

## Press Release

#17/2020  
(dated 8/07/2020)

EBI is pleased to announce yet a further contribution by **Evariest Callens** (*Ghent University and Member of EBI's Young Researchers Group*) in the EBI Working Paper Series No. 66. His paper entitled "**Financial Instruments Entail Liabilities: Ether, Bitcoin, and Litecoin Do Not**" was published on 23th June 2020.

Mr. *Callens* pinpoints that the financial assets that are subject to major European financial legislation (i.e. (designated types of) financial instruments) have traditionally been defined in a largely exemplary and circular manner. The recent proliferation of 'non-traditional' financial assets, such as cryptocurrencies and stablecoins, is increasingly challenging the viability of these pragmatic financial asset definitions. Through the analysis of the technologies and functionalities underpinning non-traditional financial assets, legal scholarship has aimed to categorize novel assets within the existing framework of financial asset definitions. Although a solid understanding of e.g. distributed ledger applications and cryptography appears a prerequisite for future policy and legislative interventions, contemporary European financial legislation is mostly indifferent to the technologies on which financial assets may be wired. Categorizations based on the purposes that non-traditional assets may serve (i.e. payment, utility, and investment) are more relevant to financial law, but suffer from subjectivity because they depend on the asset usage by the asset holder.

Against this backdrop, Mr. *Callens* proposes a novel systematization of non-traditional assets that is based upon the conceptual substructure of the assets within scope of European financial legislation. More specifically, in his paper he submits that, irrespective of underlying technologies and functionalities, all assets that are subject to major European financial legislation have a conceptual common denominator: they entail the liability of an entity and, hence, have intrinsic value. The proposed categorization singles out a well-defined group of novel financial assets that is not subject to European financial law (i.e. assets that only have extrinsic value). Different from functionality- and technology-based categorizations, the suggested approach allows to eradicate ambiguities and potential overinclusiveness of functionality-based categorizations of non-traditional assets. By exploring the conceptual common denominator of the financial assets that are subject to European financial legislation, his paper aims to foster debate on the circular and exemplary character of financial asset definitions in European financial legislation in general and the relation of these definitions to novel types of financial assets in particular.

To read the entire paper: <https://ssrn.com/abstract=3630895> or <http://dx.doi.org/10.2139/ssrn.3630895>

For further information also visit: <https://ebi-europa.eu/>

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**Media Contact:**

EBI Office: Claudia Collins: [claudia.collins@ebi-europa.eu](mailto:claudia.collins@ebi-europa.eu) and  
Lukas Boeffel: [lukas.boeffel@ebi.europa.eu](mailto:lukas.boeffel@ebi.europa.eu)

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**EBI European Banking Institute e.V.**

TechQuartier (POLLUX)  
Platz der Einheit 2  
60327 Frankfurt am Main  
Germany

Tel.: +49 69 7500 3904  
E-Mail: [news@ebi-europa.eu](mailto:news@ebi-europa.eu)  
Website: [www.ebi-europa.eu](http://www.ebi-europa.eu)

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