

Legal Aspects of Digital Assets and Services

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JVI Webinar

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Digital Assets and Services - Benefits and Risks

- Enabling innovation & potential benefits
 - Higher speed, greater reach, transparency, lower cost, programmability...
- Must be balanced against risks to
 - Inform and justify regulatory and supervisory intervention
 - Shape objectives & scope of legal framework, mandates & powers of supervisors

Loss of funds/trust

Investor/Consumer Protection

Manipulation/information abuse

Market Integrity

Currency substitution

MonPol Transmission

Means of exchange

Functioning of payment systems

Interconnections

Financial Stability

Illicit transaction

Financial Integrity

Digital Assets and Services – Types of tokens

- Multitude of tokens multitude of functions multitude of risks
 - Single Framework? Single Supervisor? Cooperation?

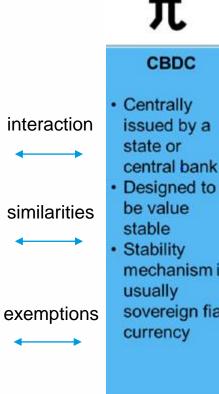












NFT tokens

- Usually centrally issued
- Right to ownership of specific product
- Collectible and nonsubstitutable

Security tokens

- Centrally issued
- · Meets the definition of a security in each respective jurisdiction
- · Within the regulatory perimeter

- **Utility tokens**
- Centrally issued
- · Right to a product / service
- Accepted across multiple ecosystems
- Transferable
- Can be used as a means of exchange

Unbacked Crypto Asset

- Usually decentralised
- · Designed to be used as a means of exchange
- Limited rights for the token holder
- No single issuer to enforce rights against
- Transferable

Stablecoins

- Designed to be value stable
- Stability mechanism can be backing or collateralization with a commodity, fiat currency,

multiple

currencies.

crypto assets

or algorithms

- issued by a central bank
- mechanism is sovereign fiat

Digital Assets And Services – Legal Design

- No internationally agreed upon taxonomy/classification
- (Legal) Principles
 - Same activity, same risk, same regulation
 - Technological neutrality, proportionality, risk-based
 - Powers/tools to enforce (new/existing) laws
 - Effective and comprehensive regulation, supervision
 - Cooperation and information sharing
- Legal design questions:
 - Principle of equal treatment/non-discrimination
 - Coherence of the legal framework
 - Translation of economic substance into legal criteria:
 - One size fits all?
 - Broad vs targeted? Flexibility? Discretion?
 - What to regulate/supervise? Activity, service-provider, product...

Classification criteria

- Issuer
- Degree of (de)centralisation
- Stabilization mechanism
- Reference to a currency(ies)
- Use as a means of exchange
- Reference to rights
- Financial use, substitution
- Access to a service/product/asset
- Claim against issuer/reserves
- Redemption rights
- Interest-bearing

....

Digital Assets and Services – Classification & the law

Assigning crypto assets to specific legal categories is essential in order to provide legal certainty

Objectives
Mandate(s)
Powers

- Financial law classification: e.g. (tokenized) deposit, security, payment instrument or regulated types of cryptoassets will define regulatory perimeter, regulatory regime, competent supervisor etc.
- Private law classification: property, personal claims, or sui generis asset; informs, among others, modalities of transfers, custody arrangements, rights in insolvency →
- Interaction: private law informs regulatory approach: transparency rules, information obligations, minimum contractual content, marketing, statutory rights for investors/consumers (redemption, withdrawal, liability...)

Substantive obligations

Scope of application (material/personal)

Exemptions

Regulated Entities/
Activities/
services

Approaches

- Bespoke (new rules, eg MiCA)
- Amendments (eg CH, JP,...)
- Enforcement (US)

Mode

- Legislative
- Regulatory
- Supervisory

Digital Assets and Services – Interaction with monetary and payment law

- Digital Assets as a form of money?
 - Unit of account
 - Store of value
 - Means of payment



- Legal concept of money wider
 - Redeemability in currency (book money or e-money)
 - Stablecoins?
- Currency: Legal tender reserved for coins/banknotes?
 - Official means of payment in official monetary unit as recognized by monetary law
 - Sovereign monopoly to issue, cours forcé, privileges under civil/criminal law...
 - Extension to CBDC, but not to privately issued assets
- Payment instruments
 - neither currency nor money but legally used to effect payments in book money or currency
 - → While stablecoins are not currency or money, they could constitute **payment instruments or** resemble book/e-money

Digital Assets and Services – Wrap Up

Classification essential for

- Legal certainty regulatory perimeter coherence of legislative framework
- Allocation of competences delineation of tasks mandates powers

Alignment with monetary law

- Preservation of "singleness of money"
- Role of sovereign to issue and control currency also in digital format

Private law considerations need to inform regulation

- Investor protection: eg segregation or safekeeping rules
- Crypto-asset services: information, transparency, contractual obligations

Legal framework will in turn shape market practice

- Standardization & adequate labelling & convergence
- Singling-out of illicit actors → credibility & trust

→ How to do it in practice? What taxonomy under which design?