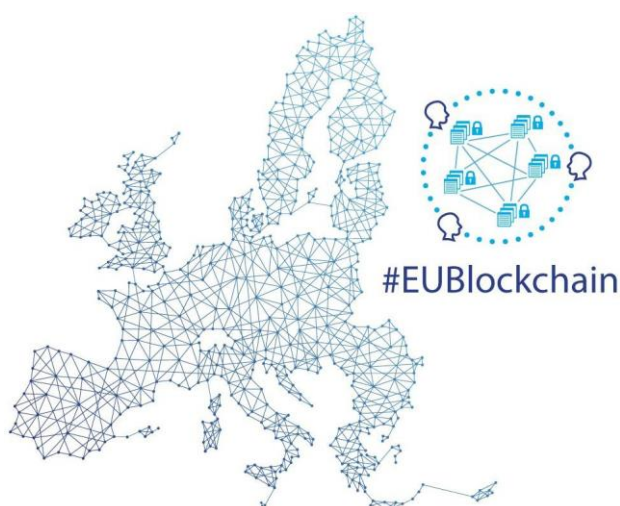


EU BLOCKCHAIN OBSERVATORY & FORUM

Workshop Report –
Regulation no Markets in
Crypto-assets –
Online Video Conference, 19 January 2021



By the European Commission, Directorate-General of Communications Networks, Content & Technology.

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Table of Contents

Workshop Report – Regulation no Markets in Crypto-assets –.....1
Table of Contents2
WELCOME3
INDEPENDENT ACADEMIC OVERVIEW3
INATBA POSITION PAPER ON THE REGULATION ON MICA4
PANEL DISCUSSION: IMPLICATIONS OF THE REVISED MICA REGULATION FOR THE INDUSTRY4
PANEL DISCUSSION 2: INTERNATIONAL EXPERIENCE & VIEWS7
Appendix9
Workshop slides9
Workshop videos9
Official agenda10
Speakers Biographies11

WELCOME

Ioannis Vlachos, EU Blockchain Observatory and Forum, commenced the workshop with a brief explanation on the housekeeping rules that had to be followed during the workshop.

Peteris Zilgalvis, Head of Unit, Digital Innovation and Blockchain, DG CONNECT; Co-Chair, FinTech Task Force, EC followed, welcoming everyone to the workshop for discussing the MiCA regulation and the pilot regime.

INDEPENDENT ACADEMIC OVERVIEW

After the brief introduction to the workshop, the floor was given to Dr. **Philipp Sandner**, Frankfurt School Blockchain Center and Assistant Prof. Dr. **Agata Ferreira**, Warsaw University of Technology, to present an independent academic overview.

The Digital Finance Package was presented and explained as a comprehensive set of measures for the digital era, consisting of two strategies: 1) the Digital Finance Strategy and Retail Payments Strategy, and 2) sets of legislative proposals, Legislative proposals for crypto-assets and 2) the Legislative proposal for Digital Operational Resilience.

MiCA refers to cryptoassets that are unregulated, such as stablecoins. It is the first work taking place at EU level for the comprehension of such assets. It will cover cryptoassets along with the existing financial services' regulations. MiCA is a mandatory regime regulation that has no need of transposition and supersedes national regimes.

The definition of issuer is referred to a legal person that offers cryptoassets to the public or seeks the admission of assets in trading platforms. Different requirements are in place relevant to the type of crypto-assets. A distinction is made between the token issuers and e-money issuers with a common point being that the issuer is a legal entity.

The presentation included the whitepaper requirements and cryptoassets services. It should be noted that the cryptoassets services are similar to financial services in regulation. MiCA comes with the introduction of the "passport rights" to operate in EU member states.

The Pilot regime was introduced to the attendees of the workshop. This regime aims to allow the development of the secondary market for cryptoassets and complements MiCA. Its characteristics are following the sandbox logic. In contrast to MiCA, Pilot is an optional regime that distinguishes between two DLT market infrastructures.

The resulted taxonomy of MiCA and Pilot was included in the presentation. MiCA establishes a new asset class that is broad and includes a range of assets. Bonds and shares are referred as digital securities, while Bitcoin and Ethereum are cryptoassets. Furthermore, MiCA includes blockchain-based e-money and Asset-Reference Tokens (ART) such as tokens backed by commodities like gold and oil. Other tokens that MiCA refers to, are significant e-money token (SEMT), significant asset-referenced token (SART), and utility tokens.

The slide presentation was concluded with four potential implementations that a digital euro could follow. In brief, the four implementations are: the euro on bank accounts, a euro stablecoin, a synthetic CBDC and a CBDC.

The presentation was wrapped up with the speakers answering questions from the audience. The first question concerned the fact that MiCA will supersede national regulations. In the answer, it is clear that EU stepped up with the regulation to avoid a high divergence stemmed from national regimes and provided a harmonization tool for Europe. The second question focused on the work that is happening in the rest of the world and how Europe might compare to them. The answer to the second question was that China has deployed a solution that will provide input for them. This fact gives a head start to Chinese authorities, as the ECB is in an initial phase. But the head start does not necessarily translate into Europe being far behind. There are cases in Europe where the private sector has led the way to innovations. Furthermore, the CBDC discussion is in infancy stage with not a concrete architecture approach and does not permit for deciding if the approach should abide by MiCA regulation.

INATBA POSITION PAPER ON THE REGULATION ON MiCA

Following the independent academic overview, Mr **Marc Taverner**, Executive Director of INATBA, introduced INATBA's policy considerations on the MiCA regulation with the attendees. In a brief introduction, the attendees got familiar with INATBA's role and objectives. MiCA regulation is welcomed as a means to establish legal certainty, support innovation, and increase consumer protection.

INATBA's position paper on MiCA discusses five different policy issues that are present within the regulation. The policy issues are in brief, the broad definitions in crypto-assets, the potential hindrances in projects due to requirements, the probable creation of an uneven playing field, the e-money and ART issuers' penalisation, and the absence of the technology neutrality towards blockchain compared to other technologies. The presentation concluded with potential ways to ameliorate the aforementioned issues.

PANEL DISCUSSION: IMPLICATIONS OF THE REVISED MiCA REGULATION FOR THE INDUSTRY

Moderated by Dr. Nina Siedler, DWF

- **Jan Ceysens**, Head of Digital finance Unit, DG FISMA
- **Jeffrey Bandman**, Founder, Bandman Advisors
- **Jennifer D'hoir**, Senior Advisor, GIDE LOYRETTE NOUEL A.A.R.P.I.
- **Marc Taverner**, Executive Director, INATBA
- **Robert Kopitsch**, BC4EU

Objectives of the session:

- To present the regulation's implementation via a constructive dialogue between the panellists.
- To give the floor to market practitioners to give the market pulse on the regulation.
- To communicate in a clear way to the audience the philosophy behind the regulation.

Main outtakes from the session:

- Initially, the moderator, Dr Nina Siedler, referred to the regulation's scope and set the floor for Mr **Robert Kopitsch** with the question on potential issues in the adaptation. In his answer, it was pointed out that the need is to focus the discussion on the end goal of the regulation. A review on the industry calls is valuable to that end, as it will further benefit Europe and its players. The regulation is the first positive step to drive Europe forward. For this reason, it needs to be polished and achieves excellence. The American and Chinese cases were referenced, as these cases differ in their focus. Their focus is respectively in the private and public sector. Mr Robert Kopitsch concluded with emphasizing on the need to get MiCA's basics and especially the taxonomy right. The reason is that the clearer the regulation is, the swifter the adoption by the industry would be.
- Onward, Mr **Jeffrey Bandman** presented his thoughts on the MiCA regulation. Despite any shortcoming that the regulation may carry, there are benefits in adopting a comprehensive approach. The regulation is to provide certainty to the industry and a consistent way across the Union. Furthermore, Mr Bandman mentioned a potential issue in MiCA, which is the access of entities with banks and credit institutions. Articles 9, 63, and 67 may expose central banks to liabilities. The case of France was mentioned as a solution to the aforementioned potential issue.
- Ms **Jennifer D'hoir** is the next panellist to participate in the discussion. Initially, MiCA brings a harmonization regime that could diminish the cost for industry players to operate in Europe without the need for abiding by the different national regime. Players and operators are mainly calling for the regulation to provide certainty. It is "fuzzy" if legal certainty will be ensured, as MiCA might be over-engineered to the point of becoming a complex regime. Two examples are referenced to support that hurdles will exist in the legislation adoption. The first example concerns the articulation of the different statuses in reality. The second example is on the Pilot regime and the devise of regulation using existing tools that will be applied to a brand-new technology. Finally, there is the need to reassure national players, that are in an ongoing process of acquiring authorization based on national regimes, that their efforts are not in vain.
- Mr **Jan Ceysens'** initial comment on MiCA is that hurdles have been overcome to provide a seamless approach across national regimes. The reliance upon existing tools is partially unavoidable to accelerate the regulation's formulation and ensure the existence of an even playing field among the DLT projects. Moreover, DLT has no need to be moved out of the existing rules' scope, but there might raise future issues. In relation to MiCA 's scope, a broad scope that is accompanied with defined proportional requirements is beneficial. The broad scope can diminish the member states' need to regulate assets that are left out of MiCA. Furthermore, an operation passport is included in regulation as long there is compliance with the requirements. The entity requirement stems from the responsibility that the regulation compliance carries. MiCA indeed regulates financial instruments and their issuers. About MiCA's overcomplexity, it is understandable due to the wide range of requirements, but the diverse activity in the DLT space makes the simplification hard. Finally, it is referenced that financial institutions are in accordance with cumbersome. MiCA does not except credit institutions from all the requirements rather than avoiding an additional authorization procedure.
- The discussion continues with the question from the panel's moderator, Dr **Nina Siedler**, on the existence of issuers in some cases like Bitcoin. It is stated that supervisor have to judge each instrument individually based on MiCA. The distinction on the issuance and service providers is vital.

- Mr **Jeffrey Bandman** made the point that MiCA and the regulations in general should consider about the issuance of stablecoins by credit institutions. That part is left out of the regulation and creates dangers to consumers and institutions. Stablecoins are novel and credit institutions have no proven experience in managing stability mechanisms and cybersecurity applications in the subject.
- Mr **Marc Taverner points** out to the fact that MiCA should care for innovators in field as a competitive advantage for Europe can stem from innovation. There is hope that MiCA will provide legal certainty and ensure the credibility of DLT companies. Consequently, banking institutions are to be encouraged to support the DLT sector.

PANEL DISCUSSION 2: INTERNATIONAL EXPERIENCE & VIEWS

Moderated by: Pēteris Zilgalvis, Head of Unit, EU Commission, DG CNECT

- **Valerie Szczepanik**, US Securities and Exchange Commission (SEC)
- **Dr. Robert Wardrop**, University of Cambridge, Centre for Alternative Finance
- **Thomas Dünser**, Director, Government of Liechtenstein
- **Peter Kerstens**, Advisor, EU Commission, DG FISMA

Objectives of the session:

- Raise awareness and inform about the international scene around crypto assets and decentralised organisations.
- Discuss current and future challenges in regulatory frameworks.

Main outtakes from the session:

- The panel moderator, Mr **Pēteris Zilgalvis**, introduced the panel's participants along with a brief introduction to the discussion.
- After the introduction, Ms **Valerie Szczepanik** provides the audience with the American regulatory framework on the cryptoassets. An initial point is made on that the regulations on securities are applicable to everything that is deemed as a security. The Federal security laws in place have a broad principle to define a thing as security. This broad principle could be translated in a simple statement as the contribution of an individual of a thing that holds value with the expectation that the other party is going to receive the valuable thing and invest or put work in increasing the value. In general, securities are either part of two division, Registered Offering and Exempting offering, or they cannot exist. Numerous cases have been reviewed in recent time. One such case was an asset that was fully registered under 33 Act. All in all, each case should be individually reviewed separately to determine if it falls under the securities transaction. Bitcoin and Ethereum are not currently offers and sales of securities.
- **Dr. Robert Wardrop** was the next panellist who discussed the interesting cases around the globe. The discussion on the taxonomy is interesting and vivid all around the world. The first speaker's first point focuses on the variations and inconsistencies in terminology and taxonomy across jurisdictions. Such phenomena could hinder the project's scalability and interoperability. Taxonomy can be considered as a foundational block that the technologies are built upon. For that reason, the industry calls for standardization. The second point is on the forces on decentralisation and centralisation. The third and final point focuses on the disproportionate impact that the crypto-assets can have on developing economies compared to bigger economies. There is an opportunity for a leading example in the crypto-assets regulation that could be adopted by the rest of the world.
- Next, the audience had the opportunity to pick into the case of the physical assets' tokenization in Luxembourg. Mr **Thomas Dünser** has stated that the discussion on the blockchain potentials has begun five years ago. Blockchain is not confined into the financial sector, but there are more uses for the technology. A regulation should create legal certainty by considering the blockchain companies and the users of these services. Luxembourg's case has not solely focused on virtual and cryptoassets, but the tokenization of physical items is taken into account. For instance, the

tokenization on the property rights is feasible, which expands the possibilities to unprecedented trends like car sharing model. The final remark was on the necessity of service providers in the decentralised space. In particular, service providers could bridge the gap for physical validation between real life and digitalized tokens.

- Mr **Peter Kerstens** took the floor to present the opportunities in global regulatory cooperation and the place of MiCA in the future. The speaker commented that Europe is often one of the first regions to regulate, driven from the desire of creating a single market across all member states. There are two trends in the international scene in crypto-assets. The first one is the adaptation of rules to ensure that value transfer in cryptoassets abides by the money laundering terrorist rules. The second international trend is on stablecoins issued by global technology companies. Despite the international developments, the subject of cryptoassets service providers, as referred to in MiCA, is neglected. The attention is on the issuers and the conditions that they should follow. As the market is recording a boom, market integrity and fairness for consumers and investors will raise the discussion around service providers.
- In the last round of the discussion, the moderator gave the opportunity for a concluding remark by each panellist. Ms **Valerie Szczepanik** focused on the SEC's recent actions on the cryptoassets. The initial step in cryptoassets is the definition and categorization of the assets. A key challenge for legislators is to clarify the custody of assets. Digital assets possession is based on private keys and the determination of the party that has exclusive access to the key is fuzzy. Next, Dr. **Robert Wardrop** pointed out that the subject of taxonomy is vital for the future. Continually, Mr **Thomas Dünser** commented on the taxonomy and the DeFi applications. Every taxonomy is raising new challenges and the case of custody is a hurdle. Fintech impacts the way that financial services are provided and the old way of thinking makes it difficult to distinguish between regulated and non-regulated sections. Finally, Mr **Peter Kerstens** pointed out to a single similarity between international regulations. Regulations, such as money laundering and investors protection, are mainly preoccupied with the intermediaries and set requirements on the intermediaries. This could be an issue due to the absence or confined role of intermediaries in a decentralised model. Regulators are challenged to find pioneering ways in this model.

Appendix

Workshop slides

- [The Markets in Crypto Assets \(MiCA\) and the DLT Pilot Regime](#), by Dr Agata Ferreira and Dr Philipp Sandner
- [INTABA 's policy considerations on MiCA](#), by Mr Marc Taverner

Workshop videos

- Videos from this and all other workshops can be found on the [EU Blockchain Observatory and Forum website](#) under the section [Reports](#)
- Videos specific to this workshop: [MiCA Regulation and Implications workshop recording](#)

Official agenda

Time	Activity
14:00	<p>Welcome Peteris Zilgalvis, Head of Unit, Digital Innovation and Blockchain, DG CONNECT, Co-Chair, FinTech Task Force, EC</p>
14:05	<p>Independent academic overview (Presentation on the main points of MiCA and PILOT),</p> <ul style="list-style-type: none"> • Dr. Philipp Sandner, Frankfurt School Blockchain Center & Assistant • Prof. Dr. Agata Ferreira, Warsaw University of Technology
14:20	<p>Questions and Answers</p>
14:30	<p>“INATBA position paper on the regulation on MiCA”, Marc Taverner, Executive Director, INATBA</p>
14:45	<p>Panel Discussion: “Implications of the revised MiCA regulation for the industry”,</p> <ul style="list-style-type: none"> • Jan Ceyskens, Head of Digital finance Unit, DG FISMA, • Jennifer D'hoir, Senior Advisor, GIDE LOYRETTE NOUEL A.A.R.P.I., • Marc Taverner, Executive Director, INATBA, • Jeffrey Bandman, Founder, Bandman Advisors, • Robert Kopitsch, BC4EU <p>Moderated by: Dr. Nina Siedler, DWF</p>
15:30	<p>Panel Discussion: “International Experience & Views”,</p> <ul style="list-style-type: none"> • Valerie Szczepanik, US Securities and Exchange Commission (SEC), • Dr. Robert Wardrop, University of Cambridge, Centre for Alternative Finance, • Thomas Dünser, Director, Government of Liechtenstein, • Peter Kerstens, Advisor, EU Commission, DG FISMA <p>Moderated by: Pēteris Zilgalvis, Head of Unit, EU Commission, DG CNECT</p>
16:15	<p>End of day</p>

Speakers Biographies



Prof. Dr. Philipp Sandner has founded the Frankfurt School Blockchain Center (FSBC). From 2018 to 2020, he was ranked as one of the “top 30” economists by the Frankfurter Allgemeine Zeitung (FAZ), a major newspaper in Germany. Since 2017, he has been a member of the FinTech Council of the Federal Ministry of Finance in Germany. He is also on the Board of Directors of Avaloq Ventures and of the Blockchain Founders Group, a Liechtenstein-based venture capital fund focusing on blockchain startups.

The expertise of Prof. Sandner includes blockchain technology in general, crypto assets such as Bitcoin and Ethereum, the digital programmable Euro, tokenization of assets and rights and digital identity.



Agata Ferreira is an assistant professor at Warsaw University of Technology and a UK qualified solicitor. She practiced law for a number of years in the financial sector in the City of London. She focuses on legal and regulatory issues of emerging technologies and innovation including blockchain and fintech. She is a current member of the Advisory Council of Blockchain for Europe, member of the Advisory Board of Consensus Health and a member of the Expert Panel of EU Blockchain Observatory & Forum.



Marc Taverner is the Executive Director of INATBA.

Since 2020, Marc works to ensure that INATBA becomes the go-to international organization for convening public and private industry partners, with the credible support of powerful allies, like the European Commission and key advisory bodies.



Jan Ceyskens is Head of the “Digital Finance” Unit in the Directorate General for Financial Stability, Financial Services and Capital Markets Union at the European Commission. He was previously Member and Deputy Head of the Cabinet of Vice President Dombrovskis and Member of the Cabinet of Vice-President Barnier, and Team Leader for Financial Supervision at the European Commission's Internal Markets and Services Directorate General.



Jennifer D'Hoir, Senior Advisor, Gide Law Firm

Within Gide Law Firm, she is one of the founding members of the team dedicated to Innovation and Fintech called Gide 255, from Digits to Opportunities. Gide 255 was launched in September 2018 as a dedicated offer to accompany innovative players in their decision-making, implementation and legal structuring as regards their digital strategy. A vast majority of projects that have been structured or advised by Gide 255 are based on DLT protocols. Prior joining Gide, Jennifer was the Head of the International Affairs Unit within the French securities' markets regulator (Autorité des marchés financiers, AMF). Her assignments included coordinating the AMF's actions within international financial regulation bodies (in particular the Financial Stability Board (FSB) and the International Organization of Securities Commissions (IOSCO)) and led cooperation actions with foreign regulation authorities. Prior to joining the AMF, Jennifer was Chief of Staff and EU Regulatory Affairs manager for Mazars. She began her career in 2009 as a parliamentary attaché at the French Senate.

Jennifer is a graduate of Sciences Po Paris (2008). She lectures within the Sciences Po Paris Law School and Paris I-La Sorbonne.



Robert W. Kopitsch is the initiator and co-founder of Blockchain for Europe and acts since its foundation in 2018 as its Secretary General. Under his tenure, Blockchain for Europe contributed to the pan-European dialogue concerning regulatory, policy as well as business needs of the Blockchain industry at EU level and across its member states. In parallel, Robert serves in Brussels as APCO's European Financial Services, FinTech and Blockchain lead. Prior to joining APCO, Robert worked for the Austrian Ministry of Finance and the Wirtschaftsrat Deutschland in Vienna, before joining the office of MEP Othmar Karas in the European Parliament. Later, Robert transitioned to the EU liaison office of Raiffeisen Bank International in Brussels, where he dealt with issues around the implementation and outcomes of financial regulation and EU foreign policy.



Jeff Bandman leads Bandman Advisors, an advisory practice helping clients ranging from governments to global firms to start-ups meet strategic innovation and regulatory challenges. He regularly advises clients on matters relating to FinTech, RegTech, derivatives, cryptoassets, blockchain, financial markets and the US and international regulatory framework. He also conducts training seminars for regulators on digital assets and international standards.

He has been appointed by the government of the Republic of Cyprus to advise it on new DLT legislation. He has also been appointed to perform a national risk assessment for Cyprus under new international FATF requirements and methodologies with respect to money laundering risks for virtual assets and virtual asset service providers. He was recently appointed to a two-year term as an Expert for the EU Blockchain Observatory established by the European Parliament and European Commission. Other recent client engagements include assisting a cryptoassets trading platform in successfully obtaining a license under a new regulatory regime in Asia, and assisting a P2P Fintech platform in successfully applying to a regulatory sandbox in MENA. He leads Regulatory Strategy for Kalshi, an innovative new U.S. exchange recently licensed by the CFTC and dedicated to event contracts.



Valerie A. Szczepanik is the Director of the Strategic Hub for Innovation and Financial Technology (FinHub) Office at the U.S. Securities and Exchange Commission (SEC). Before that, she was the Senior Advisor for Digital Assets and Innovation and an Associate Director in the SEC's Division of Corporation Finance. She also served as Assistant Director in the SEC Division of Enforcement's Cyber Unit. Ms. Szczepanik served as a Special Assistant United States Attorney at the United States Attorney's Office for the Eastern District of New York. She clerked for federal judges on the United States District Court for the District of Columbia and the United States Court of Appeals for the Federal Circuit and, prior to clerking, practiced patent law. Ms. Szczepanik received her Juris Doctor degree from Georgetown University and her Bachelor of Science degree in Engineering from the University of Pennsylvania.



Dr Robert (Bob) Wardrop, Director, Cambridge Centre for Alternative Finance

Bob is an economic sociologist with an interest in understanding how and why digital channels and instruments of finance emerge outside the traditional financial system and how these developments impact the delivery and regulation of financial services. He is a Professor in Management Practice on the faculty of the Cambridge Judge Business School (CJBS) and teaches in the MBA and Master of Finance programmes. He is also the founding Director of the Cambridge Centre for Alternative Finance (CCAF), a world-leading research centre studying the global development of digital financial services. He is the Academic Programme Director of the CCAF's Cambridge FinTech and Regulatory Innovation online programme, which has enrolled financial services regulators and policy makers from more than 100 countries. In addition to his roles in the business school, he is a member of the Executive Committee for the Cambridge Centre for Data Driven Discovery which brings together researchers and expertise from academic departments and industry to drive research into the analysis, understanding and use of data science.

Prior to embarking on an academic, Bob had an international career as a professional investor, most recently as a Managing Director in the investment group of one of the largest privately-owned companies in the United States. He has held several board directorships and advisory roles with academic, governmental and commercial organisations over the course of both his academic and non-academic career. Bob holds an MBA from the Booth School of Business at the University of Chicago, an MSc in social anthropology from the London School of Economics and a PhD in sociology



Dr. Thomas Dünser became Director of the Office for Financial Centre Innovation in April 2019. This government agency provides support for financial companies requiring advice and assistance on the issues arising from innovation and also monitors the implementation of the government's innovation policies to shape the legislative structures to support innovative businesses. Thomas Dünser had previously worked in the field of innovation and digitalisation at the Ministry for General Government Affairs and Finance, where he was responsible for the development of the Blockchain Act in Liechtenstein, among other things. Prior to his position at the Ministry for General Government Affairs and Finance he ran his own business and was Director of Group Asset & Liability Management at VP Bank in Vaduz. He holds a degree in Mechanical Engineering from the ETH (Federal Institute of Technology) and went on to earn his doctorate at ETH Zurich.



Peter Kerstens, *Adviser, DG FISMA, European Commission and Co-Chair of the FinTech Task Force, European Commission*

Peter co-chairs the Taskforce on financial technology and is the Advisor for financial sector cybersecurity at the European Commission's DG for Financial Stability, Financial Services and Capital Markets Union.

He joined the European Commission in 1996. He has extensive experience in EU policy and legislation in a range of areas through his work on the ESPRIT research programme, in health and consumer protection, e-commerce, single market and financial services policy and regulation. Peter has also been a Member of the Private Offices of Internal Market and Services Commissioner Charlie McCreevy and Health and Consumer Protection Commissioner David Byrne. From 2008 until 2013 he was the Finance Counsellor at the EU Delegation to the USA in Washington DC.

Prior to joining the European Commission, Peter worked as a public affairs consultant in Brussels advising major financial services companies on EU affairs.