



**EUROPEAN COMMISSION**

DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL  
MARKETS UNION

Horizontal policies  
Digital finance

## **CONSULTATION DOCUMENT**

### **TARGETED CONSULTATION ON THE REVIEW OF REGULATION ON THE MARKETS IN CRYPTO-ASSETS (MICA)**

#### **Disclaimer**

This document is a working document of the Commission services for consultation and does not prejudice the final decision that the Commission may take.

The views reflected on this consultation paper provide an indication on the approach the Commission services may take but do not constitute a final policy position or a formal proposal by the European Commission.

The responses to this consultation paper will provide important guidance to the Commission when preparing, if considered appropriate, a formal Commission proposal.

You are invited to reply **by 31 August 2026** at the latest to the **online questionnaire** available on the following webpage:

[https://finance.ec.europa.eu/regulation-and-supervision/consultations-0/targeted-consultation-review-mica-regulation\\_en](https://finance.ec.europa.eu/regulation-and-supervision/consultations-0/targeted-consultation-review-mica-regulation_en)

Please note that in order to ensure a fair and transparent consultation process **only responses received through the online questionnaire will be taken into account and included in the report summarising the responses.**

This consultation follows the normal rules of the European Commission for public consultations. Responses will be published in accordance with the privacy options respondents will have opted for in the online questionnaire.

In this targeted consultation, the Commission is interested in the views of a wide range of stakeholders. Responses to this consultation are expected to be most useful where they present a clear and detailed narrative, demonstrated by data (where possible), concrete examples, legal references and qualitative evidence. Specific suggestions for solutions to address issues raised are welcome.

**To the extent that not all questions will be relevant to all stakeholders, respondents are invited to reply only to those questions that are relevant to them.**

Responses authorised for publication will be published on the following webpage: [https://finance.ec.europa.eu/regulation-and-supervision/consultations-0/targeted-consultation-eu-venture-and-growth-capital-funds-reform\\_en#contributions](https://finance.ec.europa.eu/regulation-and-supervision/consultations-0/targeted-consultation-eu-venture-and-growth-capital-funds-reform_en#contributions)

Any question on this consultation or issue encountered with the online questionnaire can be raised via email at [fisma-mica-review@ec.europa.eu](mailto:fisma-mica-review@ec.europa.eu).

## INTRODUCTION

[Regulation 2023/1114 of 31 May 2023 on markets in crypto-assets<sup>1</sup> \(MiCA\)](#), which sets a dedicated and harmonised framework at Union level to provide specific rules for crypto-assets and related services and activities started to apply in part from 30 June 2024 and in full from 30 December 2024.

Crypto-assets and distributed ledger technology (DLT) offer opportunities for faster cross-border payments, new fundraising methods, and innovative decentralised services, but also entail risks. MiCA was introduced to provide legal certainty through a harmonised EU framework, defining key crypto-asset categories and setting requirements for issuers and service providers, while fostering responsible innovation and mitigating risks related to investor protection, market integrity, and financial stability. As these markets are growing in importance, and traditional financial services providers are also moving into the crypto- and tokenised assets space, a question arises whether the regulatory framework currently governing them remains fit for purpose. The national competent authorities (NCAs), the [European Supervisory Authorities \(ESAs\)](#) and the industry have been sharing feedback on their first implementation experiences. While it may be difficult at this stage to draw conclusions on how MiCA is performing in practice, there have been many policy and regulatory developments globally since MiCA was adopted, and more importantly the crypto-asset markets themselves have significantly developed and continue to evolve since MiCA was designed and adopted. Given these developments, the Commission services consider it necessary to compare and contrast, via this public consultation, the EU framework for crypto assets with the more recent frameworks of other jurisdictions and with market developments. The results should help assess whether MiCA remains fit for purpose in this evolving policy and market context.

Notwithstanding the objective to promote innovation and digitalisation in European financial systems, financial regulation should remain technology neutral. This is crucial to guarantee the freedom of choice for market participants without inciting them towards using any specific technology and to ensure financial regulation remains adapted to technological advancements without major amendments.

Article 142 MiCA requests the Commission to present a report to the European Parliament and the Council on the latest developments with respect to crypto-assets, in particular, on matters that were left outside the scope of MiCA. The Commission services consider that the review of the Payment Services Directive has largely addressed and clarified some issues emerging from the interplay between the payment services legislation and MiCA following the [advice of the EBA<sup>2</sup>](#).

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<sup>1</sup> Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (Text with EEA relevance), PE/54/2022/REV/1, *OJ L 150*, 9.6.2023, pp. 40–205

<sup>2</sup> EBA No Action letter on interplay between Payment Services Directive (PSD2/3) and Market in Crypto-assets Regulation (MiCA): <https://www.eba.europa.eu/publications-and-media/press-releases/eba-publishes-no-action-letter-interplay-between-payment-services-directive-psd23-and-markets-crypto>

With this consultation, the Commission services therefore:

- seek to respond to the request in Article 142 of MiCA<sup>3</sup> and seek to collect the views of the stakeholders on all the market developments not originally covered by MiCA and whether policy or regulatory action would be warranted (see part 5)
- seek feedback to inform the review of MiCA referred to in Article 140 of MiCA<sup>4</sup>, consulting also the [European Banking Authority \(EBA\)](#) and the [European Securities and Markets Authority \(ESMA\)](#) to that effect
- seek to consult on matters that have emerged from the implementation of MiCA to date
- take stock of whether MiCA is fit for the future in the rapidly evolving landscape of digital and tokenised asset markets in a global and internationally competitive context, seizing both the opportunities tokenisation and DLT bring and addressing risks they may generate

In line with its simplification agenda to support EU competitiveness, the Commission services also wish to use this consultation to gather information and assess whether administrative or other burdens emanating from MiCA and its implementation measures can be simplified, reduced or dispensed with.

Beyond questions related to crypto-assets covered by MiCA, this consultation puts forward several questions affecting broader financial acquis. Interested parties that wish to bring other relevant issues, not raised in this consultation, to the Commission's attention, should feel free to communicate them through the open question at the end of this questionnaire. The Commission services welcome specificity and brevity in the replies. The different parts of the consultation cover the following areas:

- **PART 1 - Scope and definitions (title II crypto-assets):** this section includes questions on the current conditions for offering or seeking admission to trading of crypto-assets other than asset referenced tokens (ARTs) or e-money tokens (EMTs)
- **PART 2 - requirements applying to asset referenced tokens (ARTs) and e-money tokens (EMTs) and their issuers (titles III and IV):** this section includes questions on the current conditions for offering or seeking admission to trading of ARTs and EMTs, their prudential regime, the multi-issuance model of global tokens and considering also the interaction with third country regulatory frameworks, the reserve requirements of ARTs and EMTs, the redemption rights of their holders and crisis management measures

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<sup>3</sup> Regulation (EU) 2023/1114, Article 142(1): 'By 30 December 2024 and after consulting EBA and ESMA, the Commission shall present a report to the European Parliament and the Council on the latest developments with respect to crypto-assets, in particular on matters that are not addressed in this Regulation, accompanied, where appropriate, by a legislative proposal'.

<sup>4</sup> Regulation (EU) 2023/1114, Article 140(1): 'By 30 June 2027, having consulted EBA and ESMA, the Commission shall present a report to the European Parliament and the Council on the application of this Regulation accompanied, where appropriate, by a legislative proposal. An interim report shall be presented by 30 June 2025, accompanied, where appropriate, by a legislative proposal'.

- **PART 3 - the appropriateness of the current legal framework for crypto-asset service providers (CASPs) (titles V and VI):** this section covers questions on the adequacy of the current scope of crypto-asset services regulated under MiCA. Since the supervisory arrangements for CASPs are covered under the current [market integration and supervision package \(MISP\)](#), supervision of CASPs is outside the scope of this consultation
- **PART 4 - topics beyond the initial scope of MiCA:** this final part of the consultation consists of questions relating to decentralised finance, crypto-assets staking, lending and borrowing activities, and non-fungible tokens (NFTs). It also seeks views on whether MiCA should aim to increase legal certainty of crypto-assets and other on-chain assets, particularly in relation to natively issued assets

## CONSULTATION QUESTIONS

### PART 1: SCOPE AND DEFINITIONS, TITLE II CRYPTO-ASSETS

MiCA covers three types of crypto-assets: asset-referenced tokens (ARTs), electronic money tokens (EMTs) and crypto-assets other than ARTs or EMTs. The provisions related to the last category are set out in Title II of MiCA. This part of the consultation seeks feedback on the regulation of this category of crypto-assets.

Crypto-assets that fall under other sectoral legislation such as deposits, financial instruments including derivatives, or other regulated products, are outside the scope of MiCA. Therefore, some crypto-assets are regulated under MiCA, while tokenised financial instruments are not.

The distinction between crypto-assets regulated under MiCA and those governed by other sectoral legislation can sometimes be complex, particularly given that the definitions of certain assets, such as securities, are established in national law. Evolving market practices further highlight the convergence between the two areas, as traditional financial institutions increasingly offer MiCA-regulated crypto-assets and services, while MiCA-authorised entities expand into traditional financial products, subject to obtaining the necessary authorisations to do so.

#### 1.1. MiCA scope & crypto-asset classification

**Question 1.** Should crypto-assets that qualify as financial instruments as defined in [Directive 2014/65/EU](#) of the European Parliament and of the Council<sup>5</sup>, continue to be governed by sectoral legislation ([MiFID/MiFIR/MAR/Prospectus Regulation](#), etc.), or should all assets that are recorded and transacted on distributed ledgers and that meet the definition of a crypto-asset, or the services provided on such assets, in principle be covered by MiCA?

- Yes, they should remain under the main sectoral legislation
- No, all crypto-assets, or the services provided on such assets, should be covered by MiCA

If the answer is “Yes”, is the distinction between financial instruments governed by MiFID and crypto-assets governed by MiCA sufficiently clear, also taking into account ESMA’s guidelines on the conditions and criteria for the qualification of crypto-assets as financial instruments?

- Yes, sufficiently clear
- No, clarification is needed

If the answer to the previous question is “No” please explain your response and suggest any policy actions for clarification if needed.

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<sup>5</sup> [Directive 2014/65/EU](#) of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

**Question 2.** To what extent have ESMA’s MiCA Article 2(5) guidelines and the joint ESA standardised classification test reduced uncertainty in practice? Which borderline cases remain difficult? Please explain your response and suggest any policy actions for clarification if needed.

## 1.2. Transparency rules and ex post supervisory control regime

**Question 3.** Title II establishes disclosure, marketing, conduct and liability rules for public offers and admission to trading of crypto-assets other than ART and EMT. How appropriate or effective is the design of Title II in balancing investor protection, market integrity and innovation?

Please assess each provision below along two dimensions:

- (1) its adequacy and
- (2) the direction of change you consider appropriate.

### Adequacy Scale

1 = Completely inadequate, 2 = Mostly inadequate, 3 = neutral, 4 = Mostly adequate, 5 = Fully adequate

### Direction of Change Scale

1 = Should be significantly weakened, 2 = Should be somewhat weakened, 3 = Should remain unchanged, 4 = Should be somewhat strengthened, 5 = Should be significantly strengthened

Provision	Adequacy					Direction of Change				
	1	2	3	4	5	1	2	3	4	5
Exemptions for offers to <150 persons per Member State, small offerings (<€1m over 12 months), and qualified investors (Article 4(2))	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
White paper disclosure framework (Article 6): issuer information, crypto-asset characteristics, tokenomics, risks, use of proceeds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marketing requirements: identifiable, fair, clear, not misleading and consistent with the white paper (Article 7)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ex ante notification model without prior regulatory approval (Article 8)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Obligation to modify/update the white paper for significant new factors, material mistakes or inaccuracies (Article 12)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Retail investor right of withdrawal (14 days), excluding assets already admitted to trading or after subscription period ends (Article 13)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Conduct obligations: honesty, fairness and professionalism, clear communications, conflicts management, and effective systems and security arrangements (Article 14)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Civil liability for inaccurate, misleading or incomplete white paper information (Article 15)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Overall balance between investor protection, market integrity and innovation under Title II	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Please explain your ratings, focusing on the issues you deem most significant regarding the overall balance between investor protection, market integrity and innovation.

**Question 4.** Based on initial implementation experience under MiCA, please assess the extent to which the following issues remain a concern.

*(1 = Not serious concern at all, 5 = Extremely serious concern)*

No	Issue	1	2	3	4	5
1	Inadequate or non-comparable disclosure clarity or complexity to retail investors in Title II white papers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	Fraudulent or misleading crypto-asset offerings affecting EU investors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	Lack of clear and enforceable investor rights for crypto-asset holders	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	Insufficient issuer governance or accountability in crypto-asset projects e.g. monitoring of the use of funds by issuers after the offering period	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	Regulatory arbitrage, including activity shifting outside the EU	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	Promotions by social media, influencers, sponsorships	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7	Post-issuance token value erosion or project failure affecting EU retail investors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8	Market manipulation practices (e.g. wash trading, price manipulation) in crypto-asset markets	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9	Misaligned incentives between crypto-asset issuers and investors (e.g. insider allocations, weak lock-ups)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10	Difficulty in assessing issuer quality and project credibility for EU investors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11	Cross-border enforcement and supervisory coordination challenges within the EU	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12	Cross-border enforcement and supervisory coordination challenges with third countries authorities outside of the EU	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your ratings above, focusing on the issues you deem most significant and add any additional issues that you deem highly important.

**Question 5.** Should additional measures either at the issuance stage or during the marketing and distribution of crypto-assets, be considered? Based on your experience or expertise, please evaluate the potential effectiveness of the following additional measures in relation to Title II crypto-assets.

- 1 Not at all effective
- 2 Slightly effective

- 3 Moderately effective
- 4 Highly effective
- 5 Extremely effective

Potential Measure	1	2	3	4	5
Marketing restrictions for high-risk or speculative crypto-assets aimed at retail investors e.g. restricting or banning the use of algorithmic or "gamified" marketing tactics for new token launches	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lock-up periods (e.g. 12 months) or vesting schedules for founder and early investor tokens	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your ratings above and what (other) regulatory or supervisory actions you would consider useful either at the issuance stage and during marketing or distribution.

**Question 6.** What administrative simplification or burden reduction measures should be considered under title II and its implementing measures and technical standards?

**Question 7.** Which specific categories remain most difficult to classify in practice? (e.g. hybrid tokens, wrapped assets, tokenised fund interests, tokenised money-market instruments, governance tokens, synthetic exposures, or assets marketed as NFTs but issued in series)?

**Question 8.** Are the current Title II mechanisms sufficient to ensure meaningful updates to investors after issuance, including where project governance, tokenomics, vesting schedules or control rights change materially?

- Yes
- No

Please explain

**PART 2: REQUIREMENTS APPLYING TO ASSETS REFERENCED TOKENS (ART) AND ELECTRONIC MONEY TOKENS (EMT) AND THEIR ISSUERS (MiCA TITLES III AND IV)**

MiCA establishes a bespoke regulatory regime for so-called “stablecoins” by distinguishing between asset-referenced tokens (ARTs) and e-money tokens (EMTs).

This section seeks stakeholders’ feedback on stablecoins (EMTs and ARTs) in general, notably on the future role they may play both within the EU and beyond. It also asks more specific questions related to their prudential regime, their reserve requirements, the redemption rights of their holders and whether MiCA’s stablecoin regime remains fit for purpose or requires adjustment in view of market and international regulatory developments.

**2.1. The future role of stablecoins**

**Question 9.** Looking 5-10 years ahead, how strongly do you agree with the following visions for the role of stablecoins in the EU?

For each vision below, please indicate on a scale of 1 to 5 where 1 = Strongly disagree 2 = Rather disagree 3 = Neutral 4 = Rather agree 5 = Strongly agree

	1	2	3	4	5
A mainstream digital means of payment for <b>retail transactions</b> within the EU	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
A mainstream digital means of payment for <b>wholesale transactions</b> within the EU	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
A complement to existing payment instruments, used mainly in specific use cases especially in international, cross-border payments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
A core infrastructure layer for the digital economy and tokenised financial markets especially for settlement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
A niche or transitional product, eventually displaced by other forms of digital money (e.g. CBDCs or commercial bank money innovations)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No clear long-term role can be identified at this stage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Others	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If your answer is “Others”, please elaborate.

**Question 10.** The following question explores the current and potential benefits of stablecoins (both EMTs and ARTs) for different use cases. For each use case below, please indicate on a scale of 1 to 5 how beneficial stablecoins would be for EU users:

1: Not Beneficial, 2: Moderately Beneficial 3: Neutral 4: Beneficial 5: Very Beneficial

Use Case	1	2	3	4	5
International payments (non-EU cross-border remittances or transfers)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Intra-EU payments (domestic and EU cross-border payments)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Crypto trading and liquidity provision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Use Case	1	2	3	4	5
Retail payments - Person to Person	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Retail payments – Person to Business (POI payment to merchants including e-commerce)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Retail payments - Business to Business	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Wholesale payments (between financial institutions)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Settlement of tokenised financial instruments (e.g., digital bonds, securities)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Corporate treasury management	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Access to programmable or smart contract-based financial services (DeFi applications)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Provision of financial services in underserved regions in the EU	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Others	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If your answer is “Others”, please elaborate.

Please explain shortly your assessment and expectations as regards the benefits of stablecoins for EU users and, where relevant, any potential risks.

## 2.2. Prudential regime and capital requirements

MiCA sets out different capital requirements for issuers of EMTs and ARTs, with additional requirements applying where tokens are classified as “significant”. Article 35 and 46 require that non-bank issuers of ARTs and EMTs shall, at all times, have own funds equal to an amount of at least the highest of the following: (a) EUR 350 000; (b) 2% of the average amount of the reserve of assets referred to in Article 36; (c) a quarter of the fixed overheads of the preceding year.

**Question 11.** To what extent do you think the calculation methods are relevant and appropriately calibrated?

- 1 = Not at all relevant/appropriately calibrated
- 2 = Slightly relevant/appropriately calibrated
- 3 = Moderately relevant/appropriately calibrated
- 4 = Mostly relevant/appropriately calibrated
- 5 = Highly relevant/appropriately calibrated

MiCA capital/own funds elements	Relevant					Appropriately calibrated				
	1	2	3	4	5	1	2	3	4	5
Minimum own funds of EUR 350,000	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2% of the average reserve of assets	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
25% of the fixed overheads of the preceding year	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Additional own funds for “significant” tokens	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your responses to the preceding question, including your reasoning and any suggestions for recalibration or alternative approaches (e.g. greater risk sensitivity, differentiation by business model, or interaction with reserve and liquidity requirements).

**Question 12.** After being in effect for close to two years, no ARTs have been licensed in the EU under MiCA. In your view, does this absence primarily reflect low market interest in ARTs or other reasons?

Please rate each factor below on a 1–5 scale, where: 1: Not at all a factor, 3: Neutral/Uncertain, 5: A major factor

	1	2	3	4	5
Market interests for ARTs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Licencing and regulatory requirements for ARTs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Question 13.** If ARTs were to come to market, what do you think is the primary purpose from a consumer/investor perspective: investment or alternative means of exchange/payment? Please explain your answer.

### 2.3. Liquidity and reserve requirements

**Question 14.** MiCA requires issuers of ARTs to establish, maintain, and prudently manage a reserve of assets and appropriate liquidity arrangements to ensure orderly redemptions and mitigate financial stability, liquidity, and operational risks. Additional and enhanced requirements apply to ARTs classified as “significant” under Article 45. How do you think, if at all, each of the following elements of the MiCA liquidity and reserve regime for ARTs should be adjusted?

Please rate each aspect on a scale from 1 to 5, where “1” indicates that requirements should be significantly relaxed (e.g. lower liquidity buffers or remove specific obligations), “3” indicates that the current framework is appropriate and should remain unchanged, and “5” indicates that requirements should be made substantially more stringent (e.g. higher reserves, tighter risk controls, or enhanced safeguards).

Requirement element	Non-significant ARTs					Significant ARTs				
	1	2	3	4	5	1	2	3	4	5
Obligation to constitute and maintain a reserve of assets covering redemption and liquidity risks (Article 36(1))	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Liquidity composition and maturity structure of the reserve (Article 36(4), RTS)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Minimum amount of deposits held (30% and 60%) (Article 36(4), RTS)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Auditing requirements (Article 36(9))	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Custody requirements (Article 37)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Enhanced liquidity management, stress testing, monitoring, and reporting obligations for significant ARTs (Article 45(3)–(4))	N/A	N/A	N/A	N/A	N/A	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Please explain your responses, including your reasoning and any suggestions for recalibration or alternative approaches (e.g. greater risk sensitivity, differentiation by business model, or interaction with reserve and liquidity requirements).

**Question 15.** MiCA sets out liquidity and reserve requirements for issuers of EMTs to ensure immediate redemption of tokens, mitigation of credit and operational risk, and resilience under stress scenarios. Additional requirements apply to EMTs classified as “significant” (Article 56).

Should any of the following aspects of the MiCA regime for EMTs issued by e-money institutions be adjusted?

Please rate each aspect on a scale from 1 to 5, where “1” indicates that requirements should be significantly relaxed (e.g. lower liquidity buffers or remove specific obligations), “3” indicates that the current framework is appropriate and should remain unchanged, and “5” indicates that requirements should be made substantially more stringent (e.g. higher reserves, tighter risk controls, or enhanced safeguards).

Requirement element	Non-significant EMTs					Significant EMTs				
	1	2	3	4	5	1	2	3	4	5
Obligation to constitute and maintain a reserve of assets covering redemption and liquidity risks (Art 36(1))	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Legal and operational segregation of reserve assets from the issuer’s own estate and from other token reserves (Art 36(2)–(3))	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Liquidity composition and maturity structure of the reserve (Art 36(4), RTS)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Minimum amount of deposits held (30% and 60%) (Art 36(4), RTS)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Auditing requirements (Art 36(9))	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Custody requirements (Art 37)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Enhanced liquidity management, stress testing, monitoring, and reporting obligations for significant EMTs (Art 45(3)–(4))	N/A	N/A	N/A	N/A	N/A	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Excessive exposure / concentration between bank and token (Article 36(4) MiCA) Do you consider the 1.5% binding limit adequate? (RTS)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please, explain your responses, including your reasoning and any suggestions for recalibration or alternative approaches.

**Question 16.** Under MiCA, credit institutions issuing EMTs are not subject to the reserve asset segregation requirements or the requirement to maintain a reserve of assets

applicable to non-bank EMT issuers (Article 58 MiCA). This is consistent with the approach to the regulation of traditional e-money. Should MiCA be adjusted to introduce a requirement to maintain a reserve of assets and segregation requirements for reserve assets of EMTs issued by credit institutions?

Please select one option.

- Yes – require reserve maintenance and segregation of EMT reserve assets within the credit institution’s balance sheet
- Yes – require issuance through a legally separate entity of the credit institution with full segregation of EMT reserve assets
- No – keep the current MiCA approach unchanged
- Others / alternative approach

Please explain your response, including your reasoning and any suggestions for other/alternative approaches.

#### 2.4. Criteria for determining significance

Under MiCA, ARTs and EMTs may be classified as “*significant*” based on a set of quantitative and qualitative criteria set out in Article 43 (ARTs) and Article 56 (EMTs), which trigger enhanced prudential, governance, and supervisory requirements. The Commission has adopted a [delegated act](#)<sup>6</sup> to further clarify the criteria for determining significance.

**Question 17.** Do you think the following quantitative criteria thresholds used to classify EMTs or ARTs as “significant” should be adjusted? If so, how?

- 1 = Significantly decreased (thresholds should be much lower / classification triggered earlier)
- 2 = Somewhat decreased
- 3 = Kept as is (current MiCA thresholds are broadly appropriate)
- 4 = Somewhat increased
- 5 = Significantly increased (thresholds should be much higher / classification triggered later)

Significant token criterion	EMTs					ARTs				
	1	2	3	4	5	1	2	3	4	5
Number of holders / users exceeding 10 million (Articles 43(1)(a) and 56)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Total outstanding value / market capitalisation exceeding EUR 5 billion (Articles 43(1)(b) and 56)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Transaction volume or value per day (average 2.5	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<sup>6</sup> Commission Delegated Regulation (EU) 2024/1506 of 22 February 2024 supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council by specifying certain criteria for classifying asset-referenced tokens and e-money tokens as significant, OJ L, 2024/1506, 30.5.2024, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32024R1506>

Significant token criterion	EMTs					ARTs				
million transactions and EUR 500 million) (Articles 43(1)(c) and 54)										

Please explain your responses, including your reasoning and any suggestions for recalibration or alternative approaches.

**Question 18.** Do you think the qualitative criteria used to classify EMTs or ARTs as “significant” under MiCA should be adjusted?

- Yes
- No

If yes, please explain how you think the qualitative criteria for classifying EMTs or ARTs as “significant” should be adjusted.

**Question 19.** Are there any additional criteria or metrics that should be added to determine “significant” tokens?

- Yes
- No

If yes, please specify which criteria or metrics and explain why.

### 2.5. Interest payment

MiCA currently prohibits the granting of interest or any interest-equivalent remuneration of stablecoins by either the issuer, offeror or crypto asset service provider. This prohibition applies to ARTs under Article 40 and to EMTs under Article 50 of MiCA.

**Question 20.** In your view, should the MiCA prohibition on granting interest or any interest-equivalent remuneration be modified?

Option	EMTs	ARTs
Interest and interest-equivalent remuneration should continue to be prohibited	<input type="checkbox"/>	<input type="checkbox"/>
Interest or interest-equivalent remuneration should be allowed (fully or under defined conditions)	<input type="checkbox"/>	<input type="checkbox"/>

If you selected “allowed”, please explain your reasons (including any benefits and risks) and specify the conditions under which remuneration should be permitted.

### 2.6. Redemption

MiCA establishes distinct redemption regimes for ARTs and EMTs. For ARTs, redemption rights are primarily governed by Article 39, supported by operational and

prudential requirements in Articles 36–38 and 47. For EMTs, redemption rights are set out in Article 49, with supporting provisions in Articles 46 and 47.

**Question 21.** Based on your experience either as a holder of EMTs or as an issuer of EMTs, how have redemption requests been processed and executed in practice by issuers or their agents? What practical problems, if any, have been encountered?

**Question 22.** If you hold EMTs and wish to dispose of them, which of the following options would you most likely choose? Please select only one for each market situations.

	I would likely spend them (e.g. on goods or services)	I would likely sell or exchange them with a broker or at a trading venue	I would likely turn to the EMT issuer or his agent to exercise my statutory redemption right
Normal market situation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stressed market situation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Question 23.** For each of the redemption rights and rules listed below, please indicate whether the existing MiCA rules should be amended or specified or kept as they are. Please consider, in particular, implications for financial stability, consumer protection, and cross-border usability.

	Weaken	Keep as is	Strengthen
Permanent right of redemption against the issuer, either at market value (ARTs) or at par (EMTs)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Timing of redemption (timeframe for redemption by the issuer)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Prohibition of redemption fees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Conditions, procedures, and transparency of redemption policies disclosed to holders	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Supervisory powers to intervene in or trigger redemption plans	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your assessment, including if a different approach is warranted for significant vs non-significant tokens, or in crisis scenarios and share any suggestions for adjustments you may have.

## 2.7. Stability issues

Stablecoins have the potential to reshape part of the financial service value chain as they can offer faster, cheaper, and more direct global payment and settlement transactions by bypassing certain financial intermediaries. They can also pose risks. This subsection aims to explore the adequacy of the safeguards provided by MiCA, especially regarding redemption and resolution plans.

**Question 24.** Articles 46 and 47 require issuers of ARTs and EMT to prepare a recovery plan and a redemption plan in case an issuer cannot comply with reserve requirements e.g. due to significant and sudden requests for redemptions. Please indicate whether the current MiCA requirements are fit for purpose in those regards or should be amended.

	ARTs			EMTs		
	Weaken	Keep as is	Strengthen	Weaken	Keep as is	Strengthen
Recovery plans	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Redemption plans	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your assessment, including if a different approach is warranted for significant vs non-significant tokens, and share any suggestions for adjustments you may have.

**Question 25.** EMTs issued by authorised e-money institutions (EMIs) could potentially operate with enhanced monetary and financial safeguards.

Please rate the appropriateness and desirability of the following policy options for EMTs issued by e-money institutions on a scale of 1 to 5, where:

- 1 = Not at all appropriate / desirable
- 2 = Slightly appropriate / desirable
- 3 = Moderately appropriate / desirable
- 4 = Mostly appropriate / desirable
- 5 = Highly appropriate / desirable

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
Allowing EMT issuers to deposit their reserve assets directly into central bank accounts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Providing clear rules that ensure the continuity of redemption rights (reserves are safeguarded for the benefit of token holders and are ring-fenced in insolvency, giving these holders an exclusive claim against those assets) in case of insolvency of the issuer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Establishing a dedicated resolution regime for EMIs issuing EMTs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Allowing emergency liquidity support / lender-of-last-resort (LOLR) facilities for EMIs issuing EMTs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Others	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If your answer is “Others”, please elaborate.

Please explain your ratings, including potential benefits, risks, or implementation challenges.

**Question 26.** How appropriate is it to require EMT-issuing EMIs to hold 30–60% of their reserve assets in bank deposits?

- Not at all appropriate / desirable
- Slightly appropriate / desirable
- Moderately appropriate / desirable
- Mostly appropriate / desirable
- Highly appropriate / desirable

Please explain your ratings and add any suggestions for recalibration or alternative approaches.

## 2.8. Global stablecoins arrangements and interactions with other regulatory frameworks

Global stablecoins are stablecoins that have a wide existing or potential reach and use across multiple jurisdictions.

**Question 27.** What are the potential benefits of global stablecoins for different use cases? For each use case below, please indicate on a scale of 1 to 5 how beneficial global stablecoins would be for EU holders:

- 1: Not beneficial
- 2: Moderately beneficial
- 3: Neutral
- 4: Rather beneficial
- 5: Very beneficial

Use Case	1	2	3	4	5
International payments (cross-border remittances or transfers,)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Intra-EU payments (domestic and cross-border EU payments)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Crypto trading and liquidity provision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Retail payments - Person to Person	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Retail payments - Person to Business (POI payment to merchants including e-commerce)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Use Case	1	2	3	4	5
Retail payments - Business to Business	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Settlement of tokenised financial instruments (e.g., digital bonds, securities)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Corporate treasury management	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Access to programmable or smart contract-based financial services (DeFi applications)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Provision of financial services in underserved regions in the world	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other potential use cases (please specify)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain shortly your assessment and expectations as regards the use cases of global stablecoins (EMTs/ARTs) and the benefits for EU users.

**Question 28.** How important is it for EU users (both people and businesses) to be able to access global stablecoins via EU-based and licenced issuers and CASPs? Please indicate on a scale of 1 to 5.

	1 Not important at all	2 Moderately important	3 Neutral / no clear preference	4 Rather important	5 Highly important
EU-based and licenced stablecoins Issuers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
EU-based and licenced CASPs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain shortly your reply.

**Question 29.** Based on your experience and assessment, how significant are the following risks associated with a multi-issuance model<sup>7</sup> of global stablecoins for the EU financial system?

Please rate each risk on a scale from 1 (Irrelevant) to 5 (Very significant).

Identified Risk	1	2	3	4	5
Run risk and reserve depletion in the EU (e.g. cross-border migration of tokens during stress leading to sudden increase of redemption pressure on EU issuers)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Unbalanced reserve distribution across jurisdictions (e.g. fragmentation of reserves between EU and non-EU entities)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<sup>7</sup> Under a multi-issuer model, the global stablecoin issuer operates subject to the requirements of the EU MICA framework for stablecoins offered or held in the EU (EU establishment, EU reserve requirements, redemption obligations, EU supervision) and the requirements of third country jurisdictions, if any, where it also issues or offers stablecoins. Protection of EU holders relies on EU prudential, operational, and consumer protection safeguards set out in MICA.

Cross-border reserve transfer restrictions (e.g. third-country limitations on moving reserves during stress events)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Regulatory arbitrage due to fungibility of tokens (e.g. operation across regimes exploiting differences in prudential or conduct rules)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Supervisory monitoring and data-tracking challenges (e.g. difficulty measuring EU-holdings, especially holdings in self-custodial wallets)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Risks resulting from the stablecoin issuer home jurisdictions not having prudential or conduct rules that meet internationally accepted standards or that are significantly lower than those set out in EU law.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Others	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If your answer is “Others”, please elaborate.

Please explain the reasoning behind your ratings above. Describe the nature and importance of these risks, the underlying assumptions, market dynamics, or regulatory factors informing your view.

**Question 30.** MiCA does not currently prohibit multi-issuer models, nor does the EU have jurisdiction to determine how third country entities, that also have licensed entities in the EU, should be regulated in third country jurisdictions. Given your assessment of the advantages or disadvantages of global stablecoins and multi-issuance models, do you think that MiCA should continue to be open to multi-issuance models?

- Yes, the multi-issuance model for stablecoins should be permitted under MiCA
- No, MiCA should disallow the multi-issuance model for stablecoins

Please explain the reasons for your response and describe the potential implications for the EU market and relevant stakeholders.

**Question 31.** MiCA considers that all EMTs that are pegged to or denominated in an EU currency are offered to the EU and therefore fully subject to MiCA issuer requirements. Does this approach continue to be justified in view of market developments? Does it discourage the international role of the euro?

- Yes
- No

**Question 32.** What are the advantages and disadvantages of this approach for the EU and the international role of EU currencies?

## 2.9. Interaction with the EU’s economic security and the international role of the euro

**Question 33.** To what extent do you believe that euro-denominated stablecoins can contribute to the following objectives?

Objective	1 Not at all	2 Small extent	3 Moderate extent	4 Large extent	5 Very large extent
Strengthening EU payment autonomy in retail payments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Strengthening EU payment autonomy in wholesale payments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Enhancing the international role of the euro	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your reply.

## 2.10. Current safeguards in MiCA

**Question 34.** MiCA provides safeguards to mitigate the risks of multi-issuance stablecoins. For each safeguard listed below, please indicate how effective you consider it to be on a scale where 1 means ‘Not effective at all’ and 5 means ‘Highly effective’.

Safeguard	1	2	3	4	5
Restriction of widely used ARTs and EMTs denominated in a currency that is not an official currency of a Member State (Articles 23, 58)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ECB binding opinion powers on withdrawing authorisation and limit the amounts of ARTs and EMTs (Articles 24(2)(3), 58)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
EU establishment requirement for ART and EMT issuers (Article 16)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reserve location, composition and liquidity requirements for ARTs and EMTs (Articles 36–38, 45, 54)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The powers of competent authorities listed in Article 94, especially to suspend or prohibit the trading of crypto-assets	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
National supervisory intervention powers (Article 105)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
EBA temporary intervention powers (Article 104)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Question 35.** MiCA requires that the reserves of the EMTs and ARTs issued, offered or held in the EU should be held in the EU. Can the tokens held in the EU be determined or estimated with sufficient accuracy and frequency?

- Yes, EU holdings can be determined with sufficient accuracy and frequency
- Partially, but with some limitations (e.g., delays, estimation challenges)
- No, current methods are insufficient for reliable compliance
- Uncertain

Please explain your reply to the above question, including any specific remarks with regard to tokens held in unhosted wallets.

**Question 36.** Should MiCA redemption rights be explicitly limited to EU holders only?

- Yes
- No

Please explain your response. If you indicated “Yes, what criteria should be used to determine who qualifies as an EU holder? Please also provide a rationale for your proposed approach.

**2.11. Potential additional safeguards**

**Question 37.** In a multi-issuance model, reserve assets may be located across jurisdictions and legal entities. Concerns have been expressed that in times of market stress, the transfer or rebalancing of reserves between issuers may be delayed or restricted. Is this concern valid or substantiated in your view?

- Valid-substantiated
- Not valid-not substantiated

Please explain your response

**Question 38.** How effective would the following possible additional measures be in mitigating such concerns?

- 1 = Highly ineffective
- 2 = Somewhat ineffective
- 3 = Neutral / uncertain
- 4 = Somewhat effective
- 5 = Highly effective

Possible additional mitigation measure	1	2	3	4	5
Introducing requirements that would favour or strengthen the redemption rights of holders of stablecoins that are genuinely circulating in the EU, as opposed to redemption rights associated with stablecoins transferred to the EU in times of stress to take advantage of MiCA protections (including redemption rights)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Restricting direct redemption rights in the EU to holders who are clients of EU-authorized CASPs, while holders that keep the tokens in un-hosted wallets do not have a MiCA guaranteed redemption right in the EU.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Differentiating redemption rights in crisis situations between retail and wholesale/professional holders	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Requiring a dedicated liquidity buffer or additional reserve tranche specifically calibrated to cover short-term redemption spikes in the EU	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Strengthening real-time or high-frequency reserve and liquidity reporting to EU competent authorities, including granular disclosure of reserve location and transfer constraints	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Establishing binding cooperation arrangements between home and host supervisors to ensure rapid approval and execution of cross-border reserve transfers in stress scenarios	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Others	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If your answer is “Others”, please elaborate.

**Question 39.** If you referred in your response to question 38 to adjusting redemption rights, please provide any comments on the operational feasibility, legal implications, proportionality, or potential intended or unintended consequences of such amendments the redemption rights in MiCA as listed above or in any other way.

**Question 40.** Do you see merit in introducing an [equivalence regime](#)<sup>8</sup> for global stablecoins in the EU?

- Yes but only if other mitigation measures are not introduced
- Yes, in addition to mitigation measures
- No

Please provide reasons for your response, including any perceived advantages or disadvantages of equivalence regimes.

**Question 41.** Equivalence regimes can rely on the third country’s regime to various degrees. How far, in your opinion, should a possible equivalence regime go in terms of relying on third-country regime? What rights or benefits should EU issuers derive from equivalence of a third country and what rights or benefits in the EU should issuers from an equivalent jurisdiction receive in the EU?

**Question 42.** What administrative simplification or burden reduction measures should be considered under titles III and IV and their implementing measures and technical standards? Do you believe that MiCA level 1 provisions lay down proportionate rules for issuers of EMTs and ARTs?

1. Strongly disagree
2. Rather disagree
3. Neutral
4. Rather agree
5. Strongly agree

<b>MiCA Level 1 requirements for ARTs and EMTs issuers</b>	<b><u>1</u></b>	<b><u>2</u></b>	<b><u>3</u></b>	<b><u>4</u></b>	<b><u>5</u></b>
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<sup>8</sup> [https://finance.ec.europa.eu/eu-and-world/equivalence-non-eu-financial-services-frameworks\\_en](https://finance.ec.europa.eu/eu-and-world/equivalence-non-eu-financial-services-frameworks_en)

Authorisation of ARTs and EMTs issuers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Prudential requirements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Governance arrangements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Obligations in respect of specific crypto-asset services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Question 43.** Do you believe that below specified MiCA level 2 acts lay down proportionate and simple-to-apply rules for ART and EMT issuers, taking into account their different size, scope of activity and risk profile?

1. Strongly disagree
2. Rather disagree
3. Neutral
4. Rather agree
5. Strongly agree

<b>MiCA Level 2 acts for ART and EMT issuers</b>	<b><u>1</u></b>	<b><u>2</u></b>	<b><u>3</u></b>	<b><u>4</u></b>	<b><u>5</u></b>
RTS on complaint handling by issuers of ARTs (Article 31(5))	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
RTS on the minimum content of governance remuneration (Article 45(7)(a))	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
RTS on the information to be submitted in an application for authorisation to issue ARTs (Article 18(6))	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
COM Delegated Act on ART/EMT significance criteria (Article 43(11))	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
RTS on own funds for issuers of ARTs and EMTs (Article 35(6))	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please motivate your answers and briefly explain what the problems are for your highest-rated issue(s) and suggest how they should be addressed (e.g. legislative clarification, supervisory guidance, industry standards)

**Question 44.** Do issuers identify any need to further standardise reporting requirements for issuers/information flow between CASPs and issuers for the purposes of MiCA?

- Yes  
 No

Please explain:

### **PART 3: THE APPROPRIATENESS OF THE LEGAL FRAMEWORK FOR CRYPTO-ASSET SERVICE PROVIDERS (CASPs)**

MiCA created a legal framework for crypto-asset service providers. While provisions governing crypto asset service providers have been in operation only since the end of 2024 and a transitional period for service providers that were already on the market is still in place in a number of Member States, a substantial number of crypto asset service providers have now been authorised across a range of Member States and service categories<sup>9</sup>.

This section accordingly seeks stakeholders' feedback on the adequacy of the current scope of crypto-asset services regulated under MiCA and seeks views on the merits of simplification of the framework, any risks not properly accounted for and on the functioning of certain CASP business models in light of MiCA.

#### **3.1. Crypto-asset services**

**Question 45.** Is the list of crypto-asset services as defined in Article 3(16) of MiCA adequate to effectively cover crypto-asset markets and provide sufficient legal clarity for businesses?

- Yes
- No

**Question 46.** If additional services should be added, what should those be and what requirements should be applied to these services and service providers? If you believe that certain services should be removed, please specify which ones and why.

**Question 47.** Would the introduction of appropriateness test for the crypto-asset services of reception and transmission, execution and placing of crypto-assets increase the protection for CASP clients, especially retail clients?

- Yes
- No

**Question 48.** The provision in the EU of crypto asset services covered by MiCA requires that the service provider is authorised under MiCA and complies with its requirements. Do you have evidence of non-EU authorised crypto asset services providers continuing to offer their services in the EU? How do they promote their services in the EU? What tools would supervisors or enforcement authorities have, or should they have, to stop non-authorised service providers from offering their services in the EU or to EU customers?

If your answer is "No", please explain what in your view could be a relevant alternative.

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<sup>9</sup> Currently, there are around 170 CASPs listed in the ESMA register (including both authorised CASPs and other entities that have notified to their national competent authorities their intention to provide crypto-asset services). These authorisations or notifications come from 18 different Member States.

### 3.2. Prudential requirements for CASPs

Article 67 of MiCA provides that prudential safeguards for crypto-asset service providers shall be equal to an amount or at least the higher of an amount of permanent minimum capital or one quarter of fixed overheads of the preceding year, reviewed annually.

**Question 49.** Is the prudential regime for crypto-asset service providers appropriate to capture the risks associated with the provision of crypto-asset services, or would it be warranted to adjust the prudential stance, e.g. by aligning it with the requirements for own funds applicable to investment firms (including K-factors) that provide services that are broadly similar?

- It is appropriate to capture the risks associated with the provision of crypto-asset services
- It would be warranted to adjust the prudential stance

**Question 50.** Is the amount of minimum capital provided for each class of CASP listed in Annex IV of MiCA adequate or should it be recalibrated?

Please rate each minimal requirement on a scale from 1 to 5, where:

- 1 = Significantly decreased (much lower than current MiCA requirements)
- 2 = Somewhat decreased (moderately lower than current MiCA requirements)
- 3 = Kept roughly as is (current MiCA calibration is broadly appropriate)
- 4 = Somewhat increased (moderately higher than current MiCA requirements)
- 5 = Significantly increased (much higher than current MiCA requirements)

#### CASP minimum capital requirements

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
<u>Minimum initial capital for Class 1 (EUR 50.000)</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Minimum initial capital for Class 2 (EUR 125.000)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Minimum initial capital for Class 3 (EUR 150.000)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your answer, indicating, if necessary, how the amount of minimum capital should it be recalibrated?

### 3.3. Multi-function groups

MiCA recognises and supports multi-function groups in which issuers, crypto-asset service providers (CASPs) may provide multiple MiCA-scope crypto-asset services, or may also carry out other types of financial activity, based on proper governance and management of the conflicts of interest this may generate.

**Question 51.** Should the current approach be maintained or should there be enhanced oversight and coordination in relation to entities that in addition to providing crypto-asset services, offer (1) other unregulated services or (2) other types of regulated services, (3) a combination of crypto-asset services?

- The existing approach should be maintained
- There should be enhanced oversight and coordination in relation to such entities

If you chose the second option, which of the following enhanced oversight and coordination mechanisms do you consider may be appropriate?

- Group-level reporting to a centralised authority
- Enhanced supervisory cooperation between ESAs / NCAs
- Operation of new supervisory colleges
- Consolidated supervision
- Other

Please provide any comments on the operational feasibility, legal implications, proportionality, or potential unintended consequences of the measures above. If your answer is “Other”, please elaborate.

### 3.4. Reporting

Apart from the obligation to report any reasonable suspicion regarding an order or transaction where there might exist circumstances indicating that market abuse has been committed, is being committed or is likely to be committed, there are no formal reporting obligations for CASPs in MiCA.

**Question 52.** Should CASPs report regularly their activities? If yes, what kind of reporting would be useful? How often?

	YES	NO
Direct holdings of crypto-assets by CASPs	<input type="checkbox"/>	<input type="checkbox"/>
Large exposures to derivatives with crypto-assets as the underlying asset	<input type="checkbox"/>	<input type="checkbox"/>
Volumes of leveraged contracts and the extent to which leverage is actually used on trading platforms	<input type="checkbox"/>	<input type="checkbox"/>
Information on counterparty risk	<input type="checkbox"/>	<input type="checkbox"/>

### 3.5. Environmental and sustainability reporting

MiCA strengthens transparency on the environmental impact of crypto-assets. It does so by (1) requiring white papers to contain information on the main adverse impacts on the climate and other environment-related adverse impacts of the consensus mechanism used to issue the crypto-asset, and (2) requiring CASPs to make that information prominently available for each crypto-asset where they provide services.

**Question 53.** Based on your experience to date, how do you assess the current environmental/sustainability disclosure regime under MiCA (including the relevant Level 2 RTS)?

- Fully appropriate and proportionate
- Broadly appropriate, with limited areas for clarification
- Partially appropriate, but improvements could be considered
- Not appropriate

Please explain your assessment.

### 3.6. Other issues

**Question 54.** Given that crypto-asset service providers are entities subject to the regulatory framework of the Digital Operational Resilience Act (DORA), are there any additional issues/challenges that need to be addressed in relation to cybersecurity?

**Question 55.** The Payment Services Directive has been substantially reviewed recently, bringing notably more clarity on the interplay between the MiCA rules applying to the transfer services in relation to e-money tokens and the rules under the payment services framework which apply to the provision of payment services. As a result, the PSD3/R will clarify which crypto-asset services may qualify as payment services, including targeted exclusions from the scope of PSD3/R for specific types of transactions/exchanges involving EMTs, and will specify the authorisation process under PSD3 in cases where CASPs are required to obtain a PSD3 authorisation. Do you consider these changes bring sufficient clarity or are there other issues that remain to be addressed? If so, please explain your response.

- Yes
- No

**Question 56.** Do MiCA provisions governing crypto asset service providers sufficiently allow, or unduly restrict, access for EU consumers and investors to non-EU and global crypto asset trading and liquidity pools? What are the advantages and disadvantages of focusing on EU liquidity or full access to global liquidity?

**Question 57.** Do you believe that the below specified groups of MiCA level 1 provisions lay down proportionate and simple-to-apply rules for CASPs, taking into account their different size, scope of activity and risk profile?

1. Strongly disagree
2. Rather disagree
3. Neutral
4. Rather agree
5. Strongly agree

<b>MiCA Level 1 requirements for CASPs</b>	<b><u>1</u></b>	<b><u>2</u></b>	<b><u>3</u></b>	<b><u>4</u></b>	<b><u>5</u></b>
Authorisation of crypto-asset service providers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Prudential requirements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Governance arrangements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Obligations in respect of specific crypto-asset services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other Title V rules	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your ratings and suggest how rules could be made simpler and more proportionate (e.g. legislative clarification, supervisory guidance, industry standards).

**Question 58.** Do you believe that below specified MiCA level 2 acts lay down proportionate and simple-to-apply rules for CASPs, taking into account their different size, scope of activity and risk profile?

1. Strongly disagree
2. Disagree
3. Neither agree nor disagree
4. Agree
5. Strongly agree

<b>MiCA Level 2 acts for CASPs</b>	<b><u>1</u></b>	<b><u>2</u></b>	<b><u>3</u></b>	<b><u>4</u></b>	<b><u>5</u></b>
RTS on complaint handling for CASPs (Article 71(5))	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
RTS on offering pre-trading and post-trading data to the public (Article 76(16)(a))	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
RTS on content and format of order book and records to be maintained (Article 76(16)(b))	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
RTS on records to be kept of all crypto-asset services, activities, orders and transactions undertaken (Article 68 (10)(b))	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

RTS on the continuity and regularity in performance of crypto services (Article 68 (10)(a))	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Please explain your ratings and suggest how rules could be made simpler and more proportionate.

## PART 4: POLICY AREAS BEYOND THE CURRENT SCOPE OF MiCA

The following sections seek feedback from stakeholders on these areas, as well as some additional topical issues that are not currently directly regulated by MiCA.

### 4.1. Decentralised finance

This section refers to decentralised finance (DeFi), understood as software programs deployed on blockchains or other types of DLT that operate autonomously without intermediaries and offer financial functionalities such as trading, lending, borrowing or portfolio management. In the broader sense, DeFi also refers to any blockchain-based application, including an application that does have an identifiable intermediary or person exercising control over its operation.

MiCA excludes from its scope ‘crypto-asset services that are provided in a fully decentralised manner without any intermediary<sup>10</sup>.

This section seeks feedback on whether and how to complement MiCA as regards DeFi considering potential opportunities and challenges.

**Question 59.** In case you are aware or make use of DeFi currently beyond the regulatory perimeter of MiCA, what are the main services you (would) use and for which of them do you consider they bring benefits compared to similar intermediated digital assets services?

1. DeFi applications present limited interest and are moderately used for this service
2. DeFi applications present important potential benefits for this service but their use remains limited due to some non-mitigated weaknesses
3. DeFi applications present important benefits for this service and are already significantly used, despite important non-mitigated weaknesses
4. DeFi applications present important benefits for this service, they are already significantly used and present limited risks

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>
Exchange services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Payments and transactions services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trading and Investment services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lending and borrowing services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Custody services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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<sup>10</sup> MICA Recital 22: “Where crypto-asset services are provided in a fully decentralised manner without any intermediary, they should not fall within the scope of this Regulation”.

Please detail the benefits or weaknesses you associate with the use of DeFi applications for these different services, and the actions you would consider appropriate to optimise these benefits or address the possible issues they raise.

**Question 60.** What do you consider to be the main risks associated with DeFi?

1. Strongly disagree
2. Rather disagree
3. Neutral
4. Rather agree
5. Strongly agree

<b>Risk</b>	<b><u>1</u></b>	<b><u>2</u></b>	<b><u>3</u></b>	<b><u>4</u></b>	<b><u>5</u></b>
Operational risk	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Money laundering and terrorist financing risk	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Market abuse	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Investor protection risk (information asymmetry, no redress, opacity of functioning)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Financial stability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your answers.

**Question 61.** In case you consider the criteria for establishing whether a DeFi application is **not** fully decentralised not sufficiently clear, which of them should do you consider should be used to assess the degree of decentralisation?

1. Strongly disagree
2. Rather disagree
3. Neutral
4. Rather agree
5. Strongly agree

<b>Criteria for establishing absence of full decentralisation</b>	<b><u>1</u></b>	<b><u>2</u></b>	<b><u>3</u></b>	<b><u>4</u></b>	<b><u>5</u></b>
Existence of an identifiable intermediary (person or group of persons) providing a crypto-asset service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Presence of control by an identifiable person or group of persons (e.g. via admin keys) over the key functionalities of a DeFi protocol (e.g. upgradeability of protocol)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Significant concentration of governance power over the key functionalities of a DeFi protocol	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Custody of user assets by the DeFi protocol	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DeFi protocol code is <b>not</b> open source	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marketing of a DeFi protocol by an identifiable entity or person	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Question 62.** Do you believe that risks to users of fully decentralised DeFi protocols should be indirectly accounted for by MiCA, e.g. by requiring CASPs to conduct due diligence over DeFi protocols they connect their clients with, or in any other way?

- Yes
- No

**Question 62.1** Please specify how should MiCA account for risks from fully decentralised DeFi applications.

For the purpose of this question, certification of a DeFi application should be understood as verifying that it robustly mitigates against smart contract vulnerabilities, operational risk in general and functions in accordance with its publicised performance.

1. Strongly disagree
2. Rather disagree
3. Neutral
4. Rather agree
5. Strongly agree

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
CASPs should be able to connect their clients to any decentralised DeFi application, subject to giving appropriate warnings and disclosures on risks	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CASPs should be liable for certain types of incidents when they have provided access to the relevant DeFi application and clients have	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

been affected					
CASPs should only facilitate connection of their clients to decentralised DeFi applications that are <b>certified</b> and service <b>global</b> (permissionless) <b>liquidity</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CASPs should only facilitate connection of their clients to decentralised DeFi applications that are <b>certified</b> and service only <b>verified liquidity</b> (verified pools)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CASPs should only facilitate connection of their clients to decentralised DeFi applications that service <b>global liquidity</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CASPs should be required to discontinue or discourage connecting clients to DeFi protocols that are strongly associated with <b>illicit activity</b> based on blockchain analytics	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CASPs should not facilitate connection to decentralised DeFi applications	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Public bodies should be required, or private organisations incentivised to publish whitelists or blacklists of DeFi protocols based on their risk profile	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other					

Please explain your responses, including your reasoning and any suggestions for improvement, recalibration, or alternative approaches.

**Question 63.** Do you support introducing certification schemes for DeFi protocols and smart contracts?

- Yes, for all DeFi protocols and smart contracts providing any of the crypto-assets services defined under MiCA, and possibly also other services not in MiCA's scope such as lending and borrowing
- Yes for the DeFi protocols and smart contracts providing some of the crypto-assets services defined under MiCA
- No

In case you support introducing certification schemes for only certain types of DeFi services, please explain which ones and for what reasons.

**Question 64.** Which of the following statements about potential certification schemes of DeFi protocols do you agree with?

1. Strongly disagree
2. Rather disagree
3. Neutral
4. Rather agree
5. Strongly agree

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
Instead of a full CASP licence, DeFi protocols that are not fully decentralised should be required to obtain a certification before or soon after making the protocol available to the public	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
To obtain their certificate, DeFi protocols that are not fully decentralised should be required to integrate specific compliance tools in the design of their protocols	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DeFi protocols and software developers offering the possibility to create and use non-custodial wallets should be required to obtain a certificate before making these wallets available to the public	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DeFi protocols and software developers offering the possibility to create and use non-custodial wallets should be incentivised to obtain a certificate	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your responses.

**Question 65.** Which of the following statements about potential certification schemes of DeFi protocols or smart contracts do you agree with?

1. Strongly disagree
2. Rather disagree
3. Neutral
4. Rather agree
5. Strongly agree

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>

Certificates should be issued by qualified private sector entities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Certificates should be issued by qualified public sector entities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Any interested party (e.g. persons providing connectivity to or participating in governance of DeFi protocols) should have the possibility to ask for the certification of a fully decentralised DeFi protocol	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Only fully decentralised DeFi protocols that reach a certain significance (e.g. based on total value locked) should be required to obtain a certificate	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CASPs should not be allowed to connect clients with DeFi protocols that are not certified	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your responses.

#### 4.2. Staking, lending and borrowing of crypto-assets

This section seeks stakeholders' feedback on staking, lending and borrowing of crypto-assets, currently not addressed in MiCA regulation<sup>11</sup>. Staking is the process of immobilising crypto-assets to support the operations of proof-of-stake and proof-of-stake-like blockchain consensus mechanisms in exchange for the granting of validator privileges that can generate block rewards. The provision of staking services often implies that the crypto-assets, or the private keys giving access to them, are held by the staking service provider in custody. Thus, the provision of staking services is ancillary to custody services which are fully covered under MiCA. The provision of staking services therefore requires that the staking service provider is authorised under MiCA to provide custody and administration of crypto-assets on behalf of clients, as set out in Article 75 MiCA. Furthermore, CASPs should obtain an explicit consent from the clients to stake their crypto-assets, as it may have an impact on their clients' ability to access them.

Respondents are asked to provide concrete examples to support answers provided, and, where possible, quantitative and qualitative information.

<sup>11</sup> EBA-ESMA joint report on recent developments in crypto-asset markets (January 2025): <https://www.eba.europa.eu/publications-and-media/press-releases/eba-and-esma-analyse-recent-developments-crypto-assets>

**Question 66.** Do you think the current approach whereby staking services are not separately regulated is adequate? If not, what specific requirements should be applied to staking service providers?

- Yes
- No

**Question 67.** Do you think that lending and borrowing of crypto-assets should be regulated?

- Yes
- No

If “Yes”, what do you believe should be the main elements of regulatory requirements applicable to lending and borrowing and why?

### **4.3. Non-fungible tokens**

Under MiCA Article 2(3), crypto-assets that are unique and not fungible with other crypto-assets (NFTs) are out of the scope of the regulation.

**Question 68.** In your view, does the current state of the NFT market and the risks and opportunities associated with it justify regulating providers of services related to these tokens?

- Yes
- No

If your reply is positive, what do you believe should be the main elements of regulatory requirements applicable to NFTs?

### **4.4. Prediction markets and perpetual futures**

One of the most marked developments in crypto markets since MiCA was adopted is the emergence of DLT-based prediction markets and the volume of trading activity in perpetual futures on crypto-assets.

Prediction markets where parties take a bet on a future development in almost any area, often far removed from financial assets or services, are increasingly conducted on or are structured through DLT, smart contracts and crypto-assets.

**Question 69.** Do prediction markets present opportunities or risks for EU consumer and investors? If so, please elaborate.

- Yes
- No

**Question 70.** Should prediction markets, where they are DLT enabled and facilitated through smart contracts be governed by MiFID or MiCA?

By MiFID

By MiCA

**Question 71.** What substantive requirements should be considered for service providers that provide prediction market services?

**Question 72.** Should perpetual futures on crypto-assets and services towards such perpetual futures be governed by MiCA or MiFID.

Yes, by MiFID

Yes, by MiCA

No

**Question 73.** What substantive requirements should be considered for perpetual futures on crypto-assets and service providers providing service for such perpetual futures?

#### 4.5. Tokenised deposits

The terms ‘tokenised deposit’ and ‘deposit tokens’ are not defined terms and are sometimes used interchangeably.<sup>12</sup> For the purposes of the following questions, ‘tokenised deposits’ are digital representations of traditional commercial bank deposits recorded on a blockchain or distributed ledger, allowing for programmable, instant 24/7 settlements.

**Question 74.** Tokenised deposits could be deployed in support of a range of use cases across payments, capital markets, and on-chain financial activities. Based on your experience and expectations, please assess the potential relevance and benefit of tokenised deposits for each of the following use cases in the EU.

Scale used:

1 = Not relevant / no meaningful benefit

2 = Low relevance / limited benefit

3 = Moderate relevance / moderate benefit

4 = High relevance / high benefit

5 = Very high relevance / transformative benefit

Potential use case or benefit	1	2	3	4	5
Person to person payments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Retail POI payments (domestic, day-to-day point of interaction transactions)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Intra-EU cross-border payments (non-POI)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
International payments and remittances (third countries)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<sup>12</sup> EBA Report on tokenised deposits (December, 2024): <https://www.eba.europa.eu/publications-and-media/press-releases/eba-assesses-potential-benefits-and-challenges-tokenised-deposits>

Potential use case or benefit	1	2	3	4	5
Settlement of tokenised securities and other financial instruments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Delivery-versus-payment (DvP) and atomic settlement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Intraday liquidity management (real-time funding and liquidity optimisation)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Treasury and liquidity management services for corporates and financial institutions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Programmable payments and smart-contract-based use cases	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
On-chain collateral or margining in regulated markets	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Improved settlement speed and operational efficiency	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reduction of counterparty and settlement risk	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Question 75.** Please select one or two use cases and benefits above that you consider most promising in the EU and explain why.

**Question 76.** What factors, if any, constrain the development and uptake of tokenised deposits in the EU?

**Question 77.** If you identify any regulatory issue(s) in your answer to the previous question, please indicate what regulatory action is appropriate to address the issue(s) identified.

**Question 78.** Do tokenised deposits raise any specific issues under the CRD/CRR framework? If so, please indicate what issues arise and what regulatory or supervisory action may be appropriate to address the issue(s) identified.

**Question 79.** Do tokenised deposits raise any questions and challenges from a deposit insurance perspective? If you identify any questions or challenges, please indicate which supervisory or regulatory action is appropriate to address the issues identified.

#### 4.6. Legal treatment of tokens

Legal certainty in the treatment of tokens in the EU and in the Member States is crucial in supporting predictable outcomes in financial markets in Europe and is vital to avoid stifling innovation, both in relation to MiCA crypto-assets (crypto-assets) as well as for the tokenisation and issuance of financial instruments in the form of tokens, currently governed by MiFID/R or asset management regulation (DLT financial instruments). Tokens in this section generally refer to both DLT financial instruments and crypto-assets, unless specified otherwise. In relation to legal certainty in the treatment of tokens, at least several issues have been noted by stakeholders, supervisors and academics. These include questions on whether tokens can be objects of property, which rules apply to the title and transfer of tokens, their treatment in the event of insolvency, custody relationships, and security rights in crypto-assets.

There are different ways to categorise tokens depending on the type of rights they confer to the holder. There are two general types of tokens, native tokens and non-native tokens. Native tokens tend to represent an asset (such as a share or security) that **only exists**

**on-chain** (i.e. without a physical or traditional paper-based equivalent). Non-native tokens tend to **represent an on chain right over an asset that is legally constituted and represented elsewhere (off chain)** allowing this right to be held and transacted on DLT. Regarding non-native tokens, legal uncertainties may arise because, depending on the legal framework and the way the token was created, the tokenisation often leads to the simultaneous existence of two assets: the token representing the asset and the asset that the token asset represents<sup>13</sup>. Native tokens too may raise important legal questions about their nature as many jurisdictions of today do not explicitly recognise existence of on-chain assets and it is often unclear if and how they fall under current rules on taxonomy and creation of traditional financial assets.

One of the key questions concerning legal certainty is whether holding (or controlling) a token on a blockchain constitutes ownership, and whether holding (or controlling) a non-native token constitutes ownership or merely a claim on the underlying asset that it represents. MiCA contains clear requirements for issuers or offerors of crypto-assets but it does not directly regulate the ownership of such assets, which remains a matter of (national) property laws. Similarly, MiFID does not define the proprietary nature of financial instruments or transfer of ownership, which is left to the discretion of national laws. Some Member States have implemented specific regulations to ensure legal certainty for tokens, including to provide for statutory “bridges” that synchronise the technical state of the ledger with the legal status of the asset.

**Question 80.** Is there **legal uncertainty** as to the private law treatment of issuance, holding and transfers of tokens, under national law?

- Yes
- No

If you believe **there is material legal uncertainty in issuing, holding and transferring tokens** (i) which of the following issues are most significant and (ii) what is the urgency with which each issue should be addressed by regulators?

Scales used:

- Significance of legal uncertainty: 1 = None or Not significant · 2 = Low · 3 = Moderate · 4 = High · 5 = Very high
- Urgency of regulatory clarification or action: 1 = None or Not urgent · 2 = Low urgency · 3 = Moderate urgency · 4 = High urgency · 5 = Immediate / critical

Issue	Significance of legal uncertainty	Urgency of regulatory action
Issuing a crypto-asset token in compliance with national law	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5
Issuing a tokenised financial instrument in	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5

<sup>13</sup> In “complete tokenisation” possession can equate to legal ownership over the asset it represents if the legal system recognises the token as the asset’s representation; the “indirect tokenisation” where the legal ownership depends on the intermediary entity or legal structure, not just the token; and the “incomplete tokenisation” where the token might only act as evidence or an interface to rights that are legally held off-chain. X Lavayssière, “Legal Structures of Tokenised Assets”, European Journal of Risk Regulation. <https://www.cambridge.org/core/journals/european-journal-of-risk-regulation/article/legal-structures-of-tokenised-assets/5D3537D89F9AD858339424E1D60D7C43>

Issue	Significance of legal uncertainty	Urgency of regulatory action
Issuing a crypto-asset token in compliance with national law	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5
compliance with national law		
Transferring ownership (acquisitions, dispositions, earmarking, etc.) over a token, including good faith acquisition / bona fide ownership	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5
Recognising ownership in a token towards third-parties	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5
Using tokens as collateral	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5
Possibility to differentiate between native and non-native tokens in national law	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5
Recognising tokens as objects of property	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5
Rights of token holders in intermediated custody chains	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5
Enforcement and exercise of rights arising from /over tokens or the underlying assets	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5
Custody of tokens	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5
Treatment of tokens in insolvency proceedings including intermediary risk	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5
Others .....	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5

Please explain your reply and **provide examples** from national law. In particular specify if any of the answers is specifically referring to native or non-native tokens and specify if any of the answers would be different depending on if the token is recording a tokenised financial instrument or crypto-assets.

**Question 81.** Would you recommend increasing the legal certainty in the treatment of tokens **through EU law**?

- Yes  
 No

**Question 81.1** If YES, what are the **3 most important elements that should be addressed in EU law**? Please explain your answer and provide examples.

**Question 81.2** If you believe there is a lack of legal certainty regarding tokens, **can legal certainty** (ownership or entitlement, transfer and enforceability of rights recorded as tokens) be achieved under EU law in one of the following manners?

Rank the below possible measures from 1 to 5.

1. Strongly disagree
2. Rather disagree

3. Neutral
4. Rather agree
5. Strongly agree

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
Implementation of a 28 <sup>th</sup> regime recognising legal effects of DLT registers holding tokens, including good-faith acquisition rules and rules on opposability/enforceability to third parties (erga omnes effects)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Full harmonisation of private law treatment of tokens in Member States	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Partial harmonisation of private law treatment of tokens in Member States	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Introducing a conflict of law regime for tokens under EU law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other model	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please **explain your response** and provide examples, in particular from national law. Where you favour full or partial harmonisation or the introduction of a conflict of laws regime, please specify which legal instrument would be most appropriate for that purpose (a new Regulation or the use of existing regimes, such as MiFID or MiCA). Also consider if there are risks with establishing an ownership regime at EU level and how these risks could be mitigated.

**Question 82.** There are different “ownership models” that could be used to increase legal certainty over tokens. Please **indicate maximum two models** listed below that you think EU law could apply if it were to improve the legal certainty of tokens in the EU.

<b>Ownership model</b>	
Model 1: The token is the asset by law, the law recognises a ledger-based asset and the ownership rights are constituted directly by the ledger entry.	<input type="checkbox"/>
Model 2: The token is the asset by law, where the law recognises that e.g. securities (dematerialised or physical) can be replaced by an entry into a DLT register and by this “replacing” (immobilisation) of the securities the function of the initial security is substituted by entry into a DLT register and the ownership rights are constituted by the representation on the ledger.	<input type="checkbox"/>
Model 3: Token is the asset by law. In this case the law does not actively regulate legal aspects such as what property is or how transfer of ownership occurs, etc. but instructs on the legal consequences of entries in a DLT register (this is often called a functional approach). The law could at EU level stipulate who may exercise rights, i.e. the person recorded in the DLT register as holder of a tokenised asset, that these rights have full	<input type="checkbox"/>

third-party effect and protects from competing claims. This also creates legal certainty for collateral use. The EU law would create a uniform rule of “digital entitlement” that functions across all Member States’ property law structures.	
Model 4: The token is the legal carrier of rights associated with a related (often off-chain) asset. The law defines tokens as legal objects that do not create new rights, but can –like a “container” –represent various kinds of rights, such as membership rights, ownership, intellectual property rights, usage rights or rights of lien, etc.. The token would represent the rights stemming from the underlying assets and the law would ensure that the transfer of a token on the ledger legally transfers ownership of the rights stemming from the underlying asset <sup>14</sup> .	□
Model 5: Any other legal ownership structures, for example based on the approaches taken by different countries, including France, Germany, Luxembourg or adopted in other jurisdictions or internationally, that could be implemented in EU law.	

Please **explain your answer and provide examples, and** in answering the question, please answer the **following sub-questions**:

- a) What would be the **legal interoperability** of any such EU level measure with national private laws of Member States, or at least laws of the Member State that you are familiar with?
- b) Is it preferable to establish **constitutive rules** of ownership based on the asset being recorded on chain or **functional rules** regulating the effects of recording an asset on chain?
- c) Are the **different ownership models** better suited for native or non-native tokens?
- d) Can the same ownership model be implemented **for all types of tokens** (crypto-assets and DLT financial instruments) and if not, what would need to be different depending on the type of the token?

**Question 83.** Comparing national laws of Member States, what are the main differences in how national laws governs the issuance, holdings and transfers of tokens? Please explain your answer and provide examples.

#### 4.7. Questions on conflicts of law

Financial Collateral Directive (FCD) and Settlement Finality Directive (SFD) entails targeted conflict of law rules, mainly applicable to financial instruments hence broadly relevant for DLT financial instruments, however the current regime leaves a potential gap where the token does not qualify under the scope of FCD and SFD or where existing conflict rules do not easily lend its application to tokens. As noted in the UNIDROIT

<sup>14</sup> Inspired by Lichtenstein Law. Art 2 TVTG defines token as a piece of information on a TT System which can represent claims or rights of memberships against a person, rights to property, or other absolute or relative rights: <https://www.regierung.li/files/attachments/950-6-en.pdf>

Art 5 TVTG states that the TT Key holder has the power of disposal over the Token. It is further assumed that the person possessing the power of disposal over a Token also has the right to dispose of the Token. For every previous holder of the power of disposal, it is presumed that he was the person possessing the right of disposal at the time of this ownership.

Principles on digital assets and private law<sup>15</sup> the usual connecting factors for choice-of-law rules, such as the location of persons, offices, activity, or assets have less of a useful role for DLT financial instruments and crypto-assets and the approach would rather be to identify connecting factors relevant to such instruments and assets.

**Question 84.** Should EU law introduce a conflict of law rule for tokens?

- Yes
- No

**Question 84.1** If you answered “YES” please explain why the current conflict of law rules applicable in EU are not enough or sufficiently clear in its application to tokens?

**Question 84.2** If the EU would **introduce conflict of law rules for proprietary aspects of tokens**, what would be the preferred connecting factors. Rank the below listed connection factors from 1 to 5 (1 being the most relevant connecting factor and 5 the least relevant connection factor). Connecting factors without a ranking will be considered not relevant.

Connecting factor	Waterfall
	<b>1-5</b>
The law of the state specified in the token or in the principles (if any) expressly specified in the token	
The law of the state specified in the rules or in the principles of the system on which the token is recorded	
The law of the state in which the legal entity operating the DLT-based system on which tokens are recorded	
In relation to a token for which there is an issuer, the law of the state where the issuer is established	
In relation to tokens for which there is an issuer, the law of the state under whose supervision the issuer operates	
In relation to tokens for which there is a provider of the technologies creating or issuing the tokens, the law of the state under whose supervision such technology operates	
Where a token shall be registered, the law of the state under whose supervision the register is maintained	
The law of the state of the relevant operating authority/administrator (PROPA), meaning a state authority or a body (e.g., a foundation) that takes	

<sup>15</sup> [UNIDROIT Principles on Digital Assets and Private Law](#)

over the administration of the system onto which the token is registered	
The law of the state of the primary residence of the encryption private master keyholder (PREMA), meaning the seat of a body that holds a system-relevant master key, with the help of which coercive transactions can be carried out, for example, based on a court order.	
Any other?	

Please **explain your response and provide examples**. In answering this question, please consider if the suggested scope of the conflict of law rule in your view is the right one, and whether there are aspects missing.

**Question 85.** Are there any other issues relating to legal certainty which are not mentioned above?

**4.8. Final open question**

**Question 86.** Interested parties that wish to bring other relevant issues, not raised in this consultation, to the Commission’s attention, should feel free to communicate them here.