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Harmonisation is key to European crypto regulation

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Senior bank and fintech sources say European regulators need to do more to get up to speed with cryptocurrencies and work towards regulatory alignment between member states.

According to Javier Sebastian, in the digital regulation and trends team at BBVA, "the crypto universe is almost, by definition, borderless". In this sense, the job of regulating cryptocurrencies extends far beyond the geographical borders of Europe. "This enhances the need for harmonisation in regulation among jurisdictions to avoid regulatory arbitrage," he added.

The need for member states to adopt similar, or at least complementary, legislation is even more beneficial in respect to the digital single market.

Yet despite its potential benefits, legislation has not gained traction yet within Brussels. This causes regulatory headaches, such as whether present guidelines allow for secure trading in cryptocurrency for customers. "Absolutely not" at the moment, according to Sebastian.

As Sebastian indicates, this isn't to say that the EU isn't working on it. "Given that, according to the European Banking Authority and

European Central Bank (ECB), cryptoassets do not have enough scale as of today to represent a danger to financial stability, we expect the European Commission to move forward at a good pace, but without running."

The notion of crypto regulation has begun to gain momentum in Europe during the last few years, but this isn't in the form of a bloc-wide regulatory agreement. Rather, different countries have begun implementing their own legislation.

But lawyers see this as a step in the wrong direction. "The difficulty is that this member state gold-plating creates a divergence from the EU single market position, and it means that the playing field for crypto firms becomes less harmonised and more uneven. If all member states took the same approach, crypto firms would have to deal with 28 different regimes and that involves additional cost and red tape" said Latham & Watkins' Stuart Davis.

KEY TAKEAWAYS

- **Better guidance is needed to support all EU member states with crypto regulation;**
- **Harmonisation will ensure growth is maintained;**
- **Many EU states are implementing diverging legislation, though France and Switzerland, appear to be getting off to the best start.**

Italy recently began to consult on possible crypto regulation; Estonia, typically a leader in digital markets, has introduced crypto laws, and France has also implemented a new law, which its finance minister has touted for potential blanket adoption by other member states.

France's approach focuses on the registration and transfer of unlisted securities by using blockchain technology, and ensuring that banks cannot give crypto start-ups the cold shoulder, by insisting on their right to a bank account if they comply with regulations.

Despite French laws appearing more coherent than other member states, it is debatable as to whether they would be a success if adopted in a Europe-wide move. Sebastian believes that "it is a good start", but points out that "as of today, the framework does not address all the issues related to the crypto environment".

Davis points out that rather than a country specific start, it is "important to ensure that this relatively nascent industry can thrive across the EU and to avoid regulatory silos" and adds that this can be achieved "via a bespoke regulatory regime for crypto-assets or, alternatively, through additional guidance from the pan-European regulators such as ESMA and the EBA as to the correct interpretation of the existing regulatory perimeter as regards crypto-assets."

One place of influence that the ECB and Esma could look to as they nudge other European institutions into action is Switzerland. While not an EU member, its crypto regulation is largely viewed as a strong foundation for a consumer and innovation-friendly framework.

Luca Bianchi, vice president of the Swiss Finance and Technology Association, believes that the new regulation and, in particular, the proposed new rules for distributed ledger technology (DLT), aim to punctually adjust historically grown laws in order to make them more suitable for innovative business models and products".

He continued that this has been a "pragmatic and fast legislative approach. Consequently, the Swiss fintech and DLT regulation represents an important step in the right direction".

"Switzerland is one of the global leaders in the area of Fintech and blockchain. Thus, the related Swiss regulations could serve other countries as a model for their own regulation. Internationally harmonised and aligned rules would benefit the European (and the global) fintech ecosystem," added Bianchi.

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More so than ever, aligned legislation is needed to ensure that the crypto and blockchain ecosystem remains innovative, and that Europe remains a global leader.

It is time for either a harmonised regime on cryptoassets or guidance from Esma which determines to member state regulators how they need to apply existing rules, recognising some crypto does and should fall outside existing rules.

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