The EU-Japan EPA outlines bilateral and multilateral regulatory cooperation with the objective of reinforcing global financial stability, efficient markets, and protection of investors, depositors, and fiduciaries. The EPA’s cooperation covers all areas of financial services. This affects EU companies throughout the financial sector and financial services industry.

**YEN’S SHARE OF BITCOIN TRADING (Bloomberg)**

Presently, Japan is a major market for cryptocurrency trades. JPY was the largest medium for bitcoin purchases in 2017.

1. BLOCKCHAIN, CRYPTOCURRENCY & TOKENS

1.1 CURRENCIES AND TOKENS

Tokens offer a functionality other than and beyond that of a general-purpose medium of exchange. Cryptocurrencies and tokens are issued in the framework of Initial Coin Offering (ICO) and Initial Token Offering (ITO) respectively. While ICOs, issue new currencies into the market, ITOs serve to raise funds for a given project or enterprise.

1.1.1 Asset, Security and Investment Tokens

Represent either a debt or equity claim on the issuer. They promise a share in future earnings or capital flow, making them analogous to equities, bond, or derivatives. Tokens which enable physical assets to be traded via blockchain also fall into this category.

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1.1.2 Cryptocurrency and Payment Tokens
Intended for use as means of payment, these do not give rise to claims on the issuer. As such, these do not give rise to claims on the issuer, and are functionally more similar to currency than to securities.

1.1.3 Utility Tokens
Intended to provide digital access to applications and specific services by means of blockchain-based in e-infrastructure. Since they are intended for use only on their home-platform, they are not a general medium of exchange.

1.2 PLAYERS IN THE CRYPTO-LANDSCAPE

1.2.1 Users
On the cryptocurrency market, a user is a party who uses cryptocurrency and tokens as a means of investment or transaction. The uses range from direct P2P payments to lending and borrowing, asset and commodity trading, to speculation.

1.2.2 Miners
Blockchain miners participate in the process of transactions, validating them by lending computing power to solve cryptographic puzzles, in exchange for remuneration in cryptocurrency. Miners provide the blockchain with its actual functionality. While some miners are users, many typically sell their cryptocurrency for locally or internationally tradable currency as a source of revenue.

1.2.3 Wallet Providers
Digital wallet services providers are parties whose services act as custodian services for the cryptocurrency market used for hold, storing, and transferring blockchain assets. Wallet providers hold a user’s cryptographic keys and translate a user's transaction history into an easily-readable format which simulates a bank-account.

1.2.4 Exchanges
Exchanges are parties which offer purchase, sale, and exchange services, typically on a commission basis. These exchanges provide a platform for the various market players to buy and sell cryptocurrencies, tokens, currencies, services, and commodities.

In general, exchanges accept a wide-range of payment options, including PayPal, transfers in multiple currencies, as well as multiple cryptocurrencies. In addition, some exchanges provide statistics and analytics to their clientele. Many exchanges also provide digital wallet services.

1.2.5 Trading Platforms
Trading platforms (also called decentralised exchanges) are marketplaces that bring various market players together for P2P exchange of cryptocurrencies, tokens, currencies, services, and commodities among each other. In principle, these platforms do not buy or sell blockchain-based assets themselves, instead functioning as an OTC marketplace for the assets in question.

1.2.6 Coin Offerors
Coin offerors are parties who place cryptocurrencies and other blockchain-based assets into the market upon the coin or asset’s initial release. The coins offered by the offeror are pre-mined prior to the coin’s release into the market. Release can occur via crowd-sale or via more organised pre-registration.
2. REGULATORY LANDSCAPE

2.1 REGULATORY OUTLOOK IN EUROPE

EU regulation relevant to the cryptocurrency market is focused on transparency, taxation cooperation, and anti-money-laundering. Most notably, this includes:

- AMLD1-AMLD5: Anti-money-laundering directives
- DAC5: Directive on Administrative Cooperation in taxation
- FTR: Funds Transfer Regulation

2.2 REGULATORY OUTLOOK IN JAPAN

In Japan, cryptocurrencies, tokens and services are governed as Virtual Currencies (VCs) under auspices of:

- Payment Services Act: Establishes framework for electronic payment mediums.
- Virtual Currencies Act: Establishes framework for regulation and licensing for the cryptocurrency market.

Overall, an issuer selling to residents in Japan is required to have a VC-license or to partner with a licensed VC-service provider, who undertakes selling activity on behalf of issuer.

2.3 ICO IN JAPAN

In December 2017, Japan’s FSA expressed view that ICO tokens constitute Virtual Currencies. Since then, a government-backed study group led by Tama University, the Center for Rule-making Strategies, and a consortium of Japanese industrial firms published a 2018 policy recommendation outlining guidelines and guiding principles for ICO transparency, regulation and corporate governance.
3. EU-JAPAN EPA AND THE CRYPTOCURRENCY MARKET

3.1 COVERAGE OF THE CRYPTO AND BLOCKCHAIN MARKET:

- EPA 8.59 a (ii) (F) and (G) establish any involvement with securities trading and issuing & underwriting respectively as “banking and other financial services” for the purposes of the EU-Japan EPA.

- EPA 8.59 a (ii) (J) establishes settlement and clearing services for financial assets (including securities and derivatives) as “banking and other financial services” for the purposes of the EU-Japan EPA.

- EPA 8.59 (C) establishes recognition of “new financial services” for financial services existing in Europe, but not yet in Japan.

3.2 WHAT THIS COVERAGE PROVIDES:

- EPA 8.8 protects EU SMEs against discrimination by regulators while EPA 8.62 protects against discrimination concerning self-regulatory organisation membership, privileges or advantages.

- EPA 8.60 establishes the right of European financial service providers to offer new financial services in Japan (although this might still require licenses and regulatory authorisation).

- EPA 8.63 protects information transfers and processing of financial information needed the conduct of the ordinary business of a financial service supplier.

- EPA 8.73 protects the source-code of any e-commerce operation from disclosure or expropriation.

- EPA 9.2 protects the free movement of capital and of transactions (which can be temporarily interfered with during times of external financial difficulties). This can facilitate cross-border crypto and blockchain transactions.

3.3 CHALLENGES

While the EU-Japan EPA offers EU financial-sector businesses more opportunities to participate in Japan’s financial market landscape. EU SMEs should take into consideration that other factors, such as cultural, linguistic, and regulatory barriers will need to be addressed in order to take full advantage of the EU-Japan EPA.

While new financial services to the Japanese market cannot be impeded by regulators on novelty grounds, regulators can still require authorisation, refuse authorisation on prudential grounds, or determine the judicial form under which the financial service can be supplied. EU SMEs in the business of supplying new financial services should still expect regulatory oversight. In addition, the regulatory landscape in Japan’s cryptocurrency and blockchain industry is still emerging.

Likewise, Japanese SMEs can still be subject to regulatory authorisation, licensing requirements, macroprudential regulation, and competition policy regulations and thresholds.

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MORE INFORMATION

EU-Japan EPA’s main text and annexes can be found on European Commission’s DG Trade website:

EU-Japan EPA’s Chapter on financial services is also available on the European Commission’s DG Trade website:

Annex 8-A on financial services regulation is also available on the European Commission’s DG Trade website: