Law, Science and Technology MSCA ITN EJD n. 814177



The open legal challenges of pursuing AML/CFT accountability within privacy-enhanced IoM ecosystems

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Overview of the Anti Money Laundering / Counter Terrorist Financing framework

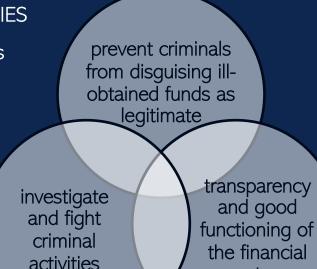
Concepts and Principles

OBLIGED / REPORTING ENTITIES

-> "chokepoints" / gatekeepers



- ACTIVE COOPERATION
- Financial Intelligence Units
- ACCOUNTABILITY
- Risk-Based Approach
- Proportionality
- Supervision
- Sanctions





system

Obligations

- Registration and/or licensing
 - Know Your Customer
 - Customer Due Diligence
 - Record retention
 - Risk assessment(s)
 - Internal procedures
 - Ongoing monitoring (e.g. transaction scrutiny)
 - Suspicious TransactionReporting

alternative Internet of The Internet of Money and crypto misuse risks financial Money system pseudonymity following the (perceived) disinterblockchain analysis and mediation anonymity money.... forensic strategies transaction traceability Transparency (data tech schemes -> public availability) cryptounderlying technology currencies Privacy Mixing/ (pseudonymity -> tumbling hiding in plain sight) but obfuscation of Zero-Bitcoin User best financial knowledge flows practices proofs abuses for Internet of Anonymity-Enhanced Currencies / Privacy Coins illicit Value purposes

Cryptocurrencies can be used to launder money...

Placement

Placement

pseudonymous and easy-to-open VC accounts

in crypto-based contexts

Integration

pseudonymous and easy-to-open VC accounts

in crypto-based contexts

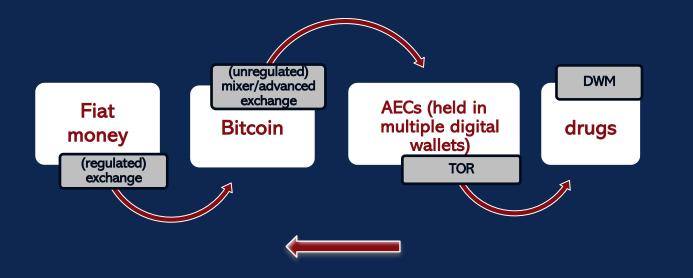
a growing variety of goods can be purchased with VCs







...to pseudo/anonymously engage in illegal transactions...



....and can be laundered themselves -> crypto-cleansing

multiple AECs, exchanges and addresses

virtual to virtual layering schemes

AECs



AML/KYC

Crypto-related AML/CFT initiatives

Financial Action Task Force (FATF/GAFI)



Specific guidelines since 2014

Guidance for a RBA to Virtual Currencies (2015)



FATF Recommendations (VAs included since 2018)
Recommendation 15
(Interpretative note June 2019)

INTERNATIONAL STANDARDS

TERRORISM & PROLIFERATION

The FATF Recommendations

AND THE FINANCING OF

ON COMBATING MONEY LAUNDERING

Guidance for a RBA to VAs and VASPs (2019)



A **virtual asset** is a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes. Virtual assets do not include digital representations of fiat currencies, securities and other financial assets that are already covered elsewhere in the FATF Recommendations.

Virtual asset service provider means any natural or legal person who is not covered elsewhere under the Recommendations, and as a business conducts one or more of the following activities or operations for or on behalf of another natural or legal person:

- i) exchange between virtual assets and fiat currencies;
- ii) exchange between one or more forms of virtual assets;
- iii) transfer1 of virtual assets;
- iv) safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets; and
- participation in and provision of financial services related to an issuer's offer and/or sale of a virtual asset.

AECs

- mixing/tumbling service providers
- decentralized platforms and exchanges



reduction in transparency and increase in the obfuscation of financial flows



FATF: no activities involving AETs if unable to manage and mitigate relevant risks

NEWS: January 9, 2020: Supervisors' Forum on how to supervise virtual assets

Crypto-related AML/CFT initiatives

5th EU AML Directive

Deadline for MS transposition: January 10, 2020 DIRECTIVE (EU) 2018/843 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 30 May 2018

amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU

providers engaged in exchange services between virtual currencies and fiat currencies

two new obliged entities



"virtual currencies" means a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically;

custodian wallet providers

"custodian wallet provider" means an entity that provides services to safeguard private cryptographic keys on behalf of its customers, to hold, store and transfer virtual currencies.';

The Commission shall draw up a report on the Directive's implementation and include, if deemed necessary and appropriate, legislative proposals such as

central database registering users' identities and wallet addresses accessible to FIUs

self-declaration forms for the use of virtual currency users

Possible limits of the current AML approach in the crypto sphere

cryptocurrencies imagined and created to keep intermediaries out of the picture

concept of transparency within user non-centralized systems and operation

transparency



middlemen to be held accountabile to ensure transparency of financial transactions

financial regulatory transparency rules no opaqueness as to origin of funds, reasons for operations and beneficial owners

Diverse distributed governance mechanisms of VCs Involvement
of both
traditional
intermediaries
and other
actors

Multi-layered stakeholders

Relationship with the financial sphere

Cross-border nature



Recycle box (existing rules just need to be adapted)

Dark box (the objective is straightforwardly illegal)

Sandbox (the objective is not illegal but existing legal schemes are defied)

Possible innovative approaches and open issues

EBA EUROPEAN BANKING AUTHORITY

Regulated Self-regulation Scheme Governance Authority

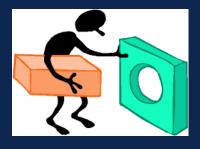
- → an entity accountable to the regulator
- → able to exercise authority over market participants

Self-declaration role of crypto users and market participants (?)

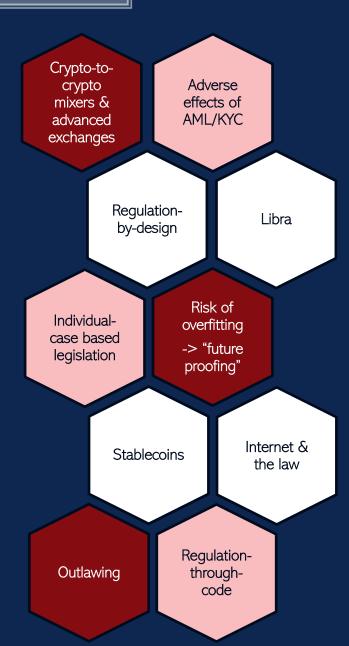
compatibility with the conceptual origin of the crypto economy?



crypto-world (and its conceptual origin)



AML system of approved parties and active cooperation





Thank you very much for your attention!

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