Digital Finance: emerging risks in crypto-assets - regulatory and supervisory challenges in the area of financial services, institutions and markets

2020/2034(INL) - 08/10/2020 - Text adopted by Parliament, single reading

The European Parliament adopted by 542 votes to 63, with 89 abstentions, a resolution containing recommendations to the Commission on Digital Finance: emerging risks in crypto-assets - regulatory and supervisory challenges in the area of financial services, institutions and markets.

Members reiterated that digital finance, which plays a key role in developing financial activities, shall be integral to the success of the Capital Markets Union (CMU) through increasing financing options for companies and citizens, as well as investment options. They stressed the increased need for a review of measures relating to the regulation of digital finance, taking particular account of the growing importance of this sector in the context of the COVID-19 pandemic.

Taking action at EU level

Parliament welcomed the adoption by the Commission of the Digital Finance Package including two legislative proposals on crypto-assets and operational resilience. However, it regretted that the Commission did not properly address the problems related to money laundering, terrorism financing and criminal activity associated with crypto-assets, which remain largely unresolved.

Given the intergovernmental nature of digital finance, Parliament called on the Commission to coordinate closely with international fora and regulatory bodies in the development of international standards.

It stressed that any measures taken at Union level in the area of digital finance shall reflect the following principles:

- the same activities and services and their associated similar risks should be subject to the same rules;

- proportionality and technology neutrality;

- an approach based on risk, transparency and accountability;

- respect for the fundamental rights, specifically the protection of privacy and personal data, as guaranteed by Articles 7 and 8 of the Charter of Fundamental Rights of the European Union;

- high levels of consumer and investor protection;

- a level playing field;

- an innovation-friendly approach.

Recommendations

Parliament made a series of recommendations to the Commission on the actions to be proposed:

(1) Define a framework for crypto-assets

The term ‘crypto-assets’ is used to refer to a wide variety of digital assets, including virtual currencies and tokens. At present, crypto-assets are neither issued nor guaranteed by a central bank or public authority in the Union, and can have a variety of uses, including as a means of exchange, for investment purposes, and in order to access a good or service.

Members considered that developing a comprehensive pan-European taxonomy for new products such as crypto-assets is a necessary step towards fostering a common understanding, facilitating collaboration across jurisdictions and providing greater legal certainty for market participants operating cross border.

Parliament recommended the presentation of a legislative proposal on crypto-assets, which would provide legal certainty with regard to the treatment of crypto-assets, while ensuring a high level of consumer and investor protection, market integrity and financial stability. This legislative proposal shall:

- provide guidance on the applicable regulatory, supervisory and prudential processes and treatment of crypto-assets;

- adopt specific rules on market transparency and integrity at least equivalent to those of MiFID II for issuers or sponsors of crypto-assets;

- address the regulatory gaps in existing Union legislation as regards to crypto-assets, for example, classifying certain crypto-assets as ‘transferable securities’ under MiFID II;

- create a bespoke regulatory regime for new and evolving crypto-asset activities, such as initial coins offerings or initial exchange offerings, and any crypto-assets which do not fall under the existing regulatory framework, ensuring that they are regulated in a harmonised manner on the Union level;

- address the environmental impact of crypto-mining and the need for solutions aimed at mitigating the ecological footprint of mainstream crypto-assets.

Parliament also recommended: (i) moving towards stronger regulatory and supervisory convergence; (ii) developing a legislative framework for stablecoins; (iii) presenting a proposal for a common Union framework for a pan-European sandbox for digital financial services; (iv) strengthen the implementation of the anti-money laundering and anti-terrorist financing framework with regard to crypto-assets.

(2) A common strategy for cyber-resilience in the financial sector

Parliament recommended that a legislative proposal on cyber-resilience be put forward which ensures consistent standards of ICT and cyber security across the Union financial sector, taking into account international standards. Such a framework shall be future-oriented and focus on modernising the current rules applicable concerning cyber resilience, while also closing any regulatory loopholes and gaps, which may put businesses, investors and consumers at risk.

The proposed legislative changes in the area of cybersecurity requirements shall focus on: (i) modernising ICT governance and risk management and ensuring compliance with international standards; (ii) aligning reporting rules for ICT incidents; (iii) a common framework for penetration and operational resilience testing across all financial sectors; and (iv) monitoring and applying minimum standards to critical third-party ICT providers.

(3) Data

The EU's traditional role as a global standard setter regarding data calls for an ambitious regulatory approach to the management of data by financial entities, with consumer protection at its centre. The Commission was invited to:

- propose a framework for digital onboarding. Such a framework should comply with relevant Union legislation such as Anti-Money Laundering provisions, data protection and privacy norms and aim to ensure a common understanding of digital financial identities across the single market, while fostering the harmonisation of cross-border onboarding;

- work to enhance accountability, explicability and transparency with regards to algorithms, data processing and analytics.