor protection, whilst ‘utility tokens’ would pose risks to consumer protection, which are two different regulatory compliance frameworks).

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Based on the definitions and classification referred above, Euronext believes that the Commission’s identification of some of the different branches of ‘crypto-assets’ (i.e. ‘investment’, ‘hybrid’ and ‘utility’ tokens) should be identified as branches of either ‘crypto-securities’ or ‘crypto-currencies’. This would allow ensuring current protection of customers using ‘crypto-currencies’ or investors using ‘crypto-securities’ provided by their relevant existing regulatory frameworks.

Euronext proposes that:

‘Investment tokens’ - which are defined as a token with “profit-rights attached to it” - **should be defined as a crypto-securities** (crypto-assets that act as financial instruments).

‘Hybrid tokens’ – which have characteristics that change during the course of their lifecycle – **should be defined as crypto-securities** (crypto-assets that act as financial instruments).

‘Utility tokens’ - which do not fulfil the criteria of a financial instrument – **should be defined as crypto-currencies** (crypto-assets that do not act as financial instruments) but still be treated in such a way that consumers are protected, and markets are fair, efficient and transparent (see e.g. IOSCO objectives of Securities Regulation).

III. EU bespoke regime for ‘crypto-currencies’

12. Euronext supports the creation of a bespoke EU regime for ‘**crypto-currencies**’, given that they are not considered as financial instruments. Whilst several EU Member States have adopted their own legislative frameworks dedicated to ‘crypto-currencies’ with a view to incentivising the uptake and use of DLT, we believe that the EU should have a role in harmonising the different national regimes notably as these existing bespoke regimes may risk creating a unlevel regulatory playing field.

13. The creation of an EU bespoke regime would enable a distinction to be made between ‘**crypto-currencies**’ and ‘**crypto-securities**’, whilst safeguarding the principles of market integrity and investor protection as provided by its current financial regime (MiFID II, MiFIR, MAR, CSDs, etc.). Once identified as non-financial products, ‘crypto-currencies’ would be subject to an EU bespoke regime which would harmonise existing financial regimes to facilitate the uptake and compliance of

the different categories of 'crypto-currencies', and related services, that would be provided to different types of customers on a cross-border basis.

14. This regulatory approach would allow for a clear distinction between 'crypto-currencies' and 'crypto-securities', with the latter being covered by the existing technology-neutral EU financial framework. It goes without saying that **financial market participants trading 'crypto-securities' and those trading 'traditional' financial instruments should fall under the same level of regulatory obligations**. Failure to maintain this would risk introducing regulatory arbitrage based on the technology used or alleviations to the existing regulatory framework at the expense of the safeguards, objectives or principles embedded in EU law.
15. In the absence of an **EU definition and classification of 'crypto-assets'**, we are concerned that the different existing Member States' definitions of 'crypto-currencies' may inadvertently provide an alleviated regulatory framework for 'crypto-assets' that act as financial instruments (i.e. 'crypto-securities') irrespective of the current EU financial services framework.
16. For example, France has established a bespoke regime for service providers in 'crypto-assets' that **it qualified** as non-financial instruments⁴. However, with the lack of a clear definition of 'crypto-securities' and of 'crypto-currencies', the national bespoke regime's framework applied a selection of existing MiFID II requirements applicable to financial instruments (i.e. in regards to the distribution, brokerage, trading venues and custody services of an asset) that was deemed appropriate for users trading 'crypto-assets'.
17. Inevitably, Euronext identified that the scope of these requirements **may apply to users trading 'crypto-assets' that act as financial instruments** and that the national bespoke regime adversely provided **some requirements which are questionably lighter than those applicable when the same function are performed in relation to traditional financial instruments** as defined under MiFID II.
18. More specifically, the French government:
 - (i) Enabled the use of blockchain to register bonds and shares that are not within the scope of the CSDR;
 - (ii) Adopted a specific regime for initial coin offerings with adapted disclosure requirements for issuers; and,
 - (iii) Allowed trading platform operators to execute orders discretionarily, to trade on own account on the platform they operate, and benefit from some additional exemptions regarding pre and post-trade transparency of their 'crypto-assets'.
19. The creation of an EU bespoke regime dedicated to 'crypto-currencies', supported by the introduction of its definition in the EU legislative framework, would ensure that non-financial 'crypto-assets' are subject to relevant and appropriate requirements outside the EU financial framework.
20. This would also be an opportunity to replace existing national bespoke regimes with one EU bespoke regime for 'crypto-currencies', thereby avoiding the creation of alleviated national legislative frameworks in the EU that would depend on the technology used by financial market participants.

⁴ [Prestataires de services sur actifs numériques](#) (PSAN)

Euronext Proposal

The absence of a harmonised EU regime for 'crypto-assets' currently allows EU Member States to adopt their own legislative frameworks dedicated to new technologies that may not be in accordance with the principle of technology neutrality. Euronext believes that the implementation of such regimes, whilst clarifying and addressing certain risks brought by the crypto-assets, may risk providing an alleviated regulatory regime for financial market participants based on the technology used.

Based on the above, Euronext proposes an EU framework for markets in 'crypto-assets' that should be based on the existing framework to safeguard market integrity and investor protection. This regulatory framework would respect the principles of making the legislation technology neutral and establishing a level playing field between financial market participants trading 'crypto-assets' (i.e. 'crypto-securities') that are considered as financial instruments and those trading 'financial instruments'.

To illustrate this framework, please find a figure attached in Annex I.

ANNEX I: Euronext proposal for an EU framework for markets in crypto-assets

