



Crypto Valley

Crypto Valley Association

**Position on FINMA
Stablecoins Guidance**

On July 26, 2024, FINMA published the Communication entitled *“Stablecoins: Risks and requirements for stablecoin issuers and guarantee-issuing banks”* (06/2024), which has caused strong criticism in the blockchain community and a fear that Switzerland might not be one of the the n°1 crypto nations anymore.

Why Is It So?

It is common practice since the ICO Guidelines dated February 16, 2018 and the complementary ICO guidelines on stablecoins dated September 11, 2019 that the issuance of a stable coin is qualified as the issuance of a payment token, i.e a means of payment under the Swiss Anti-Money Laundering Act (AML Act; RS 955.0), meaning that the issuer must comply with Anti-money laundering requirements as a financial intermediary in Switzerland. This implies an identification (KYC) from the issuer itself of the public addresses of the initial acquirers of the stable coin.

In this respect, the recent communication from FINMA does not change - nor bring - anything to the Swiss regulatory environment.

However, invoking both (i) accrued risks on money laundering, terrorism financing and sanction circumvention in relation to stable coins and (ii) the FATF report published on July 9, 2024 entitled *“Targeted Update on the Implementation of the FATF Standards on Virtual Assets and Virtual Asset Service Providers”*, the Swiss Financial Markets’ Surveillance Authority goes further by considering that, because of the claim of the holders of stable coins towards the issuer, the latter is to be considered as a financial intermediary on the basis of the **durable business relationship** carried out with its customers (Art. 4 para 1 lit. b Anti-Money Laundering Ordinance ; AMLO ; RS 955.01) and not only as the issuer of a means of payment in accordance with Art. 4 para 1 lit. c AMLO.

According to FINMA, this durable business relationship would justify obliging the issuer of the stable coin to:

- (i) identify all the persons holding stable coins, including those transferring the tokens further; and
- (ii) using contractual and technological restrictions to limit the transfer of stable coins.

Furthermore, assuming that the issuance of stable coins is subject to the Banking Act because of the claim on the issuer to convert back the stable coins into fiat currency, FINMA goes even further to limit the insolvency risk by obliging stable coins issuers using a bank guarantees:

- (i) to cover all the claims and interests; and
- (ii) to give a direct right to each and every stable coin holder to claim in the bankruptcy of the issuer.

Why Is Such an Approach Unfortunate?

Firstly, this communication relies on a very broad interpretation of Art. 4 para 1 lit. b Anti-Money Laundering Ordinance on the notion of durable business relationship (which requires helping the transfer of crypto assets on top of the durable business relationship which is not the case of stable coin issuers) and of the bank guarantee exception stated in Art. 5 para. 3 lit. f of the Banking Ordinance (which simply excludes funds covered by a bank guarantee from the definition of deposits).

This extensive interpretation is not in line with the regulatory principles that rule FINMA action stated in Article 7 of the FINMA Supervisory Act (FINMASA; RS 956.1) and would have required at least a circular (Art. 7 para 1 lit. b FINMASA), if not an amendment of the AML Ordinance and of the Banking Ordinance to impose such new obligations on stable coin issuers.

Furthermore, this Communication 06/2024 has been published without prior consultation of the blockchain industry, including Crypto Valley Association, which contradicts Art. 7 para. 4 FINMA Act providing for a transparent regulatory process and the appropriate participation of the parties concerned.

Second, the accrued identification obligations imposed on stable coin issuers goes beyond the requirements and international standards set by FATF and other jurisdictions such as the EU, USA, Singapore, Hong Kong and Japan without any justification.

Third, the accrued identification and technical requirements on subsequent transactions imposed on stable coin issuers would oblige the issuance of stable coins to occur on a ledger centralizing information about the wallets - which is likely to qualify it as a payment system under Art. 81 of the Financial Market Infrastructure Act - and would simply not be technically feasible on a public blockchain relying on nodes operated in a distributed way. This appears to be in full contradiction to the very idea of distributed ledger technology where peer-to-peer

transactions should proceed without any form of centralized control. This requirement thus cannot be technically met for stable coins issued on public blockchains.

Fourth, giving a direct right to all stable coin holders to claim in the bankruptcy of the issuer presupposes that the stable coin encapsulates a claim on the issuer which is not the case of all stable coins.

As a result, the only aspects of this communication from FINMA that go beyond the existing regulatory framework are either extra legem or technologically not relevant.

They would, in fact, only apply to stable coins encapsulating claims against the issuer, which limits to a very large extent the scope of this FINMA communication.

Therefore, Crypto Valley Association regrets not having been consulted before the publication of this Communication 06/2024. While the publication does not touch decentralized stablecoins, it makes it hard - if not impossible - for centralized issuers to launch a competitive stablecoin in Switzerland.

The Crypto Valley Association will continue to strive to actively have its voice heard in favor of a regulatory approach technologically sound, in line with international standards and generally favorable to the crypto industry in order to maintain Switzerland's position ahead on these topics.

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