OVERVIEW OF TAX AND ACCOUNTING REGULATION GOVERNING EUROe AND ITS USE IN FINANCIAL TRANSACTIONS

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The examination presented in this note is based on the legal sources described below, on the interpretation of an independent third-party expert ("expert") contracted by Membrane Finance Oy ("Membrane") and prevailing market practices. In support of this note, the following laws and legal sources, among other materials, have been reviewed:

- Regulation (EU) 2023/1114 on markets in crypto-assets ("**MiCA**")
- Regulation (EC) 1126/2008 on adopting certain international accounting standards ("**ACAS**")
- Regulation (EC) 1606/2002 on the application of international accounting standards ("**AAS**")
- Directive (EU) 2018/843 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ("**AMLD5**")
- Directive (EU) 2015/2366 on payment services in the internal market ("**PSD2**")
- Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings ("**ACRD**")
- Council directive 2011/16/EU on administrative cooperation in the field of taxation ("**DAC**")
- Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions ("**EMD2**")
- Loi portant des dispositions diverses relatives à la prévention du blanchiment de capitaux et du financement du terrorisme et à la limitation de l'utilisation des espèces ("**Belgian Law 2020**")
- Loi relative au statut et au contrôle des établissements de paiement et des établissements de monnaie électronique, à l'accès à l'activité de prestataire de services de paiement, et à l'activité d'émission de monnaie électronique, et à l'acce ("**Belgian Law 2018**")
- Arrêté royal relatif au statut et au contrôle des prestataires de services d'échange entre monnaies virtuelles et monnaies légales et des prestataires de services de portefeuilles de conservation ("**Royal Decree of 8 February 2022**")
- Code monétaire et financier ("**CMF**")
- Zahlungsdiensteaufsichtsgesetz vom 17. Juli 2017 ("**ZAG**")
- Geldwäschegesetz vom 23. Juni 2017 ("**GwG**")
- ZAG-Instituts-Eigenmittelverordnung vom 15. Oktober 2009 ("**ZIEV**")
- Kreditwesengesetz in der Fassung der Bekanntmachung vom 9. September 1998 ("**KWG**")
- Decreto legislative 21 novembre 2007, n. 231 ("**D. Lgs 231/2007**")
- Decreto Legislativo 16 aprile 2012, n. 45 ("**D. Lgs. 45/2012**")
- Decreto legislative 1 setembre 1993, n. 385 ("**TUB**")
- Wet op het financieel toezicht ("**WFT**")
- Wet ter voorkoming van witwassen en financieren van terrorisme ("**WWFT**")
- European Court of Justice: Case C-106/89 Marleasing SA v La Comercial Internacional de Alimentacion SA (ECLI:EU:C:1990:395, "**ECJ C-106/89**)
- European Court of Justice: Case 120/78 Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein (ECLI:EU:C:1979:42, "**C-120/78 Cassis de Dijon**")
- European Court of Justice: Case 6/64 Flaminio Costa v E.N.E.L. (ECLI:EU:C:1964:66, "**C-6/64 Costa v E.N.E.L..**")
- Craig, Paul – de Burca, Grainne: EU Law. Oxford University Press, 2011, fifth edition.
- European Commission proposal for Counsil directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation ("**COM(2022) 707**")
- European Commission's website: Tax fraud & evasion – strengthening rules on administrative cooperation and expanding the exchange of information ("**EU Commission: Tax fraud & evasion**", visited 22.8.2023)
- European Commission's website: E-money ("**EU Commission: E-money**", visited 5.9.2023.)
- Global Legal Insight: "Blockchain & Cryptocurrency Laws and Regulations 2023 | France" ("**GLI France**", visited 18.8.2023)

- Global Legal Insight: "Blockchain & Cryptocurrency Laws and Regulations 2023 | Netherlands" ("**GLI Netherlands**", visited 21.8.2023)
- Banca D'Italia: Questioni di Economia e Finanze, Aspetti economici e regolamentari delle cripto-attività, Marzo 2019. ("**Aspetti economici e regolamentari delle cripto-attività**")

Disclaimer

This note has been produced by a third-party legal expert specialising in electronic money and blockchain-related legal questions in the EU. The expert's typical business does not include legal opinions regarding the legal systems of other EU member states. Furthermore, a specific time limit was set on how many hours the expert could use for the research presented in this document.

Henceforth, the observations made in this node about the contents of the legislation in other EU countries are only intended as general starting points to serve the purpose of this research, and the more precise contents needs to be studied in more detail before any final business decisions should be made.

Furthermore, e-money distribution, agent activities and provision of payment services are not addressed in this note, as they are an entirely separate matter from the general use and holding of e-money. Also, this research uses English translations of national laws. As none of the member states assessed use English as their official language, it is advisable to consult a local legal counsel before making business decisions.

The information provided in this note is for informational purposes only and should not be construed as financial, legal, tax, or any other advice.

1. Generally

Based on the observations mentioned in the document titled "National Differences in Legal Aspects of Holding and Using EUROe" (published by Membrane on Sep 11, 2023), it seems that at least the biggest economies in the EU have implemented EMD2 correctly, and therefore, EUROe should be available to use and hold in the EU.

When it comes to accounting and taxation, it is important to understand that according to Article 4(25) of PSD2, e-money is seen as *funds*, as well as banknotes, coins, and scriptural money. Also, according to Recital 8 of the AMLD5, e-money is defined as *fiat currency* (with coins and banknotes that are designated as legal tender) when comparing that to crypto-assets.

2. Accounting

For clarity, the question of how EUROe should be treated from an accounting perspective is largely dependent on what each user of EUROe plans to use it for. For example, if EUROe is intended to be used for day-to-day business operations, it should be treated differently in accounting compared to if it is seen as a longer-term investment. Therefore, this paragraph only presents general accounting considerations regarding the use of EUROe.

The correct way to perform accounting varies depending on the type of entity doing the accounting. If the entity is a publicly traded company, it must comply with the International Accounting Standards ("IAS") according to Article 4 of AAS and Article 1 of ACAS. If the company is not publicly listed, it must follow its national legislation, but the main principles are set in the ACRD. For clarity, not any of the said legislation has specifically defined how e-money should be recorded in accounting.

According to the Section 6—7 of IAS:

> "The following terms are used in this standard with the meanings specified:
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> Cash comprises cash on hand and demand deposits.
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> **Cash equivalents are short-term, highly liquid investments that are readily convertible to known amounts of cash and which are subject to an insignificant risk of changes in value**.
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> Cash flows are inflows and outflows of cash and cash equivalents.
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> Operating activities are the principal revenue-producing activities of the entity and other activities that are not investing or financing activities.
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> Investing activities are the acquisition and disposal of long-term assets and other investments not included in cash equivalents.

> Financing activities are activities that result in changes in the size and composition of the contributed equity and borrowings of the entity.
>
> Cash and cash equivalents
>
> **Cash equivalents are held for the purpose of meeting short-term cash commitments rather than for investment or other purposes**. For an investment to qualify as a cash equivalent it must be readily convertible to a known amount of cash and be subject to an insignificant risk of changes in value. Therefore, an investment normally qualifies as a cash equivalent only when it has a short maturity of, say, three months or less from the date of acquisition. Equity investments are excluded from cash equivalents unless they are, in substance, cash equivalents, for example in the case of preferred shares acquired within a short period of their maturity and with a specified redemption date."

As can clearly be observed above, the concept of e-money, and **therefore also the concept of EUROe, could reasonably be interpreted as a "cash equivalent"** if it is used by publicly listed companies.

In the case of not publicly listed companies, for the presentation of the balance sheet, member states shall prescribe one or both layouts set out in Annexes III and IV of ACRD, according to its Article 10. When considering everything stated above about the concept of e-money, the most reasonable outcome is to interpret EUROe as a part of "IV Cash at bank and in hand" under "C. Fixed assets" of "Assets" in the Annex III of ACDR or "IV Cash at bank and in hand" under "D. Current assets" in the Annex IV of ACDR.

3. Taxation

Generally, for income tax purposes, the exchange of money for goods or services does not result in a separate gain or loss calculation, provided that the money is used solely as a means of payment. In this instance, the money provided and accepted in exchange for goods or services is simply a measure of their value. Thus, in most cases, it should not prompt any income or capital gains taxes.

In cases where a taxpayer conducts transactions in a currency that differs from the primary economic environment in which their business operates, i.e., their functional or measurement currency, concerns arise regarding the suitable income tax treatment for any gains or losses resulting from fluctuations in foreign exchange rates. Specifically, the characterisation of the gain or loss and the timing of its recognition for tax purposes are matters of consideration.

At least for now, the EU does not have the authority to decide on the taxation of its member states. Therefore, each member state decides for itself how and how much it taxes people living in that member state, or an entity based in that member state.

That said, there is currently a process going on, which goal is to update the DAC to ensure that EU rules stay in line with the evolving economy and include other areas such as crypto-assets and e-money. That process has led to a point where there is already a proposal published and waiting on feedback.[1]

[1] EU Commission: Tax fraud & evasion.

According to the Recital 27 of COM(2022) 707:

> "E-money products, as defined by Directive 2009/110/EU of the European Parliament and of the Council are frequently used in the Union and the volume of transactions, and their combined value increases steadily. E-money products are however not explicitly covered by Directive 2011/16/EU. **member states adopt diverse approaches to e-money. As a result, related products are not always covered by the existing categories of income and capital of Directive 2011/16/EU**."

Therefore, it can be said that currently there are not any general rules on how EUROe should be taxed in the EU countries. Since EUROe is e-money, **it should be taxed as e-money and therefore the same way as banknotes and cash, not crypto-asset**. **It must be also noted that e-money is always issued at par value of one euro and therefore, there should not be a significant variety in its price**.[2] Notwithstanding what has been previously stated, using analogous lines brought up in the guidelines[3] by The Finnish Tax Administration, all such virtual currencies that meet the definition of § 1 of the Act on Virtual Currency Providers, are regarded as virtual currencies, regardless of whether the value of such virtual currency is tied to an official currency.

Thus, it is possible, within certain frameworks, that the Finnish Tax Administration could deem that EUROe should also be taxed as a virtual currency, even though EUROe is not a virtual currency. However, the assessment should therefore be carried out separately for each EU country.

It can also be mentioned, that in the COM(2022) 707, the main and relevant changes will be about reporting obligations set from financial institutions to member states authorities, which will report to other member state authorities. In that context, the Annex I of COM(2022) 707 proposes that in the DAC there should be difference on: the term *Electronic Money*; *Electronic Money Token*; *Fiat Currency*; *Central Bank Digital Currency*; *Crypto-Asset* and *Reportable Crypto-Asset*, **but, when reporting on *Depository Account*** it should mean an account or notional account that **represents all e-money or e-money tokens held for the benefit of a customer**.[4] Thus, the EU's Commission still sees many similarities with e-money and e-money tokens even after the MiCA enters into force.

[2] When comparing EUROe to the other stablecoins, which are not regulated by EMD2, there are no requirements set to guarantee that the stablecoin is, in fact, backed by anything.
[3] Taxation of virtual currencies, Section 1.1
[4] The Annex I of COM(2022) 707, p. 3-4.