

CRYPTO-ASSETS NEED COMMON EU-WIDE APPROACH TO ENSURE INVESTOR PROTECTION

09 January 2019

INNOVATION AND PRODUCTS

The European Securities and Markets Authority (ESMA) today publishes its [Advice to the European Union \(EU\) Institutions](#) – Commission, Council and Parliament – on initial coin offerings and crypto-assets. The Advice clarifies the existing EU rules applicable to crypto-assets that qualify as financial instruments, and provides ESMA's position on any gaps and issues in the current EU financial regulatory framework for consideration by EU policymakers

ESMA has been working with National Competent Authorities (NCAs) on analysing the different business models of crypto-assets, the risks and potential benefits that they may introduce, and how they fit within the existing regulatory framework. Based on this work, including a survey of National Competent Authorities (NCAs) during 2018, ESMA has identified a number of concerns in the current financial regulatory framework regarding crypto-assets. These gaps and issues fall into two categories:

- For crypto-assets that qualify as financial instruments under MiFID, there are areas that require potential interpretation or re-consideration of specific requirements to allow for an effective application of existing regulations; and
- Where these assets do not qualify as financial instruments, the absence of applicable financial rules leaves investors exposed to substantial risks. At a minimum, ESMA believes that Anti Money Laundering (AML) requirements should apply to all crypto-assets and activities involving crypto-assets. There should also be appropriate risk disclosure in place, so that consumers can be made aware of the potential risks prior to committing funds to crypto-assets.

Steven Maijoor, Chair, said:

“Our survey of NCAs highlighted that some crypto-assets may qualify as MiFID financial instruments, in which case the full set of EU financial rules would apply. However, because the existing rules were not designed with these instruments in mind, NCAs face challenges in interpreting the existing requirements and certain requirements are not adapted to the specific characteristics of crypto-assets.

“Meanwhile, a number of crypto-assets fall outside the current financial regulatory framework. This poses substantial risks to investors who have limited or no protection when investing in those crypto-assets.

“In order to have a level playing field and to ensure adequate investor protection across the EU, we consider that the gaps and issues identified would best be addressed at the European level.”

Next steps

ESMA's work on crypto-assets has highlighted a number of issues that are beyond ESMA's remit. The Advice allows the EU Institutions to consider possible ways in which the noted gaps and issues may be addressed and subjected to further analysis. ESMA will continue to actively monitor market developments around crypto-assets while cooperating with NCAs and global regulators.