

SNAPSHOT

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Giving you insight to what is on the political agenda

Crypto currency laws on the horizon

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Blockchain technology and crypto currencies have been around for a decade. However, hype amongst users, its high volatility and speculation by a broader range of investors has attracted increasing regulatory attention. Efforts have not been uniform. In some countries, authorities have been introducing a swathe of new measures to try and impose a new rule book. In others, governments are actively discouraging private market transactions, without explicitly prohibiting them. And finally, there are some where the regulatory position has been more ambiguous or hasn't been regulated at all so far. The fintech team at FTI Consulting looks at what might be coming forward as governments in both the United States and the European Union look to protect both investors and the markets.

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Regulators and lawmakers in the United States (US) and the European Union (EU) are increasingly focusing their attention on crypto currencies. Blockchain technology and related activities are here to stay – therefore which rules apply, and which do not, needs to be figured out.

While legislators are trying to keep the regulation technology neutral, blockchain and crypto currencies have triggered so many questions that the issue has arisen over whether to adapt existing rules or whether a completely new approach is needed.

The technology intersects multiple areas of oversight. Each has its own answer to the question - *what is crypto currency?* While commodity authorities are looking to crypto as a commodity, financial markets and securities regulators see it as a financial asset. Central bankers consider it as potential “money”. As a result, a single crypto asset is often regarded simultaneously as all the above depending on who the overseer is creating multiple challenges for investors blockchain creators and users. There are numerous voices

urging for legal clarity and better consumer protection against fraud and money laundering.

The US approach

The US Congress has largely remained silent on lawmaking around crypto currency, leaving individual agencies and states to decide their role as policeman or promoter, often acting as both. Judges are also crafting law by weighing in on enforcement actions brought by regulators.

Where potential criminal activity is being detected, the US regulators and enforcement agencies take a very strong stance. CFTC and SEC are focusing on the crypto currency surveillance practices and identifying typical features of fraudulent crypto assets offerings. The US Congress is introducing bills requiring the US authorities to research crypto price manipulation or how crypto currencies enable illicit uses, like drug trafficking.

While hard legislation in the US is not expected in the near future, the US Securities and Exchange Commission (SEC) and the US Commodity Futures Trading Commission (CFTC) are taking the lead on enforcement. With additional funds earmarked for 2019 to prioritise and work through the cases they have opened, these two institutions are expected to clarify the country's legal position and launch new ones that will seek to provide guidance and set the soft law to help define and interpret how existing laws will apply.

The EU approach

On the EU side, the political debate about regulating crypto assets and potential risks stemming from blockchain technologies has been intensifying lately. However, policy makers will need to strike a balance in 2019 while Brussels undergoes a legislative transition with European parliamentary elections in May and the appointment of a new Commission in November. In such a busy year, new proposals are unlikely. Nonetheless, European Commission staff, together with the European Supervisory Authorities, will be preparing their ideas for the new legislative period. Its one to keep a close eye on.

While Brussels focusses on the politics, a number of Directorate Generals at the European Commission are coming together to establish an initial view and way forward. A new Unit has been established to look into general FinTech questions, including crypto currencies, while the EU Blockchain Observatory and Forum are working on numerous theoretical and practical issues, some of which might need to be fixed with new laws. The European regulators are also engaging in open conversations with the industry to get the rules right from the first attempt. Therefore, one should not be surprised if EU crypto regulation is proposed as soon as the beginning of 2020.

Regulating crypto currencies will be one of the big issues the Commission will want to address in its new mandate. It will

be keen to reaffirm its position as an international leader on the issue by establishing new global standards. This may or may not fall within the remit of its Capital Markets Union, the EU's flagship initiative to deepen and further integrate the capital markets of its Member States. Whatever happens the EU will most probably want to avoid any form of self-regulation. Austerity might be over, but lessons learnt from the global financial crisis remain fresh in many memories.

The regulation of crypto currencies and blockchain technology is on its way on both sides of the Atlantic. The approach so far has been piecemeal with a lot of uncertainty as to what shape it should take. The principle question is whether legislators be informed enough and coordinate their approaches?

For further information on the issue, a more detailed analysis of the relevant legislative and non-legislative activities (by European institutions and agencies, as well as the United States Federal and States level) can be found on the FTI Consulting website [here](#) or go to www.fticonsulting.com.



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