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Comments on the EFRAG Discussion Paper "Accounting for Crypto-Assets (Liabilities)"

Dear Sir or Madam,

On behalf of the Austrian Financial Reporting and Auditing Committee (AFRAC), the privately organised standard-setting body for financial reporting and auditing standards in Austria, we appreciate the opportunity to comment on the *Discussion Paper on Accounting for Crypto-Assets (Liabilities): Holder and Issuer Perspective (July 2020).*

Principal authors of this comment letter were Michael Deichsel, Klaus Hirschler, Christoph Krischanitz, Otto Nowotny and Guido Sopp. In order to assure a balanced Austrian view on the consultation, the professional background of these authors is diverse.

If you would like to discuss our comments further, please do not hesitate to contact us.

Best regards,

Romuald Bertl
Chairman

GENERAL COMMENTS

We support EFRAG's initiative to explore the accounting treatment of crypto-assets (and –liabilities).

Basically, there are three types of crypto-assets that have to be distinguished: (i) financial instruments based on Distributed Ledger Technology (thereafter referred to as DLT), therefore qualifying as crypto-assets, (ii) Central Bank Digital Currencies, thereafter referred to as CBDCs, and (iii) intangible DLT-based crypto-assets, which have emerged in recent years, such as coins and tokens, that represent a hybrid instrument that may fulfil both the economic criteria of intangibles, cash and financial instruments.

Concerning the first two categories, no amendments are necessary in our view, since contracts that have previously been based on commercial law or on property law - in our view - still provide a clearly identifiable contractual basis, even if DTL-based. Furthermore, CBDCs will be issued directly by national or central banks and, therefore, fulfil all characteristics of legal tender.

However, the existing IFRS standards do not address the third category in a comprehensive and satisfying manner, since on the one hand, standards applicable to such crypto-assets (liabilities) (i.e. IAS 2 and IAS 38) do not reflect their economic characteristics, and on the other hand, those standards that could reflect those characteristics are not applicable, as certain definitions and/or criteria of these standards are not met.

The following comments refer to this third category only.

There are such crypto-assets (liabilities) that fulfil the economic characteristics of a financial instrument within the scope of IAS 32. However, the definition of financial instruments in IAS 32 requires a contract. Thus, IAS 32 and related standards do not apply to crypto-assets (liabilities) that fulfil the economic characteristics of a financial instrument, solely due to a missing clearly identifiable contractual agreement. Therefore, a clarification as well as an extension in IAS 32 or in the BC of IAS 32 would be necessary. It will also be necessary to clarify that the term “currency” (cash) as stated in IAS 32 refers to fiat currencies only, in order to make sure that fiat currencies and cryptocurrencies are not mixed up. Furthermore, hedge accounting according to IFRS 9 also has to be taken into account for the assessment.

For crypto-assets that do not fulfil the economic characteristics of a financial instrument within the scope of IAS 32 and that are neither bound to a clearly identifiable contractual agreement, AFRAC proposes a new standard for investments in digital and other non-financial assets that allows Fair Value through Profit and Loss (later referred to as “FVTPL”) and Fair Value through Other Comprehensive Income (later referred to as “FVTOCI”) measurement similar to the business model criteria as stated in IFRS 9. In our view, this would represent a far more accurate and fair presentation of the economic characteristics and, consequently, of the net assets, financial position, statement of cash flows as well as results of operations of the company. Educational guidance of the IASB on crypto-assets and liabilities based on the new and the existing (amended) standards would be helpful.

Therefore, AFRAC suggests that the IASB should develop a new standard for investments in non-financial assets (other than investment properties). Such a new standard should be principle-based and not restricted to crypto-assets of this third category only. Other investments in non-financial assets like investments in precious metals or commodities should also fall within the scope of this new standard. How to deal with IAS 40 has yet to be clarified. It is important that there is a clear definition of the term “investment”.

During the development of a new standard for investments in non-financial assets, the IFRS IC agenda decision should also be critically considered. Fair value measurement according to IFRS 13 must also be applied consequently. A separate fair value measurement standard only for such types of non-financial assets would thwart the reason why IFRS 13 was issued. Adjustments to other standards may be necessary. A clear distinction from financial assets is required.

Generally speaking, the issuer's accounting can be solved with the current standards, i.e. in particular IFRS 15, IFRS 9, IAS 32 and IAS 37. However, as it is already the matter with financial instruments, IFRS 15 also requires a contractual agreement to be applied for. Again, clarification and educational guidance on the term "contract" would be required. Furthermore, please note that a precise analysis of the characteristics of the instrument on a case-by-case basis would berequired.

On the other hand, as already stated, the holder's accounting can hardly be addressed based on the current standards and requires additional guidance and clarification, in particular due to special topics that cannot be displayed by current IFRS standards. This issue can only be solved with setting up the new principle-based standard for investments in non-financial assets.

Accounting for trusts is not a typical problem for crypto-assets and liabilities. A separate regulation for crypto assets would only lead to further problems and questions concerning all other trusts. If there has been any uncertainty about the existing IFRSs in the past, clarification should be considered.

Detailed comments on the questions and other comments can be found below.

SPECIFIC COMMENTS

Question 1 - Please describe the areas in which your company (or institutional clients) use or expect to use crypto-assets (liabilities).
What are the main factors influencing the usage of crypto-assets (liabilities)?
For what purposes are crypto-assets usually held or issued by your company or institutional clients?

In Austria, only very limited information is available concerning the purpose of crypto-assets used as well as concerning different institutions, which use crypto-assets. According to a survey the share of Austrian internet users, who own any kind of crypto-assets, amounts to two to nine per cent. Besides this information, no further specific information is available concerning the distribution of this quantity (e.g. into coins, tokens, corporate holders, etc.). Neither is any information available concerning crypto-assets held by Austrian entities or corporations, respectively, quoted on the stock exchange.

Question 2.1 - As detailed in Chapters 3 and 4, this DP proposes that there is need to address accounting topics, not in scope of the IFRS IC agenda decision on cryptocurrencies and to include unaddressed holders' and issuers' accounting topics.
Do you agree that there is need to address accounting topics not in scope of the IFRS IC agenda decision on cryptocurrencies? Please explain.

It is a question of fundamental importance how circumstances are to be accounted for without an identifiable "contractual partner". In some cases, approaches can be derived from the existing IFRSs, in some cases companies would have to develop their own accounting and measurement principles. This would result in material difficulties concerning the comparison between companies. However, the IFRS IC agenda decision should not be excluded in this discussion.

The requirement of an (unambiguously) identifiable contractual partner, who is essential for the existence of a financial instrument in accordance with IAS 32.11, is of central importance in relation to crypto-assets. A study conducted by the Canadian Securities Administrators (later referred to as "CSA"), which is used in this DP, clearly shows that a large number of companies made use of IAS 8.11 to realize a measurement of crypto-assets at their fair value with changes recognized in the statement of comprehensive income (FVTPL). Also according to this survey, a large number of companies made use of IAS 2.3(b) for commodity brokers and dealers who measure their inventories at fair value less costs to sell, to also arrive at a measurement at FVTPL. A measurement of crypto-assets at their fair value with changes recognized in other comprehensive income (FVTOCI) by using the revaluation model according to IAS 38.75 has only been used by 10% of the respondents, according to the survey.

Since IAS 8.10 seqq allows the management of a company to develop and apply its own accounting methods in the absence of an IFRS that expressly applies to a business transaction or other events or conditions, the cross-company comparability would certainly suffer by the method mentioned above.

However, adaptations to the existing IFRS standards must also be carried out because of a further perspective: Due to current design of the applicable standards, most crypto-assets will probably fall under the scope of IAS 2 or IAS 38. Normally, however, these standards cannot reflect the investment character that crypto-assets usually have. In addition, especially with regard to IAS 38, there are constellations in which, despite the existence of the same or very similar transactions in connection with crypto-assets, completely different results can occur in the annual financial statements and in the cash flow statement; please refer to the comments on question 3.1.

Question 2.2 - Chapter 6 and Paragraphs ES35 to ES46 of the executive summary section analyses three possible approaches on the way forward for addressing IFRS requirements. Chapter 6: Paragraph 6.26, Table 6.1 outlines the pros and cons of each option. The three options are as follows:

- **Option 1: No amendment to existing IFRS requirements;**
- **Option 2: Amend and/or clarify existing IFRS requirements; and**
- **Option 3: A new Standard on crypto-assets (liabilities) or digital assets (liabilities).**

Which of the three options do you consider to be the most appropriate solution to address IFRS requirements? Alternatively, please elaborate if you consider there to be other possible approaches towards clarifying and developing IFRS requirements for crypto-assets.
If a new standard is to be developed, what should be in its scope?

We are of the opinion that a new principle-based standard for investments in non-financial assets - insofar as these are not covered in another standard such as IAS 40 - is necessary. However, a new standard should not be based on individual types of crypto-assets (such as payment token, utility token, security token), but rather be determined by an accounting method based on the characteristics of an instrument (such as entitlement, transferability, share of profit, etc.). The problem here may be that there may be overlaps with existing standards or statements that may contradict existing standards. The development of a new standard alone will not be sufficient; adjustments to existing standards will also be necessary.

In this context, it should also be noted that the classification of tokens, which are currently divided into utility tokens, security tokens and currency tokens, is not an internationally accepted classification, but merely represents a kind of consensus in the literature (Swiss FINMA, for example, describes the security token as an investment token).

It should be noted, whether the scope of IAS 40 could then also be included in such a standard and whether this standard would subsequently become obsolete. The argument behind the introduction of IAS 40 specifically for investment property, namely property, plant and equipment, was that from a functional perspective these properties are financial investments and only from a formal perspective property, plant and equipment (see *Promper*, Fair Value Accounting [2011] 33). In the case of crypto-assets, the functional perspective would also be a financial investment (achieving above average returns analogous to securities, bonds, real estate, etc.) and the substantial perspective would be an intangible asset.

Question 3.1 - This DP (Chapter 3: Paragraphs 3.37 to 3.41) has identified that applicable IFRS Standards for crypto-assets holders (IAS 2 and IAS 38) do not explicitly address situations where crypto-assets are considered to be held as non- financial asset investments. Furthermore, as outlined in Chapter 3: Paragraphs 3.42 to 3.48, there are situations where the measurement requirements under IAS 2 or IAS 38 may not allow FVPL or FVOCI to reflect the economic characteristics of crypto-assets with trading or investment asset attributes. For example, under IAS 38, FVOCI is only allowed if there is an active market.
Do you agree that standard-setting activity is needed to address the limitations of IAS 2 and IAS 38 requirements towards addressing non-financial asset investments; namely that: IAS 38 does not allow FVPL when cryptocurrencies are held as trading or investment assets; and IAS 38 does not allow fair value measurement when markets are inactive? Please explain.

Only IAS 2 and IAS 38 are currently available for accounting for non-financial assets (IAS 16 and IFRS 16 do not fit in this context). Investments in non-financial assets are currently not regulated - with the exception of IAS 40 Investment Properties. Until 2000, there was IAS 25 Accounting for Investments, but this was dissolved with the introduction of IAS 40 due to the multitude of exceptions. A new standard for investments in non-financial assets means that adjustments to IAS 2 and IAS 38 will not be necessary (apart from a scope exception). In this new standard, fair value assessments could then be permitted or prescribed in accordance with the respective business model, either via FVTPL or FVTOCI with or without recycling. However, the derivation of a fair value is specified in IFRS 13, investments in non-financial assets can be recognized in accordance with IFRS 13. A change to IFRS 13, in particular the definition of an active market, could have far-reaching effects on other areas.

Here, a certain analogy can or could be seen to the statements on the business model criterion (i.e. the company's intention in which way the crypto-assets should be controlled) of IFRS 9.4.1.2 ff:

If the objective of the business model is, both, to hold crypto-assets for trading purposes and to collect contractual cash flows, they shall be measured at FVTOCI. If, on the other hand, the objective of the business model is to hold crypto-assets for trading purposes only, they shall be measured at FVTPL. In our opinion, a measurement at amortized cost (later referred to as “AC”) would not be applicable, as crypto-assets (with the exception of stablecoins, i.e. coins linked to one or more fiat currencies) usually have a(n extremely) high volatility and, therefore, the financial position and earnings position of the company would not be faithfully reflected (*Sixt / Himmer* [2019] showed this in a case study using an example in which two different companies, which both prepared their financial statements according to IFRS, had carried out the same or very similar crypto transactions. While one company used the acquisition cost model according to IAS 38.74, the other company carried out the subsequent valuation according to the revaluation model in accordance with IAS 38.75 ff. According to *Sixt / Himmer*, this resulted in incomparable annual financial statements and cash flow statements.).

Question 3.2 - This DP (Chapter 3: Paragraphs 3.49 to 3.56) has identified the need to clarify the eligibility of some crypto- assets for classification as financial assets. There may be a need to update IAS 32 such that crypto-assets that have similar characteristics or functional

equivalence to equity or debt securities (e.g. rights to profit, stakes in partnership arrangements, voting rights, right to cash flows from entities) but do not meet the current definition of financial assets under IAS 32. Alternatively, there may be a need to classify crypto-assets as a unique asset and to allow accounting treatment that is similar to that of financial assets where appropriate.

Do you agree that there is need to clarify crypto-asset holders' eligibility to apply IFRS 9? Please explain.

Do you have views on whether or not IAS 32 needs to be updated to include crypto-assets (tokens) with functional equivalence to equity or debt securities, within the IAS 32 definition of financial instruments (financial assets for holders and financial liabilities for issuers) or alternatively whether crypto-assets should be classified as a unique asset and allowing accounting treatment similar to financial instruments where appropriate? Please explain.

IAS 32.11 defines a financial instrument as any contract that gives rise to a financial asset of one entity and a financial liability or an equity instrument of another entity. However, the problem with crypto-assets / crypto-liabilities is that such a "contractual partner" is unknown. In particular, this matter applies to crypto-assets that fulfil all characteristics indicating a financial asset or liability, however, are lacking the required contractual partner.

In this regard, it has to be noted that there are different types of crypto-assets and, thus, there are crypto-assets as well as liabilities that could possibly be within the scope of IAS 32 due to their economic characteristics. However, due to the absence of a clearly identifiable contractual partner in some types of crypto-assets, the application of IAS 32 would not be possible in such cases. At present, the definition of a financial instrument fails only due to the missing possibility to (unambiguously) identify the contractual partner.

There are cases, where the crypto-asset or liability fulfils all characteristics of a financial asset or liability (e.g. Security Token Offerings) and there is also a clearly identifiable contract partner. However, we have to keep in mind the dynamics and the rapid development of this industry, and, therefore, there might be constellations in the (near) future where this will no longer be the case. In order to cope with these developments, which we already monitored in the past, we are of the opinion that the broadest scope possible should be covered when dealing with this matter.

As a result, in our view, it would be appropriate to change (i.e. expand) the definition of a financial asset / liability in IAS 32 to the extent that such crypto-assets / crypto-liabilities, which meet the existing definition as stated in IAS 32, but are not tied to the existence of a contract, are also considered as financial instruments within the scope of IAS 32 and, therefore, will also fall within the scope of IFRS 9. In our view, such changes would be consistent with a principle-based view and the substance over form-approach.

If the definition of financial instruments in IAS 32 is expanded to non-contractual agreements or if the term "contractual" is clarified, the eligibility to apply IFRS 9 as well as the corresponding valuation and measurement rules would not be a problem. Prima facie at least, this should not result in an excessive qualification of instruments as financial instruments, since the requirement of the financial asset on the one hand and the financial debt or equity instrument on the other hand would be retained.

If, however, the economic characteristics of a financial instrument or liability within the scope of IAS 32 or IFRS 9 would not be fulfilled in general, such crypto-assets and liabilities would then qualify for the proposed new standard according to our opinion.

Question 3.3. This DP (Chapter 3: Paragraphs 3.57 to 3.63) has identified that the definition of cash or cash equivalents may need to be updated to include some of the stablecoins that are pegged to fiat currency on a 1:1 basis, cryptocurrencies that qualify as e- money and CBDCs. And that crypto-assets received in exchange for goods and services could also be treated as being equivalent to foreign currency.
Do you have views on whether or not the definition of cash or cash equivalents needs to be updated? Please explain.

Cash defined as legal tender in the monetary constitution of a state is called currency. Currency is money issued by a state through its central bank. The central bank (e.g. ECB) is the guarantor of the currency. According to the paper of the Securities and Markets Stakeholders Group of the European Securities and Markets Authority (later referred to as "ESMA SMSG") dated October 19th, 2018, a currency has the following properties for supervisory purposes:

1. It does not give the owner an entitlement against the issuer.
2. It is transferable.
3. It does not have a use value (= use value as a commodity, raw material, etc.).
4. It does not have an immutable scarcity (unchangeable scarcity - money supply can be controlled by the central bank -> not immutable scare).

IAS 32.AG3 only states that "currency (cash) is a financial asset because it represents the medium of exchange and is therefore the basis on which all transactions are measured and recognized in financial statements. A deposit of cash with a bank or similar financial institution is a financial asset because it represents the contractual right of the depositor to obtain cash from the institution or to draw a cheque or similar instrument against the balance in favour of a creditor in payment of a financial liability."

IAS 21 neither does contain a clear definition of the term currency. Only in IAS 21.9 the functional currency is described as the currency of the primary economic environment in which the company operates. According to this description, currency in this specific manner can also be a currency other than a fiat currency. For example, the currency could be Bitcoin for companies that are active in the darknet - even if these companies are neither interested in financial instruments which are prepared according to IFRS nor in local Generally Accepted Accounting Principles (later referred to as "GAAP").

Basically, in our opinion, the definition of the terms "currency" or "cash" should not be expanded. A clarification that this definition only refers to fiat currencies is, in our opinion, desirable.

CBDCs, like the equivalent to a fiat currency, are central bank money. CBDCs have the same properties as the corresponding fiat currency.

So-called stablecoins, on the other hand, are cryptocurrencies, the price of which is controlled by active or automatic monetary policy with the aim of a low volatility in relation to a fiat currency, a currency basket or other assets. Even if stablecoins are linked to a fiat currency, they convey a different risk (counterparty risk) than the fiat currency itself.

However, there may be also a differentiated point of view:

On the one hand, the qualification of crypto-assets, such as stablecoins, as a currency, as well as a possibly conceivable expansion of the term "currency" for the purposes of IFRS have to be ruled out, since IAS 32.A3 already by definition standardizes that a currency in terms of IFRS refers to the exchange media and therefore acts as the basis on which all business transactions are evaluated and recorded in the financial statements. Since both in Austria and (according to current knowledge) in the rest of the EU, crypto-assets (especially stablecoins would be eligible for this) are not a recognized exchange medium (with mandatory acceptance), they cannot constitute the basis for the measurement of business transactions.

On the other hand, the qualification of stablecoins as cash for accounting purpose has also to be considered from a different perspective: IAS 7.6 standardizes that means of payment include cash and demand deposits. The term "cash equivalents" in turn encompasses short-term, highly liquid financial investments that can be converted into fixed amounts of cash at any time and are subject to only insignificant fluctuations in value. Stablecoins would meet the requirement of an insignificant fluctuation in value already due to their design.

The possibility of being converted into fixed amounts of cash at any time must, therefore, be examined more closely: It is in any case questionable whether stablecoins should be subsumed under cash and / or demand deposits. There is no definition of the term "cash" neither in the IFRS nor in the BC itself nor in the literature. Art 2 of the Regulation (EC) No. 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community defines cash essentially as transferable bearer securities as well as banknotes and coins, that are in circulation as a means of payment (to interpret the term cash in relation to crypto-assets, e.g. *Schmidt*, Kryptowährungen und Blockchains[1] [2019] 159). Payment instruments with a bearer clause, transferable papers and incomplete papers are to be subsumed under the transferable bearer securities (as concluded by *Puchinger*, FJ 2009, 220 [223]). It is interesting that the draft of the present regulation made use of the concept of liquid funds and included, among other things, any anonymous or bearer-issued financial or monetary instrument that can be exchanged for cash, especially securities and other promissory notes, regardless of the issuer (Art 3 (2) draft regulation, COM [2002] 328 of June 25, 2002). According to this definition, stablecoins in particular would consistently be viewed as cash. In addition, it is sometimes noted in the literature that cryptocurrencies (i.e. coins) should not (yet) be subsumed under the cash equivalents within the meaning of IAS 7.6, because they are subject to such significant fluctuations in value (e.g. *Kirsch / Wieding*, IRZ 2018, 115 [118]; *Thurow*, IRZ 2014, 197 [198]). The exclusion criterion as a means of payment, namely the high volatility, would no longer apply to stablecoins.

In this context, however, it has also to be mentioned that besides the high volatility, the critical criteria in the definition of cash equivalents set out in IAS 7.6 are the requirements that cash equivalents can be 'convertible to known amounts of cash' and 'subject to insignificant risk of changes in value' (IFRIC Update July 2009). The IFRIC noted that the first criterion means that the amount of cash that will be received must be known at the time of the initial investment, i.e. the units cannot be considered cash equivalents simply because they can be converted to cash at any time at the then actual market price in an active market.

As a result, it is difficult to say whether an expansion of the term "cash" or "cash equivalents" should take place: Due to the argumentation regarding the exchange medium and the need to serve as a basis for the measurement and recording of all business transactions in the financial statements, it can almost certainly be ruled out that a qualification as a currency within the meaning of IFRS would be appropriate due to the lack of mandatory acceptance and the comparatively very low transaction volume. On the other hand, in the case of stablecoins - at least from an economic point of view - the requirements for qualification as money or means of “cash equivalents” in the sense of IAS 7.6 would probably be considered fulfilled, although in the end a case-by-case examination must be required. Thus, one can initially agree to the view that it must be made clear that the currency in the sense of IAS 32 is a fiat currency. For the sake of consistency, however, this should also be clarified in a comparable way in IAS 7.6. Another possibility would be to insert a definition of the term “cash”.

Question 3.4 - This DP (Chapter 3: Paragraphs 3.79 to 3.93) proposes that the clarification of IFRS requirements is needed for holders on behalf of others (e.g. custodial services) including on interpretation of the indicators of economic control.
Clarification is also needed for accounting by holders of utility tokens and hybrid tokens, and for holdings arising from barter transactions and proof-of-work mining activities (Chapter 3: Paragraphs 3.64 to 3.76). For hybrid tokens, there is a question of whether the predominant component should be considered or if/how bifurcation principles should be applied to determine their classification and measurement. For utility tokens, there is also a question of the appropriate recognition and measurement of atypical tradeable rights (e.g. rights to update network functionality; and rights to contribute resources and effort to the system) and the lack of IFRS guidance for prepayment assets.
Do you agree that the aforementioned areas need clarification in IFRS requirements as has been identified in this DP? Please explain.

Accounting for trusts is not a typical problem as regards to crypto-assets. A separate regulation for crypto-assets would only lead to further problems and questions concerning all other trusts. If there was any uncertainty about the existing IFRSs in the past, clarification should be considered.

However, due to the generally decentralized design, accounting for trusts concerning crypto-assets could be a bit more complex. KPMG, for example, drafted a questionnaire addressing this matter which is also referred to in the DP, but it is very complex, and it cannot be assumed with 100% certainty that the questionnaire will apply in every case. Regardless of this complexities, no separate regulation for accounting for trusts is required for fiduciary arrangements in connection with crypto-assets.

Balancing utility tokens and hybrid tokens is of course a challenge. In our opinion, the characteristics that a specific token comprises must be clearly worked out in order to ensure proper accounting rules and regulations for trusts. The accounting of such tokens as well as of mining activities is in our opinion covered by the existing IFRSs. For the user, however, an educational guidance would be helpful.

In the light of the substance over form-approach, which is pursued in addition to the IFRS also in the national GAAP and in the Federal Fiscal Code (later referred to as “FFC”), a classification of tokens based on their properties is definitely necessary, because not the wording, but the actual characteristics of the token should be material for the classification for IFRS purposes. This is also of particular relevance since the breakdown into currency tokens, utility tokens and security tokens does not represent an internationally recognized classification, but rather a consensus in specialist literature.

However, it has to be queried whether all recognition and (subsequent) measurement issues in connection with tokens can actually be clarified based on the current design of the IFRS standards. On the one hand, especially concerning security token, it is questionable in some cases whether a classification as a financial instrument can be made in all cases in which, based on the economic content, the existence of such a financial instrument can be assumed (e.g. in case of the lack of a clearly identifiable contractual partner). On the other hand, currency tokens would currently be subsumed either as inventories in accordance with IAS 2 or as intangible assets in accordance with IAS 38, whereby these standards - as stated in the DP - generally do not offer the possibility to take into account the investment character, which, however, is always inherent in tokens issued by ICOs.

As a result, the facts regarding the missing (clearly) identifiable contractual partner should also be clarified. Afterwards, of course, in a next step it would have to be determined to what extent crypto-assets, which currently fall under the scope of IAS 2 or IAS 38, should then be regarded as financial instruments within the meaning of IAS 32 or IFRS 9.

Question 4.1 - This DP (Chapter 4: Paragraphs 4.23 to 4.29) concludes that in the absence of clarification by the IASB, the preliminary conclusion of this research is that ICO issuers (and issuers in similar offerings) can apply one or a combination of the following IFRS Standards: IFRS 9 *Financial Instruments*, IAS 32 *Financial Instruments: Presentation*, IFRS 15 *Revenue from Contracts with Customers*, IAS 37 *Provisions, Contingent Liabilities and Contingent Assets* and IFRS 13 *Fair Value Measurement*.
Do you consider that existing IFRS Standards provide a suitable basis to account for crypto-liabilities by issuers of ICOs, IEOs and STOs? Please explain.

In December 2020, the IASB decided to put the Financial Instruments with Characteristics of Equity project on the agenda of their standard settings program.

Based on the current content of IFRS 13 and IAS 37, liabilities in connection with crypto-assets can be appropriately presented and their economic content can be considered appropriately. With the criteria for the existence of a provision or a contingent liability, IAS 37 offers a broad basis for application. Again, it is questionable whether a liability in connection with the issue of tokens, as financial liabilities according to their full economic content should be classified as a financial liability, can actually be classified as such a financial liability according to the current provisions of IAS 32.11, since IAS 32.11 always requires a contractual obligation, which is usually not always clearly given or identifiable in the case of crypto-assets due to the decentralized design. Regarding the adjustment proposals required in this regard, please refer to the comments to question 3.2.

With regard to the recognition of revenue, IFRS 15.9 stipulates that a contract with a customer may only be recognized in the financial statements in cases in which the contracting parties have agreed to a contract and promised to fulfil the contractual obligations (lit a); the company can determine for each contracting party what rights it has (lit b); the company can determine a payment term (lit c); the contract has economic substance (lit d); and it is likely that the company will actually receive the consideration (lit e). The requirement of a clearly identifiable contract is also found in this IFRS which also requires a clearly identifiable contract partner (i.e. the same problem exists here as with IAS 32.11).

However, this does not only apply to the issuance of tokens via ICOs (or STOs or IEOs, respectively), but also to special topics such as staking or masternodes. Staking can basically be compared to mining, but with the essential difference that there is hardly any use of resources and the appearance is much more passive (see *Schmidt*, Kryptowährungen und Blockchains[1] [2019]

143). Due to the decentralized design, it is questionable in such situations, especially in the light of the element of chance, whether the requirement of the probable receipt of the consideration can actually be fulfilled.

Question 4.2 - The DP (Chapter 4: Paragraph 4.28) highlights a number of areas that could pose concerns with the application of IFRS 15 for an entity issuing crypto-assets through ICOs (or other offerings such as IEOs and STOs).
In cases when an issuing entity establishes that the issuance of crypto-assets falls within the scope of IFRS 15, which areas, if any, would you consider need further guidance/clarification for an entity to apply the principles in IFRS 15? Please explain.

If recognition as revenue from contracts with customers within the meaning of IFRS 15 is possible, i.e. in particular the cumulative fulfilment of the application requirements of IFRS 15.9 (a) to (e), no further adaptations or changes are necessary.

Question 4.3 - The DP (Chapter 4: Paragraphs 4.25 and 4.29) highlights a number of areas that could pose concerns with the application of IAS 37 for an entity issuing crypto-assets through ICO (or other offerings such as IEOs and STOs).

In cases when an issuing entity establishes that the issuance of crypto-liabilities qualify as a financial liability under IAS 32/IFRS 9 or as a provision under IAS 37, which areas, if any, would you consider need further guidance/clarification for an entity to apply these Standards? Please explain.

With regard to the applicability of IAS 37, IAS 32 or IFRS 9, reference can be made to the comments on question 4.1.

Question 5.1 - The DP (Chapter 5: Paragraphs 5.44 and 5.45) observes that when considering fair value measurement under IFRS 13, determining an active market for crypto-assets is not always straightforward.
Do you consider that the guidance in IFRS 13 provides an adequate basis to determine an active market for crypto- assets (and, if applicable, related crypto-liabilities) when these are measured at fair value?

It has always been a difficult task to determine if and when there is an active market for an asset. The definition of an active market as stated in Appendix A of IFRS 13 requires a lot of management judgment during the application. However, this definition applies to all financial and non-financial assets (as well as liabilities). A separate definition of an active market only for crypto-assets must be strictly rejected, since such a market is difficult to identify.

Concerning certain types of crypto-assets (such as tokens), it is more difficult to find an active market than for instance for common crypto-currencies such as *Bitcoin*, *Ripple* or *Ethereum*, as the latter have a much higher transaction volume.

Question 5.2 - The DP (Chapter 5: Paragraph 5.42) observes that there is an emergence of valuation methodologies, that might differ from the fair value measurement guidance in IFRS 13, tailored for crypto-assets.
In the absence of an active market under IFRS 13, do you consider that IFRS 13 provides an adequate basis to determine an appropriate valuation technique to measure crypto-assets (and, if applicable, related crypto-liabilities) at fair value? If not, what alternative measurement bases do you propose?

IFRS 13 regulates the determination of the fair value for all financial and non-financial assets (except IFRS 2 - where, however, only slight modifications with regard to the equity instrument have been implemented; IFRS 16 - only for lessors, but no significant difference).

The fair value determination according to IFRS 13 has always been complex, especially with fair values of level 3. In our opinion it would be counterproductive to create separate regulations for fair value determinations for crypto-assets and would soon make IFRS 13 obsolete, because it would be likely that certain parties would lobby for certain exceptional provisions for certain assets.

Question 6.1 - Do you have other comments on the accounting for crypto-assets (liabilities), or on any other matter in the DP not addressed by the above question?

No.

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