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Pablo Hernández de Cos
Chair
Basel Committee on Banking Supervision
Centralbahnplatz 2,|
4051 Basel,
Switzerland

30 September 2021

Dear Mr Hernández de Cos

Re: Prudential treatment of cryptoasset exposures

We welcome the opportunity to provide input to the BCBS's second consultation on the prudential treatment of cryptoassets (hereinafter: "the CP"). The EMA is a trade body of FinTech, BigTech and technology firms engaging in the provision of alternative digital payment services, including the issuance of e-money and the provision of cryptoasset related services As such, the EMA has a strong interest in the digitalisation of financial services and markets, in the development of digital payment instruments and cryptoassets based on centralised as well as distributed architectures. Our members include leading payments and e-commerce businesses providing online payments, card-based products, electronic marketplaces, and increasingly cryptocurrency exchanges and other cryptocurrency related products and services. A list of our members can be found in the annex to this response.

Regarding the substance of this second CP, we welcome many of the changes that are now being proposed and commend the BCBS for what we believe to be a much-improved proposal regarding the treatment of banks' cryptoasset exposures. The BCBS has demonstrated willingness to conduct a thorough review of the initial proposals and a commitment to properly considering the received feedback.

Having said this, and referring back to our response to the first consultation, we continue to believe that the Committee would have been well advised to leave significantly more room for a discretionary prudential treatment of banks' cryptoasset exposures including capital add-ons under pillar 2. As set out in our earlier submission, more supervisory discretion, complemented by an ongoing debate and exchange with the industry would allow for a gradual movement towards a more risk-sensitive prudential treatment responding to the growing maturity of cryptoasset markets and of the underlying technology. The CP recognizes the need for an ongoing review and periodic assessment of the suitability and appropriateness of the proposed regime and, going forward, we stand ready to contribute to the debate and any more specific requests you may have.

Whilst acknowledging the significant progress that has been made, we have some reservations regarding in particular the new elements the Committee is now proposing:

We would urge the Committee to reconsider the proposed infrastructure add-on. There is a lack of clarity in the CP on the underlying rationale, the proposed calibration, and the risks it is meant to cover. We consider that the conservatively calibrated capital charge would also take into account that the underlying "distributed ledger technology (DLT) infrastructure … is still new and evolving and may pose various unforeseen risks". For these "unforeseen risks" we do not see any evidence to support a separate add-on, let alone its calibration at 2.5% (or any other percentage number) of the exposure value. We were further surprised to read that the proposed infrastructure add-on could be waived for "assets that are backed by the full faith and credit of a central bank or sovereign entity (eg a tokenised asset issued by a sovereign entity)". Faith and credit have little to no impact on infrastructure risks of a typically operational nature, and often relate instead to unregulated 3rd party service providers supporting the infrastructure.

In contrast, we consider that such unforeseen operational risks, including those related to the underlying infrastructure, suggest that central bank issued CBDCs should also attract a capital charge under the proposed regime. The CBDC projects currently pursued by central banks across the globe, including the pending digital Euro project of the ECB, rely to a large extent upon services and infrastructure provided by (in many cases) unregulated 3rd parties. These risks are relevant but cannot be captured in any sensible manner by an infrastructure add-on calibrated at 2.5% of the exposure value.

We have similar concerns regarding the rationale and calibration of the proposed overall exposure limit for group 2 cryptoassets. It draws on the BCBS's large exposure rules which, as the CP concedes, "are not designed to capture large exposures to an asset type". In essence the CP proposes a position limit, which, however, addresses a concentration risk that is very different from the concentration risk related to single name credit or connected lending risks as targeted by current large exposure rules and limits. Accordingly, we do not understand why large exposure rules are referred to in this context, all the more since the calibration at 1% of Tier 1 capital is far off the limit of 25% of the "eligible capital base" that is applicable to large exposures.

Moreover, the proposed position limit would apply "jointly to all Group 2 cryptoassets on gross exposures with no netting or recognition of diversification benefits", and hence to a position combining a potentially heterogenous bundle of different (market, operational, credit and liquidity) risks, unlike the single name credit and connected lending risk that large exposure limits are designed to address.

For the reasons set out above, we believe addressing any concentration risks related to investments in Group 2 cryptoassets should be left to case-by-case discretion exercised by regulators in the course of their supervisory review. We welcome the opportunity to respond to related draft guidance, but believe that the proposed quasi-binding 1% limit would likely do more harm than assist regulators' evaluation of, and response to, a given bank's (highly concentrated or well diversified) position in Group 2 cryptoassets.

We would be grateful for your consideration of our comments in this and in our earlier submission. As mentioned before, we stand ready for exchange and debate in any bilateral or multilateral form you may deem appropriate.

Yours sincerely

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

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