GDF Translation of European Parliament Draft Report on Markets in Crypto-Asset Regulation – Stefan Berger Amendments

AMENDEMENTS
1 - 14

February 2021

About GDF

GDF is a not-for-profit industry body that promotes the adoption of best practices for crypto and digital assets, and digital finance technologies through the development of conduct standards, in a shared engagement forum with market participants, policymakers and regulators.

Established in 2018, GDF has convened a broad range of industry participants, with 300+ global community members - including some of the most influential digital asset and token companies, academics and professional services firms supporting the industry.

GDF is proud to include 100x Group, Coinbase, Diginex, DLA Piper, EY, Hogan Lovells, the London Stock Exchange Group, R3, and SDX as patron members. The GDF Code of Conduct (the "Code") is an industry-led initiative driving the creation of global best practices and sound governance policies. GDF is informed by close conversations with regulators and developed through open, inclusive working groups of industry participants, legal, regulatory and compliance experts, financial services incumbents and academia. The principles set out in the Code undergo multiple stages of community peer review and open public consultation prior to ratification.

The following amendments are a rough translation of Parliament Rapporteur Stefan Berger's amendments from German into English. Please note that this document is to be used for guidance purposes only until the official translations are published by the European Parliament.

Amendment 1

Proposal for a regulation
Recital 29

Text proposed by the Commission	*Amendment*
(29) A competent authority should refuse approval if the business model of the potential issuer of asset-referenced tokens could pose a serious threat to financial stability, monetary policy transmission and currency sovereignty. The competent authority ***should*** consult the EBA and ESMA and - if the asset-referenced tokens refer to Union currencies - also the European Central Bank (ECB) and the national central bank that issues the currency in question before granting or refusing approval. The EBA, ESMA and, if applicable, the ECB and the national central banks should provide the competent authority with a ***non-binding*** opinion on the application of the potential issuer. When approving a potential issuer of asset-referenced tokens, the competent authority should also approve the crypto-value white paper created by the issuer. The approval by the competent authority should be valid throughout the Union and enable the issuer of asset-referenced tokens to offer the corresponding crypto values in the internal market and apply for admission to trading on a trading platform for crypto values. Likewise, the whitepaper created for the crypto values in question should also be valid throughout the Union without the Member States being able to define additional requirements.	(29) A competent authority should refuse approval if the business model of the potential issuer of asset-referenced tokens could pose a serious threat to financial stability, monetary policy transmission and currency sovereignty. The competent authority ***must*** consult the EBA and ESMA and - if the asset-referenced tokens refer to Union currencies - also the European Central Bank (ECB) and the national central bank that issues the currency in question before granting or refusing approval. The EBA, ESMA and, if applicable, the ECB and the national central banks should provide the competent authority with an opinion on the application of the potential issuer. ***The statements, with the exception of those of the European Central Bank and the central banks of the member states on the implementation of monetary policy and ensuring secure processing of payment transactions, are non-binding.***When approving a potential issuer of asset-referenced tokens, the competent authority should also approve the crypto-value white paper created by the issuer. The approval by the competent authority should be valid throughout the Union and enable the issuer of asset-referenced tokens to offer the corresponding crypto values in the internal market and apply for admission to trading on a trading platform for crypto values. Likewise, the whitepaper created for the crypto values in question should also be valid throughout the Union without the Member States being able to define additional requirements.

Or. de

Amendment 2

Proposal for a regulation
Article 3 – paragraph 1 – point 1

Text proposed by the Commission	*Amendment*
1. "Distributed Ledger Technology" or "DLT"	1. "Distributed Ledger Technology" or "DLT"

a technology ***that supports the distributed recording of encrypted data***;	a technology ***that refers to the protocols and supporting infrastructure that enable computers in different locations to propose, validate, and immutably synchronize records over a network create***;

Or. de

Justification

The definition of DLT in Art. 3 Para. 1 (1) MiCA does not match the general understanding of DLT. The definition in MiCA does not cover existing DLT-based crypto values, such as Ethereum, because these crypto values are not encrypted. If MiCA is restricted to DLT, at least one DLT definition should be used, which better reflects the general understanding of DLT; in particular, encryption ("encrypted") should not be used in the definition.

Amendment 3

Proposal for a regulation
Article 3 – paragraph 1 – point 4

Text proposed by the Commission	*Amendment*
4. "E-money token" a crypto value, the main purpose of which is to serve as a ***medium of exchange*** and in which a nominal monetary currency, which is legal tender, is used as a reference in order to achieve value stability;	4. "E-money token" a crypto value, the main purpose of which is to serve as a ***means of payment*** and in which a nominal monetary currency, which is legal tender, is used as a reference in order to achieve value stability;

Or. de

Justification

In the recitals, EMT are referred to as means of payment. This definition should be applied consistently throughout the text.

Amendment 4

Proposal for a regulation
Article 3 – paragraph 1 – point 5

Text proposed by the Commission	*Amendment*
5. "Utility token" a crypto value that is intended to provide digital access to a product or service, is available via DLT and is only accepted by the issuer of this token;	5. "Utility token" a ***fungible*** crypto value that is intended to provide digital access to a product or service, is available via DLT and is only accepted by the issuer of this token;

Or. de

Justification

Necessary differentiation from values that use DLT as a technology, but only convey non-transferable content. The use of the carrier technology must not in principle and automatically lead to the applicability of this regulation. When classifying the token, the focus must be on the purpose of the token, not the underlying technology.

Amendment 5

Proposal for a regulation
Article 5 – paragraph 9

Text proposed by the Commission	*Amendment*
(9) The crypto value whitepaper is in at least one of the official languages of the home Member State or ***in a language commonly used in international finance***;	(9) The crypto value whitepaper is in at least one of the official languages of the home Member State or ***English***;

Or. de

Justification

The white paper should be written in one of the official EU languages or English; Documents written in third languages should be inadmissible for the purposes of this regulation.

Amendment 6

Proposal for a regulation
Article 18 – paragraph 4

Text proposed by the Commission	*Amendment*
(4) EBA, ESMA, ECB and, if applicable, a central bank referred to in paragraph 3 shall issue a ***non-binding*** opinion on the application within two months of receipt of the draft decision and the application dossier and submit their ***non-binding*** opinions to the competent authority concerned. ***This*** competent authority takes due account of these ***non-binding*** statements as well as the remarks and comments of the issuer making the application.	(4) EBA, ESMA, ECB and, if applicable, a central bank referred to in paragraph 3 shall issue a opinion on the application within two months of receipt of the draft decision and the application dossier and submit their opinions to the competent authority concerned. ***The statements, with the exception of those of the European Central Bank and the central banks of the member states on the implementation of monetary policy and ensuring secure processing of payment transactions, are non-binding. The*** competent authority takes due account of these statements as well as the remarks and comments of the issuer making the application. ***If the ECB's opinion is negative due to monetary policy considerations, the competent authority rejects the application for approval and informs the issuer making the application of the decision.***

Or. de

Explanation

Asset-referenced tokens can reach market volumes that can affect the currency security of the euro zone. This must be taken into account by correspondingly involving the European Central Bank in the form of a mandatory positive attestation.

Amendment 7

Proposal for a regulation
Article 19 – paragraph 1

Text proposed by the Commission	*Amendment*
(1) The competent authorities shall, within one month of receipt of the ***non-binding*** opinion referred to in Article 18 (4), make a fully reasoned decision on the granting or refusal of admission to the applicant issuer and shall notify the applicant issuer of this decision within five working days. If an applicant issuer is approved, its crypto value whitepaper is deemed approved.	(1) The competent authorities shall, within one month of receipt of the opinion referred to in Article 18 (4), make a fully reasoned decision on the granting or refusal of admission to the applicant issuer and shall notify the applicant issuer of this decision within five working days. If an applicant issuer is approved, its crypto value whitepaper is deemed approved.

Or. de

Amendment 8

Proposal for a regulation
Article 31 – paragraph 1 – point b a (new)

Text proposed by the Commission	*Amendment*
	(b a) a quarter of the fixed overhead costs of the previous year, which are reviewed annually and calculated in accordance with Art. 60 (6) of this Ordinance.

Or. de

Justification

The calculation basis for the capital requirements for the issuers of ART should be comparable with those for other market participants in order to ensure a level playing field. This is not the case for the 2% mentioned in the draft regulation (or 3% for significant ART). One possibility would be to transfer the rules for determining capital requirements for investment firms that are subject to the CRR to ART issuers as well: Such investment firms have to maintain 25% of the fixed overheads of the previous year (Art. 97 CRR).

Amendment 9

Proposal for a regulation
Article 37 – paragraph 2

Text proposed by the Commission	*Amendment*
(2) A natural or legal person who has	(2) A natural or legal person who has

decided to directly or indirectly sell their qualified participation held in an issuer of asset-referenced tokens (hereinafter "interested seller") shall inform the competent authority in writing beforehand, stating the extent of the participation concerned. The natural or legal person concerned also notifies the competent authority of their decision to reduce their qualified participation in an issuer of asset-referenced tokens so that their share in the voting rights or in the capital would fall below ***10%,*** 20%, 30% or 50% or the issuer of asset-referenced tokens would no longer be your subsidiary.	decided to directly or indirectly sell their qualified participation held in an issuer of asset-referenced tokens (hereinafter "interested seller") shall inform the competent authority in writing beforehand, stating the extent of the participation concerned. The natural or legal person concerned also notifies the competent authority of their decision to reduce their qualified participation in an issuer of asset-referenced tokens so that their share in the voting rights or in the capital would fall below 20%, 30% or 50% or the issuer of asset-referenced tokens would no longer be your subsidiary.

Or. de

Justification

The threshold of 10% for the takeover of asset-referenced tokens from the issuer seems too low. The acquisition of ART issuers follows the rules in MiFID II and EMD2. In PSD2 (Art. 6 (1)), EMD (Art. 3 (3)), MiFIDII (Art. 11 (1)), however, a qualified participation is only available from 20%. MiCA should not deviate from the regulations mentioned.

Amendment 10

Proposal for a regulation
Article 43 – paragraph 1 a (new)

Text proposed by the Commission	*Amendment*
	(1 a) The decision on the approval of e-money tokens lies with the European Central Bank. The ECB will refuse approval if it cannot rule out a threat to financial stability or currency sovereignty in the euro zone due to the business model, the expected market volume or other disadvantageous circumstances of the e-money token applied for. The ECB will make its decision within three months of receipt of the complete application for admission and will inform the issuer making the application of the decision within five working days.

Or. de

Justification

E-money tokens can reach market volumes that can affect the currency security of the euro zone. This has to be taken into account through the appropriate decision-making authority of the European Central Bank.

Amendment 11

Proposal for a regulation
Article 61 – paragraph 9 (a) (new)

Text proposed by the Commission	*Amendment*
	(9 a) Services, insofar as they are obliged within the meaning of Directive 2015/849 / EU, have effective procedures in place for the prevention, detection and investigation of money laundering and terrorist financing in accordance with Directive 2015/849 / EU.

Or. de

Explanation

AML and CTF in connection with crypto assets is one of the core concerns of regulators, regulators and the financial industry worldwide. The added value of crypto results for the user from cross-border and digital use as a means of payment and exchange. In this regard, too, a level playing field must therefore be guaranteed between established payment service providers and new market participants in accordance with the stipulation "same regulations for equal risks".

Amendment 12

Proposal for a regulation
Article 61 – paragraph 9 b (new)

Text proposed by the Commission	*Amendment*
	(9 b) Providers of crypto services that transfer crypto values for payment purposes must have internal control mechanisms and effective procedures for the full traceability of all crypto value transfers within the EEA as well as transfers of crypto values from the EEA to another region and vice versa in accordance with the provisions of the Regulation (EU) 2015/847.

Or. de

Explanation

AML and CTF in connection with crypto assets is one of the core concerns of regulators, regulators and the financial industry worldwide. The added value of crypto results for the user from cross-border and digital use as a means of payment and exchange. In this regard, too, a level playing field must therefore be guaranteed between established payment service providers and new market participants in accordance with the stipulation "the same rules for the same

risks".

Amendment 13

Proposal for a regulation
Article 66 a (new)

Text proposed by the Commission	*Amendment*
	Article 66 a
	Orderly handling of service providers
	The providers of crypto services draw up an appropriate plan to support the orderly processing of their activities in accordance with applicable national law. This plan must prove that the provider of crypto services is able to process the order in a manner that does not cause undue economic damage to the customer.

Or. de

Justification

It is intended that issuers of asset-referenced tokens draw up an appropriate plan for an orderly settlement (see Art. 42). From a risk perspective, it appears necessary that this is also required of crypto value service providers.

Amendment 14

Proposal for a regulation
Article 74 – paragraph 2

Text proposed by the Commission	*Amendment*
(2) To sell crypto services directly or indirectly held qualified participation (hereinafter "interested seller"), informs the competent authority in writing beforehand, stating the scope of the participation concerned. The natural or legal person concerned also notifies the competent authority of their decision to reduce a qualified stake in such a way that their share of the voting rights or capital would fall below ***10%,*** 20%, 30% or 50% or the provider of crypto Services would no longer be their subsidiary.	(2) To sell crypto services directly or indirectly held qualified participation (hereinafter "interested seller"), informs the competent authority in writing beforehand, stating the scope of the participation concerned. The natural or legal person concerned also notifies the competent authority of their decision to reduce a qualified stake in such a way that their share of the voting rights or capital would fall below 20%, 30% or 50% or the provider of crypto Services would no longer be their subsidiary.

Or. de

Justification

The acquisition of providers of crypto services follows the rules in MiFID II and EMD2. The qualified participation in MiCA starts at 10%. In PSD2 (Art. 6 (1)), EMD (Art. 3 (3)), MiFIDII (Art. 11 (1)), however, a qualified participation is only available from 20%. MiCA should not deviate from the regulations mentioned.