

Financial Stability Board

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Centralbahnplatz 2

CH-4002 Basel

Switzerland

Dear Madame / Sir,

In the name of the Crypto Valley Association (CVA), the CVA Western Chapter would like to address its response to the consultative documents entitled "*The regulatory, supervisory and oversight challenges raised by "global stablecoin" arrangements*" released by the FSB (hereafter: "*the document*").

Overall, we welcome the interest in the harmonization of regulation of stablecoins. We strongly believe that the active and comprehensive participation, of such standards setting bodies as the FSB, is key to the developments and normalization of blockchain related initiatives.

Best regards,

Gabriel Jaccard, on behalf of Crypto Valley Association

Regulatory Working Group, Stablecoins Taskforce

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1 / Do You Agree With The Analysis Of The Characteristics Of Stablecoins That Distinguish Them From Other Crypto-Assets?

The document defines in its glossary the notion of stablecoin (or coin) as “*A crypto-asset that aims to maintain a stable value relative to a specified asset, or a pool or basket of assets.*”. In addition to this definition, the document highlights **three key characteristics** to this summarized notion.

In brief, it considers stablecoin under a functional approach as a crypto asset that has firstly a stabilization mechanism, secondly that combines multiples functions and activities, and third that has a potential reach and adoption across multiple jurisdictions¹.

First Criteria: Stable Mechanism

In addition to the two stability mechanisms underlined (asset-linked or algorithmic), we would like to propose an even broader view of the possible mechanisms highlighted. In our opinion, any type of stabilization mechanism that is set, be it structured on or off-chain, could and should constitute a valid stabilization mechanism to be taken into consideration.

For instance, in the eventuality where an authority (e.g. a Foundation) is empowered (e.g. legally in its Statutes or contractually via the Whitepaper) to take measure and to act as a *de facto* stabilizer of the coin (e.g. taking Central Bank-like type of measures) it should also be encompassed as fitting under the criteria of a “*stabilization mechanism*”.

Second Criteria: Multiple (Core) Functions & Activities

Beforehand, we notice that the point 1.2 of the document sets three core functions under its bullet points on page 8, and then four under its table on page 10. Hence, we take the most exhaustive list, being the following with the following remarks:

- (i) Governance of the arrangement
- (ii) Issuance, redemption and stabilization of the value of the coins;
- (iii) Transfer of coins;
- (iv) Interaction with coin users for storing and exchanging coins.

(i) Governance of the arrangement

We fully agree. In addition, we would precise that it is not relevant whether the governance occurs on- or off-chain.

(ii) issuance, redemption and stabilization of the value of the coins

¹ They are defined in part 1.1 to 1.3 of the consultative documents, p.8 ss.

We fully agree. Further, we would add another point to the activities of “Issuing, creating and destroying stablecoins”. In our view, the activity of the **management of the value of the stablecoin itself** - and not only the management of the assets in reserve underlying its value - should be considered as a possible core characteristic.

For instance, this would encompass broader cases where a portion of the stablecoins are already issued and held in escrow to be liberated at a precise moment in the future, if needs be. Or more generally if specific events can be triggered by the community or stakeholders in order to manage or adapt the stablecoin volume, which would affect its value (e.g. having in mind the Bitcoin halving, the diminution of the amount of a reward in stablecoin for validating a transaction in order to reduce inflation).

(iii) transfer of coins & (iv) interaction with coin users for storing and exchanging coins

In our view, those two elements are not particularly characteristics to stablecoins. Much more, they are common to all “blockchain” coins and to **blockchain technology in general** and its infrastructure.

Consequently, we believe the third and fourth typical characteristics refers actually and can be summarized into one characteristic, that could be translated as “stablecoin must be stored using a highly qualitative technical infrastructure based on mathematical & cryptographical principle (e.g. a system commonly referred as a blockchain)”.

In brief, we believe the use of “blockchain” as a technology is hence the fundamental characteristic of stablecoins. In this regard, legislators should not try to define what is a blockchain, as the concrete definition of this notion is of technical nature, which lies in the competence of the technical experts of this domain. Much more, legislators should simply legally acknowledge the possibility to use this technology and ask technical experts to set up the most highly secure system in place in terms of technical standards to store those (crypto)-assets. Allegorically speaking, we could say that legislators should acknowledge the use of paper and ink as a valid means to store information and leave the details of the fabrication of a sheet of paper to the manufacturers.

Third Criteria : Multiple Jurisdictions Reach

The third criteria apparently **only applies for the definition of global stablecoins (GSC)**. Hence, it is not *per se* a characteristic of stablecoins in general as the systematic of the documents would imply.

In our view, any coin using blockchain - or any information available on the internet - has the potential to fit into the definition of “*reaching multiple jurisdiction*”. Then, we believe this criteria is a bit misleading as it represents **more a feature by default** inherent to the technology rather than a true characteristic element.

From a legal standpoint, we believe that the most important and relevant characteristic of a GSC to be the actual **systemic importance** rather than the potential internationality, which basically triggers mostly financial supervision problematics and potential authorization requirements. For instance, if a stablecoin were used only in-between traders in Liechtenstein as means of payments to trade 80% of the rice worldwide it would not be considered a GSC as it lacks internationality *per se* being traded in a single jurisdiction even though it would be systemic.

Besides, the systemic importance is in our view the true criteria that is stressed in the documents when it states: “*A stablecoin’s global systemic importance could be measured in terms of the impact that a stablecoin arrangement’s failure can have on the global financial system and wider economy*”. Further, all the criteria of annex 5 of the documents seem to tend to prove systemic importance rather than internationality.

Then, we could add to the annex 5 criteria in order to determine whether the coin qualifies as a GSC, the “Number of jurisdictions with stablecoin nodes” as a possible **indicator**.

Finally, we highlight that this word of “**Global**” in GSC half-word implies that stablecoins can also be legally assessed from a local (only one jurisdiction, e.g. the Swiss-Italian mountains) or a regional (e.g. the Lemanic area) point of view, which would hence trigger a different (lighter) regulatory response to those use cases. This is interesting as those represent very interesting initiatives and probably the majority of the stablecoins issued today.

2 / Are There Stabilization Mechanisms Other Than The Ones Described, Including Emerging Ones, That May Have Implications On The Analysis Of Risks And Vulnerabilities? Please Describe And Provide Further Information About Such Mechanisms.

In summary, the document covers **two types of stabilization mechanisms**: (1) asset-linked or (2) algorithmic; and **three types of vulnerabilities**: (1) Financial exposures in the GSC arrangement, giving rise to market, liquidity and credit risks. (2) Weaknesses in the GSC infrastructure, giving rise to operational risk (including cyber risks) and risk of loss of data; and (3) Vulnerabilities in those parts of the GSC arrangement on which users rely to store, exchange and trade GSCs, including operational or fraud risk.

First, with regards to the possible stabilization mechanisms, **we regret that the scope was intentionally limited**. We can refer to the FINMA’s more exhaustive approach on stablecoins, which isolated five types of stabilization mechanisms through its specific guideline summarized below in the Appendix 1².

In comparison, we remark that an extensive part is dedicated to mechanisms using **commodity-backed coins** (gold, diamond, or any other form of asset). However, in the document of the FSB, we note that most of the use cases are based **only on stablecoins collateralized by crypto or fiat**³. In our view, the document should take more into account, and with more details the different kinds of asset-linked to the stablecoins as they represent quite different risks.

Further, one of the main additions of the FINMA’s guideline is the stabilization mechanism created with a **collective investment scheme**, playing the role of a special purpose vehicle (SPV), especially when featuring stablecoins using **real estate assets** as underlying assets. Those use cases present some particular risks that should be further developed, as the tokenization of those categories of assets is especially promising.

Finally, we **note regarding non-collateralized** stablecoins (algorithmic) that they should not be set aside by the report as they offer a transparent form of stablecoins, which can generate a lot of trust in the currency due to their main characteristics (code-based and openly

² <https://www.finma.ch/en/news/2019/09/20190911-mm-stable-coins/>, see Appendix 1

³ Page 33 of the document.

auditable). Also not considering algorithmic stablecoins means to ignore potential future developments of this type of currency, especially if we consider current developments in AI and ML algorithms. In our view, this option should not have been skipped from the study.

Secondly, with regards to the **vulnerabilities**, we note that the governance model of certain GSC arrangements leaving important stakeholders in commands and enabling them to trigger stabilization decisions for instance, can be problematic. In particular, we note that important members of a Community or diverse Stakeholders might have important or hardly identifiable **conflict of interest** or may create a situation of **unfair competition**. In our view, those vulnerabilities should be further elaborate.

3 / Does The FSB Properly Identify The Functions And Activities Of A Stablecoin Arrangement? Does The Approach Taken Appropriately Deal With The Various Degrees Of Decentralisation Of Stablecoin Arrangements?

Key Prior, we refer to what has been said in the question 1 regarding *(iii) transfer of coins; & (iv) interaction with coin users for storing and exchanging coins*, as the identification of some activities and functions (as defined on p.4 of the consultative document) seem rather general to any coins on blockchain and not specifically related to stablecoins.

The FSB properly identifies functions and activities when the stablecoin is a GSC. That being said, **we deeply regret that the FSB intentionally limited the scope** of the document. We believe this study should have focused on a broader definition of stablecoins arrangements, as it limits the legal clarity brought over the overall problematics posed by stablecoins.

In particular, we believe the question of **specific functions inherent to GSC designed for wholesale** transactions, interoperability and convertibility issues for stablecoins used for wholesale payments would have been of interest. We note in this regards that some emerging countries have already adopted stablecoins due to volatility of their local currency, or weak financial and fiscal structures.

Further, regarding **stabilization mechanisms**, we expected to learn how this would apply to algorithmic stablecoins with respect to fluctuations in value. For instance, whether the cost would be greater to compensate for potential fluctuations.

Finally, with regard to the **level of decentralization**. We consider the approach of the document to be adequate as it offers principle.

We would like to note that the notion of “decentralization” often appears as a core feature of blockchain but is not defined or unanimously understood⁴. To some it may refer to the number of different stakeholders in the lifecycle of the coins, to others it refers to the infrastructure of the database. In brief, we believe that the level of decentralization should not affect as such the functional qualification of stablecoins or its function & activities as for us the sole criteria should be the use of a blockchain or equivalent technology.

⁴ Walch, Angela, Deconstructing 'Decentralization': Exploring the Core Claim of Crypto Systems (January 30, 2019). Crypto Assets: Legal and Monetary Perspectives (OUP, Forthcoming). Available at SSRN: <https://ssrn.com/abstract=3326244>

In our view, the most obvious legal problematic linked with high decentralisation lies mostly in the lack of **accountability of stakeholder** (e.g. if system highly automated or internationally dispersed). In this view, we propose below to take some regulatory steps to favorise compliance of those systems (see “opt-in”). In this regard, we would like to highlight the clever solution brought by the Maltese government to set up a status of special agents (VFA agent), which aims at creating a legal intermediary that acts as a specialist and delegated agent of a given system for the supervising authority. In our view, decentralization is simply a technical notion part of the definition of a blockchain. From a legal standpoint, regarding the activity the sole relevant point is to recognize a scheme from a functional point of view using the core elements above and that it operates fairly.

Finally, in this vein, we notice an increase in the use of electronic agent in order to anonymise actions or render regulation ineffective, hence creating what we could name a “**technological veil**”. In our view, technical agent should be considered as an instrument in the hand of the legally liable person, which uses it. Consequently, the question is more a question of investigation rather the liability. Finally, we believe the question of decentralization should be of the competence of technicians. From a legal point of view, the sole interesting question regarding decentralization level could be summed up like this: “*Is this system sufficiently decentralized (technical) to be considered as fair (legal) for every participant in consideration of what is promoted?*”

4 / What Criteria Or Characteristics Differentiate GSC Arrangements From Other Stablecoin Arrangements?

In our view, as aforementioned, the most important criteria from a legal standpoint to qualify a GSC is the financial **systemic risk** GSCs pose compared to other types of stablecoins. The fact that the system is cross-border and can reach any jurisdiction is a *de facto* general feature of coins. Further, we could add that, in the eventuality stablecoins were forced by legal regulation to be designed as to be limited or inoperable in certain jurisdictions, the technology would probably lose of its interest as this fully international feature is one of its biggest advantages.

We would like to note that the European Regulation (Directive (EU) 2018/843 “AMLD5” takes a **broader approach in its definition** by essentially stating that non-systemic Virtual Currency serving as complementary currency by a small number is not to be consider as a Virtual Currency under the aforementioned Directive (Regeste n°11, AMLD5): “*Local currencies, also known as complementary currencies, that are used in very limited networks such as a city or a region and among a small number of users should not be considered to be virtual currencies*”. Hence, non-systemic stablecoins used among a small group of participants (e.g. rice traders) should, in our view, not be considered as a GSC but be regulated locally under a lighter regime or a sandbox regime.

Further, we believe that another specific characteristic of GSC arrangements lies in the **use & goals** of the coin, which should be generally limited to the creation of an alternative means of payments, that replace the use of a traditional general (for any good or services) means of payment (or “*pure stable cryptocurrencies*”).

In our view, other stablecoins arrangements with further goals, or with limited or specific use are different. They rely more on the creation of a Community or are set up with the main purpose to hedge directly or indirectly a risk depending on the underlying asset they are backed with (they would hence constitute possibly a derivative or securities). Even though we note that similarly, *fiat* currency creates somehow a national community and may also be used by traders to hedge some risk and gain money on appreciation or depreciation, it is not their primary goals *per se*. In conclusion, the goals of the stablecoin set by initiators should be considered one of the criteria to determine whether or not we can qualify a certain coin as a GSC, and it should also be considered one of its characteristics.

Third characteristic of GSC, in our view, is that it is necessarily a form of **private money** (regulated by contractual means and issued by a private entity in comparison with money regulated national law and issued by public entity), which is not an equivalent to *fiat* currency. Further, GSC should be less heavily regulated if the issuer is a private entity rather than a public entity as they are not the same instrument (one is equivalent to *fiat* money, the other is not).

In this regard, we regret the document does not define stablecoins globally and only focus on one of its subcategory, quite rare actually among all initiatives, that is a “global stablecoins” like Libra. This non-exhaustivity of the document might lead to imprecision and miscomprehension on how stablecoins should generally be regulated as most (if any for now) do not pose a systemic risk.

Last but not least, we would like to **highlight the different criteria** set by regulators in their attempt to define “stablecoins”.

First, the ECB, which simply defines Global stablecoins as “stablecoins with the potential for global reach”.

Secondly, the G7 Working Group on stablecoins Oct 19, which focuses on the following characteristic:

1. an existing – large and/or cross-border – customer base
2. achieve a global or other substantial footprint
3. sponsored by large technology or financial firms
4. existing large customer base
5. potentially large size and reach
6. large existing platforms (such as big techs)
7. small-scale stablecoin arrangements
8. global scale

Thirdly, the IOSCO, which focuses on the following characteristic:

1. potential global reach and adoption
2. likely to be issued by large incumbent global technology firms
3. market dominance due to the strong network effects
4. enterprises that govern the stablecoin arrangements control the key channels that consumers and businesses use to access a range of services.

Fourth, the present document, which lists the following characteristics:

1. an existing – large and/or cross-border – customer base
2. achieve a global or other substantial footprint
3. sponsored by large technology or financial firms
4. potentially large size and reach
5. large existing platforms (such as big techs)
6. small-scale stablecoin arrangements (definition of the opposite)
7. global scale
8. potential global reach and adoption
9. likely to be issued by large incumbent global technology firms

10. market dominance due to the strong network effects
11. enterprises that govern the stablecoin arrangements control the key channels that consumers and businesses use to access a range of services.
12. potential reach and adoption
13. the potential to achieve substantial volume
14. be attractive to a broad range of users across multiple jurisdictions
15. global systemic importance that the arrangement could pose
16. potential extent of the stablecoin’s use as a means of payment or store of value in multiple jurisdictions
17. impact that a stablecoin arrangement’s failure can have
18. Number and type of stablecoin users
19. Number and value of transactions
20. Size of reserve assets
21. Value of stablecoins in circulation
22. Potential substantial cross-border use in payments and remittances;
23. Number of jurisdictions with stablecoin users
24. Market share in each jurisdiction
25. Redemption linked to a foreign currency or multiple currencies
26. Interconnectedness with financial institutions
27. Available alternatives to using the GSC as a means of payment at short notice
28. Business, structural and operational complexity

Among this **myriad of characteristics**, sometimes similar, complementary or contradictory, we would like to highlight that a clear and precise definition is yet to be determined. In particular, it would be useful in our view to have concrete limits and examples objectively defined, or criteria to determine *in concreto* what regulation would apply to a given project.

Our proposed interpretation of the criteria for the qualification as a GSC is outlined below:

1. Potential number of users due to control/influence on existing technological/financial platforms - 50 million people.
2. Sponsorship by large technological (at least 50 million customers globally) /financial firms (included into TBTF list by the Basel Committee on Banking Supervision (BCBS)).
3. Dominating position in a particular market/markets.
4. Control over the key channels that consumers and businesses use to access a range of services.
5. Stable coin users base reaches 10 million factual users.
6. Stable coins in circulation have a market cap. of USD 20 billion.

5 / Do You Agree With The Analysis Of Potential Risks To Financial Stability Arising From GSC Arrangements? What Other Relevant Risks Should Regulators Consider?

We believe the report highlights most of the potential risk related to GSC. However, in our view, the fluctuation risk equals the risk of failure since a depreciation of the value of the coin is precisely the risk that stablecoins try to avoid.

Further, we would like to add the followings elements:

First, the report did not develop potential **operational risks** affecting the use of a GSC and how this could be managed. For instance, a blackout, earthquake affecting servers, a pandemic, etc. We would have liked those risks to be also taken into account.

Secondly, there is no mention of the **professional qualification** and eventual minimal requirements of the principal **team members active in the project**. The fact that anyone could potentially launch a stablecoin without having a valued experience in the financial sector seems quite an unconscious risk, yet possible though.

Third, we believe the notion of **conflict of interest and collusion** between stakeholders should be further studied as those are very opaque, especially for end users of a blockchain infrastructure. In this vein, we note that the question relating to fair competition is pretty new in the blockchain ecosystem and requires due attention as they are probably underestimated.

Fourthly, we believe the risk of loss of the GSC in case of **inheritance** is to be mentioned as it could represent in the long-run the main reason of loss of coins.

Fifth, the Bank of International Settlement (BIS) has released several studies on cryptocurrencies⁵ highlighting some of the **specific risks** they pose when the blockchain servers as a payment system. We refer to the studies of these bodies as economical standard to implement fair and correct economical mechanisms.

Sixth, it could be interesting to have some details on the **continuous assessment of those risks** in times by authority and whether those authority should conduct stress-test like situation to the monitored stakeholders.

Finally, we believe that all those risks linked with GSC are mostly **hypothetical for now** as most stablecoins and GSC's project are still on the path of being developed. However, the various risks highlighted stress the need for an appropriate regulatory framework. In order to respect the principle “same risk, same rules” the necessary framework should however be lighter, or even fall into a unregulated space (sandbox), for most stablecoins since the instrument of a stablecoin or a GSC is not the same instruments as *fiat* currency or a traditional financial instruments.

6 / Do You Agree With The Analysis Of The Vulnerabilities Arising From Various Stablecoin Functions And Activities (See Annex 2)? What, If Any, Amendments Or Alterations Would You Propose?

The In our view, the analysis shows a rather complete overview of potential vulnerabilities.

⁵ Especially by Hyun Song Shin Economic Adviser and Head of Research at the BIS).

We would like however to add the following points.

First of all, one of the vulnerabilities that was not mentioned would be the **legal hazard** for users / consumers due to the current uncertainties surrounding the use of stablecoins. The debate about stablecoins in general is heated and States might be keen to adopt harsh regulation (e.g. to repel or to control) or at the contrary fastly adopted unreasoned and permissive regulation (e.g. to attract) regarding stablecoins. In our view, both types might be detrimental for consumers and represent a way to react to the hype of stablecoins. For instance, the decision of a regulator to suddenly consider a given stablecoin as a security might be problematic for consumers. Another example of legal hazard would be that a very permissive State regulation might not be well ponderated and constitutes a way to create hypes at the detriment of qualitative well-thought regulatory framework⁶.

Further, some legal hazard might occur over time if the stablecoins project evolves in case of **requalification** of the activities by authorities.

Second, we would like to emphasize under the vulnerability named “storing key” that the non-proper management might occur from users themselves. For instance, for now the “crypto-generation” is quite young but the ability to transmit the stablecoins assets or to create some mechanism to **respect inheritance law** might be considered right away. If not, lost private keys might cause whole part of heritages to disappear.

Thirdly, regarding financial-risks, on page 13 of the document we would add clarity if one could complete the following sentence with some examples of spillover effects: *“in the composition of the reserve assets, in the absence of large-scale redemption of GSCs, might trigger spillover effects to the wider financial system”*

Finally, Annex 2 does not expressly cover the complexity (e.g. non-linearity) of the stabilization mechanism as the potential vulnerability stemming from the stable coin design. However, this factor is mentioned in the recommendations 8 and 9. We believe that it may be worth bringing it up in the “vulnerabilities” section and Annex 2.

7 / Do You Have Comments On The Potential Regulatory Authorities And Tools And International Standards Applicable To GSC Activities Presented In Annex 2?

First of all, we would like to highlight that the **legal competence** to regulate, supervise or else should be clearly stated or deductible from the national regulations. Indeed, some use cases of stablecoins, for instance relating to algorithmic stablecoins, or other non-securities stablecoins, or stablecoins not linked with a financial use, might not always easily fall under the present versions of national regulations.

In this vein, we can wonder whether the creation of dedicated authorities, empowered with cross-domains (legal & technical) set of competences and activities, like the Malta Digital

⁶ Without citing names, we can see many blockchain regulations around the world that are passed by parliaments though being completely unfit and unsound.

Innovation Authority, would not be a suitable solution for stablecoins not falling strictly into the financial domain?

Second, regarding **international standards**, we believe regulation should somehow use and acknowledge international technical standards directly, or indirectly by appointing the standards setting bodies of reference (e.g. ISO) to help clarify the legality of the systems. For instance, the notion of when the system is sufficiently “decentralized” discussed above requires in our view both a coherent technical & legal solution.

8 / Do You Agree With The Characterization Of Cross-Border Issues Arising From GSC Arrangements?

In overall, we agree with the characterisation of the issues set in point 4.2 of the document.

We would like to add the following points:

First of all, we would like to note that, in the years to come, **huge discrepancies** in-between the development and view of national regulations seem inevitable over the topic relating to stablecoins. This might lead to a certain degree of localization of the phenomenon over key destinations. Further, this could also lead in the direction where some stablecoins scheme refers or try to be affiliated to a certain legal system over another, or even try at all cost to avoid some jurisdictions.

In this vein, we note that the problem is that most regulations do not provide for an effective **framework regarding jurisdictions and competent law** in case of highly decentralized schemes. This point is however the first crucial step to consider in any regulation. In our view, a favorable development would be to agree that it makes more legal sense that certain jurisdiction is to be regarded as globally competent, least over some related aspects of the stablecoins scheme. For instance, in our view it makes more sense to regulate the issues relating to technical aspects (e.g. validity of the transfer, etc.) of the system or the qualification of the instrument from a regulatory point of view (e.g. X stablecoin = a private instrument and not a security) under a single jurisdiction and applicable law. Otherwise, we believe the future success of stablecoins might be doomed since it is quite hard to determine legal clarity over multiple actual or potential jurisdictions.

Secondly, regarding the lack of potential intermediary in a decentralized scheme, we would like to highlight that it could be in the competence of the national regulation to **create this role of legal intermediary**. Indeed, we have seen, for instance in Malta, the creation of intermediaries for blockchain under the name “VFA Agent”. Further, we can remember that European law has also created some legal intermediary by instituting in the GDPR the role of Data Protection Officer.

Third and finally, with regards to the cooperation, we agree that MOU is a useful way. However, the issue relating to stablecoins, is wider than the vision and competence of the financial scope. In brief, we need an overall common understanding. In our view, this common view could be achieved by using **International Conventions**. In particular, we see a lot of similarities between the need for legal clarification faced today by blockchain-based coins and

the one with solved in the past regarding intermediated, which gave rise to the Hague convention on intermediated securities.

9 / Are The Proposed Recommendations Appropriate And Proportionate With The Risks? Do They Promote Financial Stability, Market Integrity, And Consumer Protection Without Overly Constraining Beneficial Financial And Technological Innovation?

In overall, we believe the recommendations to be **sound and useful** as the industry is in dire needs of guidance in order to flourish. However, we would like to emphasize the fact that those recommendations are only relevant in the context of GSC, i.e. a subcategory of stablecoins, and only where those stablecoins represent an actual systemic risk or clearly fall within a regulated activity under national law. In our view, those aspects should also be stressed to the recipients.

We submit the comments listed below:

Recommendation 1

Overall, we agree with this recommendation.

In addition, we believe the recommendation should also stress the need for the national regulations to be **adapted or extended** in order to be clearer and make the phenomenon of stablecoins fit into existing law when needed.

Further, we would like to stress that multiple individual strong regulatory response from national Regulators would be detrimental to the stablecoin ecosystem, as it would probably require the emitters of such instruments to be registered in multiples jurisdiction; hence creating a huge cost of entry for stablecoins emitter, making it an instrument only available for elite actors like the GAFA. Consequently, we believe recommendations should also encourage that the regulatory regimes to be set in place include **light regimes and sandbox regimes**, i.e. de minimis limit before, which the stablecoins use would not require to be regulated.

In regards to the jurisdiction and applicable law to the agreement, the lack of regulation is problematic. Although, one of the solutions could be to create within national regulations “**opt-in systems**” for highly decentralized systems. The system could be regulated by a “Home Authority”, as suggested in the document, which supervision (consolidated or not) could be deemed equivalent in other countries hence not requiring further authorisation and legalizing the use of certain stablecoins. At the opposite, if no choice of law or jurisdiction exists is made or can be deduced we could assume that a collective jurisdiction applies. The opt-in method could hence create an incentive for highly decentralized systems to look for regulation instead of trying to avoid it.

Finally, we would like to add that the regulation should also contain some elements regarding the **technical guidance** to assess the level of compliance required. Finally, as stressed above, the Authorities should be encouraged to create specialized entities, as it was realized in Malta (MDIA & VFA Agent), that could host a technical, economical and legal expertise to handle stablecoins and blockchain-related stakeholders.

Finally, we note that, the objectives of the recommendations only consider the perspective of G20 on stablecoins as a main threat for “financial stability, market integrity and risks for users”, while emerging economies consider stablecoins more from a **sustainability perspective**. In our view, a global regulation that does not consider the different perspectives mentioned above would not be adapted for emerging countries with weak financial institutions and stability to survive.

Recommendation 2

Overall, we agree with this recommendation.

We agree the vision should be functional. We would add that it should also consider the **economic reality** of the stablecoins arrangement. Furthermore, we believe the stablecoins arrangement should be assessed **regularly** over time.

In particular, regarding the functional aspects of GSC, we note that they most often do not constitute a functional equivalence legally speaking to traditional *fiat* money. For instance, no monetary interest can usually be deduced from a debt in crypto, etc. Consequently, we advocate that this non-equivalence would justify a lighter regulation compared to payment instruments issued by public law stakeholders.

Recommendation 3

Overall, we agree with this recommendation.

Recommendation 4

Overall, we agree with this recommendation.

We highlight also the necessity of a clear liability regime for stakeholders.

Further, we believe the biggest challenge regarding governance is the set up of a system that creates a “fair” governance, i.e. especially avoiding conflict of interests and respecting competition law.

Recommendation 5

Overall, we agree with this recommendation.

The document focuses on reserves composed of capital and liquidity buffers such as government securities, but it doesn't provide information whether it should be accomplished on a 1:1 basis or not. If GSC can focus more on Government securities such as Libra (backed by 80% of government securities) it is not the same risk as a GSC only backed by fiat.

“In addition to consumer protection considerations, authorities should address potential financial stability concerns and limit spillover effects to the wider financial system, and consider requiring GSC arrangements to adopt strict rules on reserve assets management and have adequate capital and liquidity buffers to absorb credit, liquidity and market risks, as well as risks related to legal, operational and cyber risks relevant to the stabilisation mechanism.”

Further, we believe the requirements for effective risk management should not lead to create an indirect barrier to the use of crypto assets in general and stablecoins or GSC in particular.

Recommendation 6

Overall, we agree with this recommendation.

The document does not consider the case where a stablecoin could be launched by a company in a **developing country** and data hosted in a server located in a developed country. Who owns the data? Who provides access? Who is legally responsible?

“Authorities should be able to obtain timely and complete access to relevant data and information to enable them to implement adequate regulatory, supervisory, and oversight approaches that capture the functions and activities of the GSC arrangement, in accordance with the level and nature of the risks posed.”

Recommendation 7

Overall, we agree with this recommendation.

As above mentioned, we believe this point should be elaborated with more details in the document.

Recommendation 8

Overall, we agree with this recommendation.

In this regard, we could imagine the elaboration of specific “prospectus requirements” mentioning all informations that would be necessary in order to comply with those obligations. This was notably made for blockchain related project directly in its legislation.

Further, we wonder what the level of explanation would be necessary in case of an algorithmic-based stablecoins even if this stablecoin was not included in the definition of a GSC. Also, regarding the appropriate disclosures: how this will be done? which channels? If the disclosure is updated, how does this have to be communicated?

Furthermore, we can doubt the usefulness of the transmission of long and complex information towards everyday “consumers” or users of those stablecoins. Our concern is they will not reproduce the way disclosures are communicated to users by other agencies such as google (dozens of pages in 9pt font size), that nobody read it.

Any updates in disclosures should be clear and not hidden in a large amount of information. Also what happens if GSC users do not agree with the new disclosure?

“Authorities should ensure that the GSC arrangements makes appropriate disclosures to users and the market regarding the design of the stabilisation mechanism (e.g. asset linked or algorithm-based), and the mechanism by which the stablecoin’s value is Maintained.”

Recommendation 9

Overall, we agree with this recommendation.

We believe that the question of the legal clarity around the redemption right goes deeper and highlights a difficulty linked to the contractual right attached to the token. Indeed, the right incorporated in the stablecoin may **depend on the interpretation given by the law applicable to the instrument**. As many jurisdiction may end up applying their own regulation to the instrument or the instrument may end up being not clearly (from a legal point of view) related to any jurisdictions, the legal clarity over the actual redemption right or any others could be difficult, if not impossible to assess correctly *ex ante in abstracto* for a GSC.

This legal clarity is notably hard to assess because of the **nature of the claim** incorporated within a token. With regards to fiat currency, the money is normally defined by the law of the emitting state (e.g. art. 147 LDIP, RS 291) and is consider as a bearer instrument (anyone possessing the instrument is entitled to its incorporated rights).

However, under a GSC agreement, the rights rely on contractual law, which only deploys legal effects among the actual party to the agreement. Further, an additional difficulty might arise from the fact that national jurisdiction might consider the digital “bearer” of those instruments as consumer (hence triggering special norms of competence and applicable law). Consequently, those instruments do not provide a third-party legal effect similar to property law. Hence this aspect highlights one of the main weakness of stablecoins as contractual private law usually do not provide property-like effects to the instruments and requires an actual consent (somehow) of the detentor of the coin. In this vein, we note Switzerland has a project of law modifying the Swiss Code of Obligations under discussion (may enter in to force

in 2022 perhaps)⁷. The project aims at solving this issue by creating specific contractual rights with third party effect like property-law.

For instance, in a stablecoin scheme, the initial buyer / depositor for a stablecoin has most often a direct relationship with the issuer or its affiliate. However, all further acquirers of the stablecoin are derivative to this initial agreement. Hence the cession of rights must be agreed and respect the form of the legal cession (often in writings when the instrument incorporates a legal right).

As a matter of example, we can imagine the case of an American Initial buyer of stablecoins / depositor against fiat money (A) - issued by a blockchain, which is supervised in China by a Foundation (C) - which buys an ice cream from a merchant in Rome (B). The question of whether the title and its incorporated rights were validly ceded (1) and whether the consent of B to the agreement was validly obtained when he accepted the stablecoin (2)? Even beforehand, the question of the jurisdictions, applicable law would be tricky to solve with regards notably to the eventual consumer law applying.

Recommendation 10

Overall, we agree with this recommendation.

However, we wonder how should governments ensure GSC entities have this clear understanding? By which means? It is not clear how a GSC entity will have access to regulatory requirements in all jurisdictions if nothing is done by governments to communicate those regulations in a single window. A multilateral action would be required in this case.

“entities intending to engage in GSC functions and activities should ensure that they have a clear understanding of the regulatory requirements that apply and where regulations of more than one jurisdiction may apply, which jurisdictions’ rules are applicable to different aspects of the functions and activities of the entities performing them and should engage proactively with authorities.”

In our view it should also clearly state, notably through guidelines (Recommend 10) what is their interpretation to determine whether business is possible.

⁷ https://www.efd.admin.ch/efd/en/home/dokumentation/nsb-news_list.msg-id-77252.html

9.1 / Are Domestic Regulatory, Supervisory And Oversight Issues Appropriately Identified?

Overall, we believe most issues to be appropriately identified.

However, we would like to stress some of the points that were **developed above**.

In brief, domestic regulation should develop light licensing and sandbox regimes for local and non-systemic actors relating to all use cases of stablecoins. They should favorize non-heavy regulatory approach based on equivalence regime and incentivize heavily decentralized GSC scheme to opt-in in a legal system.

Regulators must understand that GSC do not represent an instrument announcing the end of their sovereignty, as they are solely a private law instrument non-equivalent to money. On this later point, we note that the lack of centralized control, the relative anonymity and high autonomy of stablecoins could constitute a powerful **democratic tool** regarding countries where monetary control used as an instrument to limit freedom or maintain power by force.

Further, a single legal system applying to the overall GSC agreement’s question related to the instrument is in our view much preferable. This view does not exclude that the relationship between user can be subject to different law and jurisdiction (e.g. UK-based GSC instrument used in a contract between a French consumer and a American seller, subject to French law/jurisdiction).

9.2 / Are Cross-Border Regulatory, Supervisory And Oversight Issues Appropriately Identified?

Overall, we believe most issues to be appropriately identified.

We refer to the arguments that were made above to favorize a simple model of supervision.

Further, on page 15, the wording below is vague (use of many, fewer) as it does not provide which type of jurisdiction has AML/CFT or other types of financial regulations. Does many means developed countries? Which countries? Does fewer mean emerging countries and LDCs? Which ones? Which regions?

“Survey results indicate that many jurisdictions have AML/CFT regulations that seem to apply more generally to stablecoin activities. The results also indicate that fewer jurisdictions have other types of financial regulation, such as market integrity, investor and consumer protection regulations, that may apply to stablecoin activities like issuance, exchanging and trading of stablecoins.”

9.3 / Do The Recommendations Adequately Anticipate And Address Potential Developments And Future Innovation In This Sector?

Overall, we believe most recommendations to be adequate.

We refer to the arguments that were made above regarding each of them.

However, we note that the **limitation of the scope** of the document also limits the possible range of the anticipation. As such, recommendations only address the potential developments in this small segment of the stablecoin’s sector that is GSC initiatives. In our view, there is a risk that the regulations that will be designed based on this paper will not be adapted to all types of arrangements and could constitute a barrier for companies wishing to launch a stable coin.

- Trying to align stablecoins to a regulatory framework that was mostly designed before the creation of the Internet is definitely a risk as it pushes innovation to align to an old model without re-considering this model.
- These recommendations could also affect DeFi protocols that rely on stablecoins and have an impact on access for unbanked people to financial support especially now in times of COVID.
- Also adding a regulatory pressure and requirements on stablecoins projects will also increase costs for emerging economies and companies to comply with these regulations. This approach will favor only large companies having a high level of financial power to comply with these regulations.

10 / Do You Think That The Recommendations Would Be Appropriate For Stablecoins Predominately Used For Wholesale Purposes And Other Types Of Crypto-Assets?

We believe the recommendations are appropriate for the specific *in concreto* use case that would constitute a GSC as Libra. As mentioned above, we regret that the FSB did not choose to study holistically stablecoins and include different regulatory approaches. Consequently, in our view, the recommendations lack the details and precision required for a wider view of stablecoins that we can find in other use cases.

Indeed, we believe the recommendations could be adapted depending on the type of use cases and on the actual risk the instrument pose. In particular, according to the principle “same business, same risk, same rules”, we believe that we could differentiate between different level of regulatory reaction. *A fortiori* as GSC do not constitute “money” *per se*, but only a form of private money, we believe the level of regulation of the instrument should be adapted to fit private emitters instead of public state emitter.

Further, the document does not consider what types of functions would be inherent to GSC designed for wholesale transactions, what functions are associated with this case.

Furthermore, we note that GSC constitute rather the exception than the rules among stablecoins project. Consequently, recommendations should be adapted regarding the actual risk and scale of the stablecoins. Finally, we believe that many specific use cases (e.g. stablecoins derivatives, stablecoins on commodities, stablecoins resembling a corporate coupon, etc.) should trigger a different regulatory response compare to the classical “libra”-type of use case.

11 / Are There Additional Recommendations That Should Be Included Or Recommendations That Should Be Removed?

In our view, the recommendations are sufficiently exhaustive as such.

However, we would like the FSB to provide more details on the following points:

First, we would like to see more information on how GSC governance bodies will define **recovery and resolution** plans considering that entities that may form part of a GSC arrangement could be distributed worldwide.

Second, we consider the **audit of GSC should be included** in the analysis as more and more auditing is included in technology, especially source-code auditing.

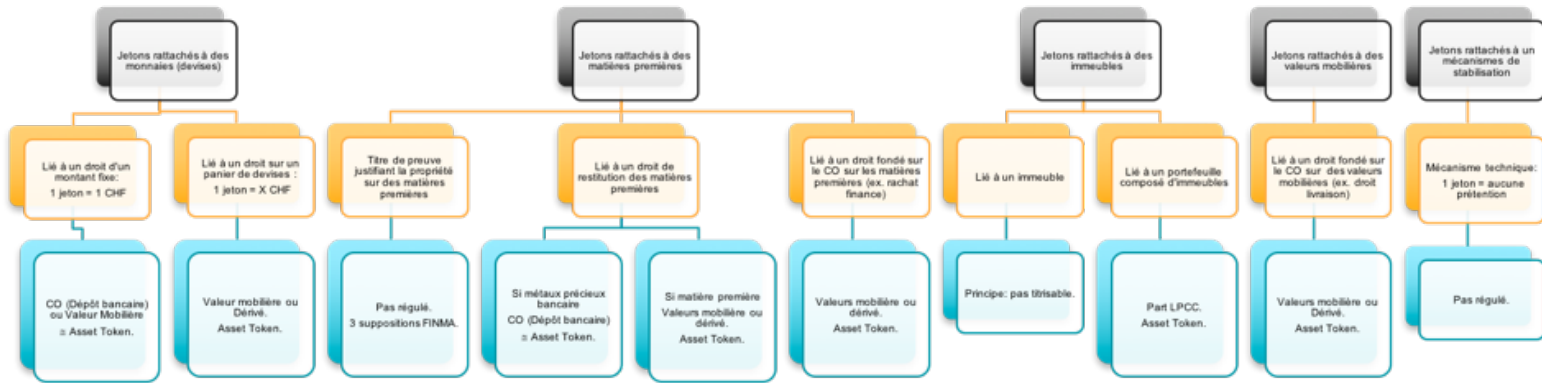
Third, we would like to know more on **potential scenarios for exchange platforms** as their Business model depends also on stablecoins. If several stablecoins do not fit into the proposed regulatory framework, what will happen with the portfolio of current retail investors? How will they recover their funds? What will happen with the current crypto market?

Finally, a summary table with the different financial standards that could be applicable to the 3 types of stablecoins covered in the study, would allow to compare the findings with the IOSCO study. It will also facilitate identifying gaps in the analysis and potentially add additional columns for commodity- and algorithmic-based stablecoins.

12 / Are There Cost-Benefit Considerations That Can And Should Be Addressed At This Stage?

In our view, a cost-benefit analysis would be to acknowledge that a light regulation of the phenomenon would be preferable as it poses very limited risks for now and that GSC do not constitute a monetary creation *per se* (as a legal equivalent to money). The benefit would be to enable the possibility of stablecoins scheme by all type of actors (including small & medium). Otherwise, innovative initiative might be hampered.

Appendix 1



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