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BC4EU Position Paper for the trilogue negotiations on AMLR

Achieving alignment with MiCA and TFR

Blockchain for Europe (BC4EU) and its members welcome the European institutions' swift progress in developing the new Anti-Money Laundering Regulation (AMLR) that will strengthen harmonisation, transparency and effectiveness of the EU's horizontal AML rules, including on crypto-assets.

In this spirit, this document outlines BC4EU's position on some key issues in the current approach proposed by the co-legislators in their respective negotiating positions on the AMLR.

Achieving consistency on decentralised finance (DeFi) between AMLR and MiCA

The European Parliament position on the AMLR seems to aim to make arrangements that self-identify as Decentralised Autonomous Organisations (DAOs) and DeFi subject to AML/CFT requirements, which is unlike the approach taken in the finalised MiCA Regulation. AMLR rules concerning decentralisation should remain consistent with the consensus achieved in the MiCA regulation. EU institutions had purposefully decided to leave services delivered without an intermediary/legal entity outside of the MiCA regulatory scope due to the early stage of development of DeFi and the need to further study the sector to identify the associated risks before appropriately addressing them through regulatory action.

We would like to present specific recommendations to support the development of a coherent, transparent and fit-for-purpose anti-money laundering regime for the crypto-asset industry in the EU that would be fully aligned with other cornerstone regulations already adopted – the Transfer of Funds regulation (TFR) and Markets in Crypto-assets Regulation (MiCA).

For this reason, we would **strongly encourage** the co-legislators to **adhere to the political agreement enshrined under Recital 22 MiCA and refrain from introducing alternative requirements** in the new recital 6a of the AMLR.

Moreover, the final text of the MiCA regulation adopted by the co-legislators clarified how the Commission will assess the development of DeFi systems and services in the markets in crypto-assets within 18 months (Article 142 (2a)). Based on this assessment, the Commission will then be able to evaluate the necessity and feasibility of regulating decentralised finance.

Avoiding unfeasible requirements for Non-Fungible Token (NFT) platforms

The European Parliament's proposal to impose the same KYC and CDD requirements for NFT platforms as credit and financial institutions is disproportionate and inconsistent with MiCA. While it is essential to recognise potential AML risks associated with NFT platforms, a one-size-fits-all approach to all NFT platforms, regardless of their business models and use cases, would curtail innovation in the nascent Web3 space, hinder economic activity, and could even risk limiting privacy of their users. Furthermore, the inclusion of NFT platforms in the scope of AMLR risks creating a mismatch with MiCA when the latter has purposely, as a general rule, left NFTs outside of its regulatory scope, which is also aligned with the Financial Action Task Force's Recommendations under which a case by case approach should be applied to NFT's to determine if they are "virtual assets".

NFT platforms have a wide range of use cases in various industries, including video gaming, branding/marketing, certificates of authenticity and owner relationship management, ticketing and events, and art and creative industries. These platforms rely on NFTs for digital collectibles, conveying brand values, proof of ownership, smart ticketing solutions, and tokenizing artworks. In the future, all economic activities have the potential to be tokenized in some way, and the NFT-standard is projected to become more popular than the fungible standard.

Without any doubt, NFT platforms should monitor and detect suspicious transactions to prevent ML/TF or fraudulent activity. However, in order to ensure that small and legitimate actors are not deprived from harvesting the benefits of this new technology, proportionality and a risk-based approach needs to be implemented. To address these issues, **we encourage the co-legislator to align with the MiCA regime and exclude NFT platforms from the scope of obliged entities**, especially considering that the EU Commission has yet to propose a definition and regulatory treatment of NFTs. Ultimately, rather than turning against the clear potential of digital ownership, lawmakers should embrace the technology and create balanced requirements that encourage the growth of tokenization in the EU.

Ensuring the regulatory framework supports the innovation of Web 3.0, and avoiding an increase of risk of non-compliance of regulated entities

The use of self-hosted wallets (SHWs) is crucial for accessing Web 3.0. Just like web browsers have given a broad access to Internet, SHWs are the gateway to the new generation of World Wide Web that is blockchain-based, and allow for benefiting from decentralisation, programmability and automation and creation of verified digital identities.

However, Article 58 of the AMLR proposal by the Commission and the Council could be interpreted as prohibiting regulated entities from providing anonymous wallets and accounts to clients - which could be understood as a SHW. Users will therefore no longer be able to access a SHW service provided from regulated entities (e.g. CASPs or financial institutions), despite SHWs playing such an important role in individual data ownership, digital empowerment and personal privacy – key concepts that lie at the core of the EU's data protection principles enshrined in the GDPR. To avoid these unintended consequences, **a solution would be to adopt the language proposed by the European Parliament**, which would exclude from the scope of Article 58 all those providers of SHWs that do not have direct access to user funds and solely function as software providers.

In addition, the European Parliament proposal in Article 59a prohibits merchants and service providers from using SHW to accept anonymous payments above EUR 1000. At the same time, in case of similar rules for cash payments, the threshold suggested by the Parliament is EUR 7000, even though the inherent transparency of blockchain technology offers a more sophisticated level of traceability for crypto-asset payments than cash payments, thanks to DLT analytics. The co-legislator already noted in the TFR's recital 17 that blockchain analytical tools may play a role in ensuring compliance with AML/KYC requirements, and how these should be included in the EBA guidelines on the topic. For this reason, we would like to **strongly encourage** the co-legislators to (1) **respect the consensus achieved in Transfer of Funds Regulation**, (2) **follow the principle of a risk-based approach** and (3) **at a minimum increase the threshold for payments using SHW at least to the level of cash.**

Last but not least, if European entities are limited in their ability to build products involving SHWs, institutions from outside of Europe will fill in the gap, putting the **development of the entire Web 3.0. domestic market in a disadvantaged position** compared to the rest of the world.

Protecting citizens' right to personal privacy and pseudonymity on the chain

Users' right to personal privacy online is put further at stake by the Council's own version of Article 58 AMLR, where the amendments proposed would prohibit regulated entities from "keeping anonymity enhancing coins" as well. While we understand the regulators' objective of combating money laundering and terrorist financing, for which a key aspect is the identification of those involved in suspicious transfers of assets, we **urge EU policymakers to not let misconceptions undermine their good intentions.** It is crucial to remember that blockchains are not anonymous but pseudonymous, meaning that each user is directly associated with a public blockchain address, rather than an identity. This means that blockchain transactions provide little privacy to users, who should have a legitimate right to decide whether

they want to disclose the destination of their funds and the amount of their transactions to other users of the network.

Considering that **regulated entities are already required to KYC new users** when establishing a business relationship, **prohibiting them from keeping anonymity enhancing coins as well would be redundant at best**, and at worst it would stifle innovation in the EU Web3.0 sector and push users that have a legitimate interest in using these tokens towards unregulated entities and markets. We continue to **advocate for KYC/CDD processes to be established at the on- and off-ramps of blockchain networks**, meaning on those entities and services that allow users to transfer funds in and out of a blockchain network to Fiat money. That is where the identification of users brings added value to AML investigations, as everything that happens within a public blockchain can be monitored and traced back to these entry & exit points.

About BC4EU

BC4EU is a trade association representing international blockchain industry players at the EU level. We work with policymakers, academics and our member companies to support their work in developing clear and consumer-friendly European regulatory frameworks for blockchain-based innovation. Over the past years, we have contributed to EU policies such as the AML package, MiCA, TFR, DAC8, taxation, Data Act, eID, as well as discussions around the Digital Euro.



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