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INSIGHT

Digital Assets and Illicit Finance: E.O. 14067 and Recent Anti-Money-Laundering Developments

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As part of an effort to shape a whole-of-government approach to address the evolving digital assets policy landscape, President Biden issued Executive Order (E.O.) 14067, *Ensuring Responsible Development of Digital Assets*, on March 9, 2022. Part of this approach is combating illicit finance enabled by digital assets, including through anti-money-laundering (AML) and combating the financing of terrorism (CFT).

Congress could play a key role in the future establishment, funding, and oversight of what may follow from the Administration's emerging framework for digital asset governance and has demonstrated an interest in digital assets broadly and their use in illicit finance specifically. (For example, the Senate Committee on Banking, Housing, and Urban Affairs held a hearing in March on "Understanding the Role of Digital Assets in Illicit Finance.")

Illicit Finance and E.O. 14067

The Biden Administration's view, as laid out in E.O. 14067, is that global advances in the development and adoption of digital assets and related technologies are outpacing the international community's ability to mitigate the potential risks they may pose. To address this concern, President Biden's executive order establishes a set of "principal policy objectives" for digital assets and directs various federal agencies to implement the President's agenda—chiefly through conducting research on various policy issues related to the proliferation of digital assets.

One principal policy objective in E.O. 14067 is to "mitigate the illicit finance and national security risks posed by the misuse of digital assets." With respect to this objective, the executive order notes various risks that digital assets pose for facilitating money laundering, cybercrime, ransomware activity, fraud, narcotics, human trafficking, corruption, terrorism, nuclear proliferation financing, and sanctions evasion. The order further warns that, to the detriment of U.S. interests, illicit actors engage in "jurisdictional arbitrage" and use foreign-based service providers where international AML/CFT standards for the regulation and supervision of digital assets do not apply. Additionally, E.O. 14067 cautions that future

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growth in decentralized finance ecosystems, peer-to-peer payment activity, and obscured blockchain ledgers could pose further market and national security risks.

E.O. 14067 Reports

Pursuant to E.O. 14067, the heads of various federal departments, offices, and agencies were required to prepare more than a dozen reports, assessments, action plans, policy frameworks, legislative proposals, and technical evaluations related to digital assets—the majority of which are now complete. The Biden Administration asserts that the reports provide a "first-ever comprehensive framework for responsible development of digital assets." Some observers, reacting to the reports, characterized the Administration's digital assets framework as laying out a vision for incremental policy change, international cooperation, and invigorated enforcement action rather than wholesale AML/CFT regulatory or legislative reform.

Among those reports that address illicit finance concerns, domestically and internationally, are the following:

- The U.S. Department of the Treasury's "Action Plan to Address Illicit Financing Risks of Digital Assets" (September 2022), which built upon the Biden Administration's May 2022 *National Strategy for Combating Terrorist and Other Illicit Financing*.
- Treasury's "Framework for International Engagement on Digital Assets" (July 2022).
- Treasury's report on "The Future of Money and Payments" (September 2022).
- The U.S. Department of Justice's (DOJ's) report on "The Role of Law Enforcement in Detecting, Investigating, and Prosecuting Criminal Activity Related to Digital Assets" (September 2022).
- DOJ's report on "How to Strengthen International Law Enforcement Cooperation for Detecting, Investigating, and Prosecuting Criminal Activity Related to Digital Assets" (June 2022).

Policy Context and Next Steps

U.S. efforts to address illicit finance risks posed by digital assets began prior to the issuance of E.O. 14067. Since 2013, U.S. regulators have issued guidance on the application of AML/CFT requirements to digital asset service providers (see also the 2019 joint statement and advisory on illicit activity involving convertible virtual currency). In 2018, Treasury's Office of Foreign Assets Control (OFAC) clarified that sanctions compliance obligations apply to virtual asset transactions. OFAC has sanctioned Russian cryptocurrency exchanges, the world's largest darknet market, North Korea–linked mixers, and more than 150 cryptocurrency wallet addresses. High-profile enforcement actions have also netted billions in virtual asset seizures—a trend anticipated to continue with DOJ's National Cryptocurrency Enforcement Team and Digital Asset Coordinator Network, among other enforcement initiatives.

While the E.O. seeks to further such efforts, implementation could take time or face congressional consideration. For example, Treasury's illicit finance Action Plan, noted above, highlights several funding objectives for FY2023. They include resources for digital-asset-related foreign technical assistance and other Treasury tools, such as OFAC sanctions and AML/CFT "special measures" to target problematic digital asset service providers.

Meanwhile, the Biden Administration released a fact sheet in mid-September identifying several next steps for addressing illicit finance concerns related to digital assets. These steps include:

1. Evaluating potential legislative proposals to amend the Bank Secrecy Act, anti-tip-off laws, statutory penalties for unlicensed money transmitters, and applicability of laws against unlicensed money transmitting to digital asset service providers, as well as to

2. authorize DOJ to prosecute digital asset crimes in any jurisdiction where a victim of those crimes is located.
3. Identifying gaps in the U.S. AML/CFT regime for digital assets through the completion of two illicit finance risk assessments, one on decentralized finance (by the end of February 2023) and a second on non-fungible tokens (by July 2023). This may also include making decisions to finalize pending virtual-asset-related proposed rulemakings.
4. Enhancing dialogue with the private sector on the illicit financing risk associated with digital assets and encouraging the use of emerging technologies to comply with AML/CFT obligations. (Treasury already published in September 2022 a request for comment "to seek feedback from the American people on the illicit finance and national security risks posed by digital assets.")
5. Continuing to "expose and disrupt" illicit actors who misuse digital assets and "hold cybercriminals and other malign actors responsible for their illicit activity" through law enforcement action and analysis of "nodes" in the digital assets ecosystem that pose national security risks.

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