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Die Deutsche Kreditwirtschaft

Comments on the

EBA draft RTS on crypto exposures

Lobby Register No R001459
EU Transparency Register No 52646912360-95

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Berlin, 8 April 2025

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Comments on EBA draft RTS on crypto exposures

General comments

In line with the current efforts to reduce the complexity of regulatory requirements, the transitional regime to be specified by the EBA should not be disproportionately burdensome. It should support a sensible but proportionate approach to the risk management of crypto assets during the transitional phase.

As the planned implementation in areas such as counterparty credit risk requires significant adjustments to the calculation logic and the calculation kernels of the reporting software, we consider a transitional period of one year after publication in the Official Journal of the EU to be necessary, formulated as an option. Within this one-year period, institutions should be given the option of continuing to apply the rules of Art. 501d(2) CRR in addition to the first-time application of the RTS. In addition to that, the EBA should require competent authorities to act moderate and proportionate if an institution is not able to fully comply with the RTS.

Moreover, it must be ensured that the EBA transitional solution can be consistently transferred to the final solution once the final "BCBS standard on crypto exposures SCO60" comes into force.

Q1: Do you agree that fair-valued crypto-assets within the scope of MiCAR should be included within the scope of the prudent valuation rules? If not, please explain.

When looking through funds, the approach of a fair value measurement appears appropriate, whereby the value of the risk position in the crypto asset is derived indirectly from the value of the financial instrument through which the crypto asset is invested in. This is because, under current legislation, funds are not permitted to invest directly in crypto assets. In accordance with German investment law (KAGB in conjunction with KARBV), this financial instrument is included in the fund's accounts at its market value. When applying Art. 132(4) CRR, the indirect crypto assets are included as risk positions in the calculation of the fund's average CRSA risk weight. The institution then applies this risk weight to the fund's accounting value. There is no fair value measurement and no prudent valuation at the institution itself.

For the reasons mentioned, the inclusion of crypto assets in the prudent valuation rules is inappropriate for both direct investments and investments via a fund.

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Q2: Do you have any concern in relation to the application of the requirements specified in Article 105 CRR and Delegated Regulation (EU) 2016/101(RTS on Prudent Valuation) to crypto-assets? If so, please explain.

c.f. Q1

Q3: Do you agree that a one-size fits all RW of 250% should apply also to CCR transactions requiring specifications on netting set treatment (Alternative A) or do you prefer using the counterparty’s RW as is standard in CCR (Alternative B)? Please briefly justify your assessment.

We prefer Alternative B.

Alternative A is not appropriate for the following reasons:

- Art. 501d (2) (b) provides for a flat risk weight of 250% for the transitional period until the RTS comes into force. In our understanding, this risk weight has only been intended to be temporarily valid until more detailed, risk-adequate methods for capital requirements apply. However, alternative A still provides this risk weight of 250%.
- The mere fact that a derivative transaction has a crypto asset as underlying does not justify a treatment that is conceptually fundamentally different from that applied to all other derivative transactions and inconsistent with the respective Basel standards.
- In counterparty credit risk, risk weights only reflect the credit risk of the counterparty. By specifying a risk weight of 250%, it becomes completely irrelevant whether, for example, a CRSA institution as a counterparty has the best credit quality step (of 1, with a regular risk weight of 20%) or the worst credit quality step (of 6, with a regular risk weight of 150%). We do not believe that the counterparty's creditworthiness is completely irrelevant for derivatives on ART. Moreover, the risk weight should not be mixed with issues unrelated to credit risk.
- Both versions of alternative A would be overly punitive
  - Assigning a 250% risk weight to an entire netting set as soon as even one single transaction within that netting set has a crypto asset as underlying is obviously not risk-adequate.
  - However, forcing banks to separate transactions with crypto underlyings from netting sets is also not a viable option as the actual netting effect will not be considered.

The SA-CCR includes a set of instruments in which the volatility and increased market risks of derivatives on ART could be appropriately taken into account in the EAD calculation. We would therefore propose to adapt Alternative B. Either, it should be clearly written in Art. 2 (3) lit. c) that derivatives on ART are to be treated as derivatives on equities, as suggested in the parentheses to Alternative B. Or, for derivatives on ART, crypto-specific supervisory volatilities, supervisory factors and requirements for hedging sets, that reflect the different risk nature of

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ART vs. other derivatives, could be specified, as was also done in Art. 3 (3) (b) of the draft RTS for other crypto-asset exposures.

Additional comments on Art. 3(3) draft RTS (counterparty default risks for other risk crypto-asset exposures):

Art. 501d (2) (c) CRR provides for a flat risk weight of 1250% for the transitional period until the RTS comes into force. In our understanding, this risk weight should only have temporary validity until more detailed, risk-adequate methods for capital requirements are developed in the draft RTS.

In contrast, the flat-rate risk weight of 1250% has now also been adopted in the draft RTS. We do not consider this solution to be appropriate. Risk weights should only reflect the creditworthiness of the counterparty and not the existence of increased market and valuation risks. This represents a non-transparent mixing of different risks.

The risk weight of 1250% also makes it completely irrelevant whether, for example, an CRSA institution as a counterparty has the best credit quality step (of 1, with a regular risk weight of 20%) or the worst credit quality step (of 6, with a regular risk weight of 150%). We do not believe that the counterparty's creditworthiness is completely irrelevant for derivatives on other crypto assets.

In addition, the SA-CCR provides sufficient tools to adequately recognise increased risks in the calculation of the risk position value, as reflected in the draft RTS through increased supervisory factors and supervisory volatility as well as separated netting sets. We also believe that the risks associated with securities financing transactions are adequately taken into account by the high volatility adjustments and the exclusion of collateral recognition.

Therefore, the risk weighting in connection with derivatives and securities financing transactions should depend exclusively on the creditworthiness of the counterparty.

Q4: Are there any credit institutions considering implementing the alternative internal model approach during the transitional period, or consider implementing it in the medium to long term? Would there be an impact for the development of the crypto-assets market in the EU, and/or for the capitalisation and/or business activities of European credit institutions, if the use of the alternative internal models approach in the short to medium term is not permitted?

N/A

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Q5: Do you agree that the risk of default of the issuer is relevant in certain specific circumstances and therefore should be considered within the scope of this draft RTS during the transitional period or do you believe that the 250% RW for direct credit risk is sufficient to capture for this risk during the transitions period? Please briefly justify your assessment.

The issuer's default risk should not be taken into account separately. In principle, this could lead to a strengthening of confidence among market participants and promote the stability of the market for cryptoassets. However, the risk in question is already sufficiently covered by the 250% risk weight. Similar to cryptoassets in accordance with Art. 501b (2) (a) CRR, an ART relates to one or more actual assets, albeit with the difference that the ART references this in terms of value and does not issue it itself. The CRSA risk weight of 250% for ART, which is significantly higher than for cryptoassets in accordance with Art. 501b (2) (a) CRR, therefore already covers the issuer's default risk.

Q6: How relevant is it to incorporate this differentiation for crypto-assets exposures referred to in Article 501d (2), point (c), of the CRR at this stage? Are institutions confident that they can assess their crypto-assets exposures against the criteria set out in these draft RTS? Is there sufficient market data available to make those assessments?

This differentiation should be permitted. The vast majority of institutions currently have rather low exposures. However, they are potentially going to increase. The current exposures predominantly relate to the known marketable (other) cryptoassets and can therefore be differentiated relatively well. If no differentiation is made, we understand that all "other cryptoassets" would have to be treated in accordance with Art. 3 (7) of the EBA consultation paper. This would lead to a significantly higher exposure value and therefore an even higher capital requirement compared to the differentiation and treatment in accordance with Art. 501d (2) (c) CRR. This is because the exposure value would be measured on the basis of the absolute notional value (netted for credit risk and gross for CCR) and not on the basis of the market value (as in the case of differentiation) or on the basis of the book value (as per CRR).

Alternatively, the provision in Art. 3 para. 6 of the consultation paper should be less conservative.

<u>Additional, general comment on "other" crypto assets:</u>

The rules for ARTs in Art. 2 of the EBA consultation paper are significantly simpler than the very complex requirements for "other cryptoassets" in accordance with Art. 3 (1) to (5). This applies particularly to CCR and market risk. Overall, we would welcome harmonization and thus simplification. Here is an example:

According to our preferred Alternative B under Q3, ARTs would be assigned to the "equity" risk category in the CCR, but "other cryptoassets" would be assigned to a new "crypotassets" risk

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category. The latter risk category is similar, although not identical, to the “Equity” risk category in terms of parameters, but the calculation should be carried out in the same way as for the “Foreign currencies” risk category. Similarly to Alternative B for the ART (Q3), the calculation of the CCR for “other cryptoassets” should not lead to a break with the regulations for other risk categories in the CRR. The risk of “crypoassets” should therefore either be clearly assigned to an existing risk category or addressed, for example, by specifying separate supervisory parameters instead of separating netting sets.

Q7: For ARTs subject to the calculation of own fund requirements for market risk in this paragraph, do you agree that the risk of default of the issuer is relevant in certain specific circumstances and therefore should be considered within the scope of these draft RTS during the transitional period as per Article 3(4)(d) or do you believe that the 250% RW for direct credit risk is sufficient to capture for this risk during the transitions period? Please briefly justify your assessment.