

Position paper on the EU Proposal for a Regulation on information accompanying transfers of funds and certain crypto-assets (recast) COM/2021/422 final

Authors:

Background

On July 20, 2021, the EU Commission adopted a proposal setting out new measures to strengthen the EU rules on combating money laundering and terrorist financing in the field of crypto-assets transfers (hereinafter “TFR”). The rules are part of a new [anti-money laundering package](#) aimed at addressing the shortcomings of the existing framework which—according to the EU institutions—includes ineffective implementation, weak oversight and insufficient detection of suspicious transactions.

On March 31, 2022, the Committee on Economic and Monetary Affairs (ECON) and the Committee on Civil Liberties (LIBE) of the EU Parliament adopted, with 93 votes to 14 and 14 abstentions, their position on the draft legislation. The report is available [here](#).

In its current form and under the newly agreed requirements, all transfers of crypto-assets, which are sent or received by a payment service provider, a provider of crypto-asset transfers, or an intermediary payment service provider established in the Union, will have to include information on the source of the asset and its beneficiary, information that is to be made available to the competent authorities. The rules would also cover transactions from so-called unhosted wallets (a crypto-asset wallet address that is in the custody of a private user).

In theory, technological solutions should ensure that these asset transfers can be individually identified.

The proposed text of the TFR is subject to significant discussions within European crypto advocacy groups and interested parties. It is usually considered a very problematic text as it may induce centralized exchanges not to accept transfers from unhosted wallets. Part of the industry argues that the sweeping categorization of crypto-assets as risky assets by nature would amount to a misconception about blockchain technologies. Obviously ML/FT risks do exist in the crypto universe, but the true level of such risks seems to be overstated here. Moreover, according to some commentators, the adoption of the proposal in its current version would represent a significant infringement of the privacy of European citizens. Therefore, the TFR will not only impact the activity of crypto-asset service providers, but potentially affect every blockchain user located in the EU. This may also have chilling effects on the wider adoption of crypto, for example, as a means of payment in trade, business or profession.

Specification

The exponential acceleration of negotiations among the European institutions in the last weeks and the desire to bring TFR into force at the same time as MiCA,, could lead to a misunderstanding of the real issues concerning AML/CFT for crypto-assets. Even AML and CFT experts often lack understanding with respect to the features of blockchain technology.

The LexPunk EU WG proposes an orientative position paper, which will explain and—where appropriate—exercise critique on the solutions proposed in the TFR. The research paper will be published during the most important phase of the legislative procedures (the so-called “*trialogue*,” where the EU institutions negotiate on the final text of the regulation).

The EU WG will consider the most relevant aspects of the TFR:

- Subject matter, scope and definitions;
- Obligations on payment service providers;
- Obligations on the crypto-asset service providers;
- Information, data protection and record retention;
- Sanctions and monitoring.

During the preparation of the paper the WG will organize weekly meetings with interested parties. In particular projects that are working on technological solutions to perform on-chain or other crypto-tailored KYC and AML (as, for instance, [Burrata](#), [PolygonID](#)) will be invited to discuss relevant regulatory issues.

At completion of the work, the WG plans to organize an explanatory workshop where everybody will be invited to participate.

Goals

- Demonstrate how **DeFi** projects could be affected by the TFR
- Demonstrate how crypto as a **means of payment** for trade, business or profession, with or without the involvement of an obliged entity, could be affected by the TFR
- Enhance **awareness** in the industry about the new rules
- Give arguments to crypto advocacy groups in the final **legislative procedure**
- Foster innovative **technological solutions** to comply with the new rules

Funding

The EU WG requests a bounty of 50,000 USD to complete the research and organize the workshop.

Timing

The WG plans to deliver the final version of the paper within the month of July 2022.

Team

Part of the WG has already worked on the Lex Punk [MiCA position paper](#). Some new members with different national backgrounds will join the team. These are their profiles:

[Eagle](#): Italian Law Professor and Attorney, focused on blockchain technology and data protection.

[J. Senftinger](#): German Lawyer, focused on information technology & corporate law.

[Sp1t](#): Swedish lawyer with a background in M&A, now focused on blockchain and regulatory questions (primarily AML).

[Raul](#) : Spanish Attorney, experience practicing in both civil and common law jurisdictions (mostly Australia, UAE and Spain) mainly in corporate/commercial & cross border relations, focused in digital assets, currently serving as GC at a DeFi research venture.

[friou](#) : French Digital Marketing Manager, crypto investor with an interest in EU crypto regulations.

[RedHatRoss](#) Polish lawyer/compliance officer/MLRO with background in the financial industry, EU payment services in particular.

[ImpermanentGain](#): Maltese lawyer with deep involvement in crypto since 2013, specializing in crypto regulation and decentralization/DAO engineering.

[Baynoni](#): American JD, legal researcher, and draft editor.

Please let us know your thoughts about the proposal!