PolicyPartner

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Look Ahead Calendar – PolicyPartner

- MiCA: early movers and banks will see significant advantages in stablecoins.
- M&A in the EMI space may be an attractive alternative for firms hoping to issue an EU ART
- Status update on transition/grandfathering country by country
- Central Banks take on stablecoins and CBDCs in 2024
- Jerome Powell joins Secretary Yellen in support for stablecoin framework.
- Regulation: Letter to SEC on SAB 121, CFTC GMAC meeting
- Michael Hsu weighs in on global crypto regulation

MiCA: early movers and banks will see significant advantages in stablecoins

PolicyPartner believes that early registration will afford stablecoin issuers a competitive advantage. Further, we believe that stablecoins that were not previously authorized, but continue to be offered after June 2024 could face enforcement from local authorities.

Join our call with AFME this coming Monday (February 26) where we will explore how traditional financial institutions are approaching MiCA, as well as other relevant institutional topics like tokenization and custody.

Who can issue an ART and which tokens will persist?

As stipulated in MiCA, issuers of Asset Referenced Tokens (stablecoins) must obtain "authorization as a credit institution or as an 'electronic money institution'" (EMI.) Our conversations with EU lawyers indicate e-money licenses can take up to a year and half to obtain. Finalized regulatory and implementation guidance in ARTs is due to be submitted to the European commission for review by June 30. The same date ART provisions of MiCA set to go into force. Without finalized RTS, national regulators will be slow to issue CASP licenses.

Credit institutions on the other hand, do not need prior "authorization to offer or seek the admission to trading of ART" (MICAR (44)). Issuers of ARTs that have prior approval will be able to continue to issue ARTs provided they apply for authorization before 30 July 2024. Our read is that this applies to e-money institutions that have existing approval to issue stablecoins. While the transition period presents uncertainty, issuers will eventually need to have both a CASP license and an e-money license (or be a bank).

We believe this dynamic gives banks and EMIs with approval to issue a stablecoin a head start in the EU stablecoin market.

- Uncertainty around ART regulations coming into force has been in focus for issuers and exchanges since the final text was agreed last year.
- Stablecoin and e-money issuer Monerium, has been calling for stricter enforcement of stablecoins out of compliance with e-money rules for some time.

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Given the lengthy application process, M&A in the EMI space may be an attractive alternative for firms hoping to issue an EU ART. A quick review of EMI licenses in Europe indicates that some countries are more popular than others. Lithuania 81, Ireland 21, France 20, and Cyprus 17. The UK has over 290 EMIs, however Brexit has complicated EU operations for UK based firms as CASP license will also be required to issue stablecoins.

Ireland in focus

Many crypto firms have selected Ireland as a home base, registering as e-money institutions to provide exchange and other services. Further, Ireland boasts a favorable tax regime and corporate legal structures. Banks.eu lists a total of 24 EMIs based in Ireland. From our view point, regulators in Ireland are well prepared to bring MiCA into force – Ireland has indicated they will reduce the transitional period to 12 months instead of the allotted max of 18. Further, the bank of Ireland has plentiful resources on MiCA and appears to be more than ready to issue authorizations to CASP applicants. **We believe existing E-money institutions in Ireland will likely find themselves in a competitive position to issue asset referenced tokens**.

Country level differences continue to emerge:

Many jurisdictions will likely split roles between local central banks (regulation of stablecoins and E-money) and local securities regulators (regulation of other tokens and services).

Policymakers' familiarity with the industry and the available resources for supervision such as staffing, and funding is critical. Available resources are a cornerstone in the question of passporting, as NCAs are required to actively communicate and collaborate with other regulators and non-local issuers.

While MiCA affords firms freedom of operation and rights of establishment, local regulations and requirements may emerge.

- Some NCAs (ex. Austria, Lithuania, Malta) are further ahead both in terms of infrastructure to support registrations and in terms of being proactive about CASP registrations. While ESMA's timeline is uniform, in practice the timelines are likely to diverge as implementation continues.
- Stablecoin companies are likely to have a more pressing schedule, given that in many cases the requirements to operate include obtaining both an e-money license and a CASP authorization.

Status update on transition/grandfathering country by country

In October 2023, ESMA urged NCAs and participants to prepare for the coming regulation in an open letter. The letter stressed the need for early designation by NCAs and the disadvantages to extensive use of grandfathering clauses.

- **Austria**: 12-month transitional period - 30 December 2025
- Belgium: has not confirmed if adopting transition period. Has in the past allotted grandfathering periods for compliance in AML/CFT for VASPs.

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- Bulgaria: has not confirmed if adoption transition period.
- Croatia: has not confirmed if adoption transition period.
- Republic of Cyprus: has not confirmed if adopting transition period. May enact one given pre-existing extensive regulatory requirements.
- Czech Republic: has not confirmed if adopting transition period.
- Denmark: has not confirmed if adopting transition period.
- **Estonia**: 18-month transition period. Estonia is allowing CASPs to operate under the MLTFPA license only until July 1, 2025
- Finland: has not confirmed if adopting transition period.
- **France**: Offering 18-month transition period
- **Germany**: does not appear to be granting transition period.
- Greece: has not confirmed if adopting transition period.
- Hungary: has not confirmed if adopting transition period.
- **Ireland**: Ireland also reduced the transitional period to 12 months instead of the allotted max of 18.
- Italy: has not confirmed if adopting transition period.
- Latvia: has not confirmed if adopting transition period.
- **Lithuania**: No transition period in Lithuania.
- **Luxembourg**: Sticking with ESMA 18-month transition period. Rumors this may change to 12 months.
- Malta: has not confirmed if adopting transition period.
- Netherlands: has not confirmed if adopting transition period.
- Poland: Has not confirmed if providers in Polish Register of Virtual Currency Activities have transitional period.
- Portugal: has not confirmed if adopting transition period.
- Romania: has not confirmed if adopting transition period.
- Slovakia: has not confirmed if adopting transition period.
- Slovenia: has not confirmed if adopting transition period.
- **Spain**: transitional period set for 6 months.
- Sweden: has not confirmed if adopting transition period.

Central Banks study stablecoins and CBDCs in 2024

Since the beginning of the year, several central banks have been ramping up their involvement and commentary on digital assets, stablecoins and CBDCs, catching up with securities regulators.

- Bank of England concluded its consultation on the stablecoin framework in the UK – now we await FCA's response to consultations with BOE and HMT which will provide context into how the framework for crypto assets may look like within the next two years. Subsequent legislation on stablecoins is expected within the next 6 months. We expect the overall framework for crypto products - stablecoins, tokens, issuers, exchanges, custody - to be created towards the end of 2025.
- European Central Bank on February 21 published a highly critical report on Bitcoin ETFs, stating that the recent rally is a "dead cat bounce", unsubstantiated by intrinsic

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value of the asset. ECB has also been active on their Digital Euro front, recently responding to concerns from major banks. According to the timeline from the ECB, the Bank is in the process of developing legislation around the CBDC following its research phase that concluded in Fall 2023.

- The Federal Reserve has recently published a generally positive study on impacts of a potential US CBDC on international payment landscape. This study concluded that a US CBDC would not negatively affect the global payments landscape, while improvements could be enhanced by non-CBDC initiatives. Interestingly, last month the Fed published a working paper of impacts of CBDC and stablecoins and concluded that these products could stimulate the deposit rate in major banks.
- The Fed has officially stated it is not developing a CBDC and needs Congressional approval to do so. Our conversations with officials have indicated that the research work has been entirely focused on “the how”, not the “why.” CBDC’s have undoubtedly become a hot political issue and the odds of such a Fed sponsored product are low.

Jerome Powell joins Secretary Yellen in support for stablecoin framework.
Fed Chair Jerome Powell in conversations with House Financial Services congressmen said that the stablecoin framework is necessary and that the effort to introduce one could be close. Given that Secretary Yellen emphasized the gaps in stablecoin regulations and Maxine Waters expressed that the stablecoin bill is “close” we see a thawing of attitudes towards a potential stablecoin bill. Senate Democrats remain the main opposition to details of the existing bill in the House, particularly on the AML, and FinCEN responsibilities.

The most positive outcome for the legislation would be if the stablecoins could be added to must-pass items in front of Congress before summer.

Regulation:

- ABA, SIFMA and BPI wrote a letter to the SEC Chair on impacts of SAB 121 on banking, asking to consider targeted adjustments, like exempting banks from holding assets on the balance sheet, as well as to limit the definition of crypto assets. SAB 121 is facing congressional challenge, and this banks’ position could influence the SEC approach to the Bulletin deemed a rule by the GAO.
- CFTC GMAC to meet March 6 in Washington, DC. During the meeting, the digital asset markets subcommittee is expected to present their first recommendations on digital asset taxonomy.
- The new AML regulator in the EU will be based in Frankfurt. Previously EU’s AMLD6 reached a political agreement, and the agency will likely oversee the implementation of the directive.

Michael Hsu weighs in on global crypto regulation
On February 22, 2024, OCC's Michael Hsu gave remarks on the FSB's Crypto Working Group. During the speech, the Acting Comptroller reflected on the importance of coordination and collaboration in supervising global financial institutions. He gave an example of a Brazilian bank BCCI's failure, due to fragmented supervision and lack of a lead regulator, which led to

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significant enhancements in supervisory collaboration and the establishment of supervisory colleges to improve the sharing of information and collaboration across jurisdictions.

The text draws parallels between the BCCI case and the challenges faced today in the crypto-asset sector, particularly the lack of consolidated supervision and the resistance from the crypto industry towards regulation. Michael Hsu noted the importance of the FSB's recommendations for a comprehensive regulatory approach to ensure financial stability, despite the hurdles in achieving consolidated supervision. Finally, the speech touched on broader implications of crypto and tokenization, questioning the necessity of blockchains for tokenizing real-world assets and liabilities, and suggested a future exploration of financial stability in tokenization scenarios.