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Attn: fsb@fsb.org

Ref. : Response to the Questions for Consultation by the FSB as regards the International Regulation of Crypto-asset Activities

This response is provided by Myriam Vander Stichele, Senior Researcher at SOMO (Centre for Research on Multinational Corporations (www.somo.nl)). SOMO is a non-profit foundation that researches and advocates in favour of public interest related to various sectors, and has a global network of non-profit organisation with which SOMO cooperates. This response is based on past and ongoing research by Ms Vander Stichele related to the commercial financial services sector, national/EU and global financial regulation and supervision, sustainable finance and the fintech and crypto sectors.

General questions and answers

1. Are the FSB's proposals sufficiently comprehensive and do they cover all crypto-asset activities that pose or potentially pose risks to financial stability?

Answer 1: While we understand the report focuses on financial stability risks, the report underestimates the interconnectedness, and especially the influence of protecting market integrity, consumer protection, and dealing with concentrated markets on financial instability. Therefore, the recommendations to supervisory and regulatory authorities should integrate much more issues of market integrity and thrust, consumer protection and market concentration when proposing regulation, supervision and oversight of crypto-asset activities and markets. Although this is mentioned, incl. regarding the work of the Financial Task Force (FTF) by IOSCO (page 17 and 67 of consultation report), the latter will only publish recommendations by end 2023. Recent events show that cooperation and regulation need to be enacted much more speedily so as to avoid diverse supervisory and regulatory approaches, and through much more preventive and pro-active interventions ensure that financial stability risks do not materialise.

2. Do you agree that the requirements set out in the CA Recommendations should apply to any type of crypto-asset activities, including stablecoins, whereas certain activities, in particular those undertaken by GSC, need to be subject to additional requirements?

Answer 2. Most of the recommendations should apply to all types of crypto-asset activities but risks particular each to crypto-assets, associated crypto services, and GSC need also to be addressed.

3. Is the distinction between GSC and other types of crypto-assets sufficiently clear or should the FSB adopt a more granular categorisation of crypto-assets (if so, please explain)?

Answer 3. No, each category might have particular risks which might be unknown, but can be covered by comprehensive requirements for all categories

4. Do the CA Recommendations and the GSC Recommendations each address the relevant regulatory gaps and challenges that warrant multinational responses?

Answer 4. The regulatory and supervisory authorities should coordinate with authorities, policy makers and international institutions that negotiate trade and investment treaties. Most of those treaties that cover financial services and investments (in separate chapters) might not have sufficient definitions related to all crypto activities, (indirectly) liberalise crypto services, and restrict regulators and supervisors in their intervention (see for instance the treaty articles on ‘domestic regulation’, annexes covering financial services with articles that deal with intervention for financial stability reasons, and treaty articles on compulsory free flow of capital and data.)

5. Are there any financial stability issues that remain unaddressed that should be covered in the recommendations?

The recommendations do not seem to sufficiently take into account that quite some crypto-assets and associated service providers are based in secrecy jurisdictions and tax havens, non-cooperative jurisdictions, have complex corporate cross-border structures, or operate online without a physical address. It is not clear how the recommendations can be implemented and enforced in these circumstances, while this is a widespread practice. Ideally, no crypto-activities should be accepted if based in secrecy jurisdictions or tax havens and without a physical or registered address.

While recommendation 1 is to be supported, the question is what needs to be done when authorities do not have the appropriate powers and tools or adequate resources: should bans and prohibition be applied, in cooperation with supervisors of other jurisdictions where enforcement is possible?

Crypto-assets and markets (CA Recommendations): questions and answers

6. Does the [report](#) accurately characterise the functions and activities within the crypto-ecosystem that pose or may pose financial stability risk? What, if any, functions, or activities are missing or should be assessed differently?

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7. Do you agree with the analysis of activity patterns and the associated potential risks?

Answer 7: The recommendations are based on underestimation of the risks and impacts of the crypto world. For instance, many requirements should to be “proportionate to their risk, size, complexity and systemic importance for financial stability” (recommendations 2 and 5). However, there are thousands of crypto currencies and around 200 of stablecoins, of which it is not easy to assess beforehand whether they can rapidly evolve and cause financial stability risks, or whether they will rapidly disappear. Moreover, there is not enough supervisory capacity to make assessments whether all crypto-assets, GSCs and associated activities already operating are risky, large, complex and systemic, and to impose and enforce regulations that are “proportionate to their risk, size, complexity and systemic importance”.

The dramatic events in 2022 in the crypto world illustrate that much more preventive and prudential actions are to be taken. A better approach would be to first require that all crypto currencies and crypto, and not in the least GSCs, should receive a licence, or at least be registered with financial authorities, before they can even be launched and operate. It would then be much easier to ban any crypto related activity that is not licensed or registered, and would not require supervisory or regulatory authorities to make the many assessments and regulatory requirements of whatever is being launched, as recommended.

8. Have the regulatory, supervisory and oversight issues and challenges as relate to financial stability been identified accurately? Are there other issues that warrant consideration at the international level?

Answer 8: The cooperation at international level, should not only be regarding information exchange etc. as proposed in recommendation 3. International cooperation should also provide support for training to supervisory and regulatory authorities, policy makers in governments and parliaments, the judicial system (to enable swift sanctioning) and accountants. Capacity and expertise building, along perhaps with financial means, would enable the many proposed recommendations to be more swiftly legislated and enforced.

Moreover, it should be recommended in recommendation 3 that cooperation nationally and internationally with non-financial sectors is urgently needed and to be elaborated, to ensure that interconnectedness of financial stability and other problems of the crypto-ecosystem areas are being addressed in a coherent way, e.g. cooperation with competition authorities, consumer protection authorities, authorities dealing with criminal and fraudulent activities, advertisements, (financial services) trade and investment treaty negotiators, authorities related to communication and infrastructure, etc.

9. Do you agree with the differentiated requirements on crypto-asset issuers and service providers in the proposed recommendations on risk management, data management and disclosure?

Answer nr 9: Recommendation 5 and 9 regarding risk management of services and providers of crypto related activities (e.g. storage, exchanges, trading platforms) should include better recommendations to ensure that these services are much more regulated in the same way as traditional securities' and derivatives' trading platforms and exchanges etc.. For instance, much more independent parties should be involved to provide counter-balances and checks (as is also the case for operating UCITS funds). In addition, it should be prohibited that crypto-assets services providers combine multiple functions and multiple activities such as storage and trading: these functions (e.g. custody and trading) should be separated and segregated.

Recommendations 6 and 7 should include better basic proposals to ensure (financial and governance) disclosure and reporting that is accessible to the public, and not be dependent whether the crypto issuers or providers are risky, complex or of systemic importance. For instance, there should be aggregate Commitments of Traders (COT) reports to help the public understand market dynamics.

Recommendation 7 to require disclose environmental and climate risks and impacts is extremely important as climate risks could affect the survival of the crypto eco-system, especially its physical infrastructure. The recommendation should be expanded to require

disclosure of all ESG risks and impacts, as some infrastructure and some back-end activities might be done in ways and countries without social safeguards or governance integrity. Moreover, how will authorities deal with the fact currently mining and running the servers on which crypto-currencies are run, become too expensive (the fees/crypto-assets are cheaper than the cost of running)?

10. Should there be a more granular differentiation within the recommendations between different types of intermediaries or service providers in light of the risks they pose? If so, please explain.

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Global stablecoins (GSC Recommendations): questions and answers

11. Does the [report](#) provide an accurate analysis of recent market developments and existing stablecoins? What, if anything, is missing in the analysis or should be assessed differently?

Assess and integrate the dramatic events that happened in the since the consultation report was published. This amongst others means that the speed of supervisory and regulatory interventions has to be accelerated.

12. Are there other changes or additions to the recommendations that should be considered?

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13. Do you have comments on the key design considerations for cross-border cooperation and information sharing arrangements presented in Annex 2? Should Annex 2 be specific to GSCs, or could it be also applicable to crypto-asset activities other than GSCs?

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14. Does the proposed template for common disclosure of reserve assets in Annex 3 identify the relevant information that needs to be disclosed to users and stakeholders?

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15. Do you have comments on the elements that could be used to determine whether a stablecoin qualifies as a GSC presented in Annex 4?