

Brussels, 30 September 2026

EBF Response to Targeted Consultation on the Review of the Regulation on the Markets in Crypto-Assets (MiCA)

PART 1: Scope and definitions, Title II crypto-assets

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, continue to be governed by sectorial 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.

Question 1.1 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?

No, clarification is needed.

Question 1.2 Please explain your answer to question 1.1 and suggest any policy actions for clarification if needed:

EBF members consider that crypto-assets qualifying as financial instruments under MiFID II should continue to be governed by the existing sectoral legislative framework, including MiFID II, MiFIR, MAR and the Prospectus Regulation, while MiCA should continue to apply only to crypto-assets and services not already covered by dedicated sectoral EU legislation. Classification uncertainty should not result in tokenised products or services inadvertently falling outside the applicable regulatory perimeter.

This approach is consistent with the principles of technological neutrality, substance over form and "same activity, same risk, same rules". The legal qualification of an asset and the applicable regulatory framework should continue

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to be determined by its economic and legal nature, rather than by the technology used for its issuance, recording or transfer. The mere use of distributed ledger technology (DLT) should therefore not alter the regulatory treatment of an instrument that already qualifies as a financial instrument under existing EU legislation.

Maintaining the current framework also helps avoid regulatory overlap, legal uncertainty and opportunities for regulatory arbitrage, while ensuring a level playing field and preserving the coherence of the existing EU financial services framework.

While emphasizing that ESMA's Guidelines on the conditions and criteria for the qualification of crypto-assets as financial instruments, together with the joint ESA standardised classification test, provide a solid framework for the distinction between financial instruments governed by MiFID II and crypto-assets governed by MiCA, EBF considers that certain areas may benefit from additional clarification to support consistent implementation across the Union.

In particular, additional clarity should be considered with reference to certain hybrid or borderline cases, which may still prove difficult to classify in practice, for instance due to a digitally represented asset displaying features of both a financial instrument and a MiCA crypto-asset (please see below Q2 and Q7).

For instance, a review of ESMA Guidelines could be considered to better clarify those circumstances where an asset-referenced token (ART) referencing an asset falling under financial instrument per EU law, should fall within the ART definition (and any relevant exception) as opposed to qualifying as a financial instrument itself.

In general, EBF considers it important to avoid the risk of divergent national classifications, double regulation or contradictory requirements, while preserving the above-mentioned principle that financial instruments remain governed by MiFID/MiFIR/MAR.

Against this background, while the current case-by-case approach remains conceptually appropriate (preserving flexibility and avoiding an overly rigid one-size-fits-all framework) EBF considers that greater harmonization supporting a clear classification of borderline cases across the EU could be given additional consideration. In this regard, policy options such as the following could be considered: (i) targeted refinement of ESMA guidance (e.g., on the regulatory treatment of ARTs depending on the nature of their underlying assets) to strengthen supervisory convergence; (ii) additional practical examples, Q&As and anonymized case studies; and/or (iii) an harmonized EU-level approach to

classification criteria and/or to empower ESMA to issue binding opinions on the classification of borderline or hybrid crypto-assets intended to be offered or distributed on a cross-border basis within the European Union.

These solutions could help reduce the risk of divergent national interpretations, while preserving the flexibility of the existing framework. Above all, any fundamental change of financial instrument definition in MIFID should be avoided, as it would carry significant impacts across multiple regulatory pieces.

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.

The EBF recognises that ESMA's Guidelines under Article 2(5) of MiCA, together with the Joint ESA standardised classification test, have contributed to reducing legal uncertainty in practice. They represent an important step forward and provide a clear and operational framework for determining whether a crypto-asset falls within the scope of MiCA.

In particular, the case-by-case approach remains appropriate, as it preserves the necessary flexibility to assess crypto-assets according to their specific characteristics and avoids an overly rigid one-size-fits-all framework.

At the same time, as mentioned above, certain categories of borderline cases continue to generate material legal uncertainty in practice. Among cases identified by EBF Members are:

- a. Hybrid tokens, in particular tokens combining payment, investment, utility and store-of-value functions. Difficulties also arise where a token was legitimately classified as a utility token at issuance but subsequently acquires characteristics commonly associated with financial instruments through governance changes, additional rights or evolving economic functions; the Guidelines do not sufficiently address these situations.
- b. Tokenised fund interests, i.e. tokenised interests in collective investment undertakings.
- c. Liquid staking tokens: it remains unclear whether these arrangements could qualify as units in collective investment undertakings. In decentralised staking protocols, the absence of an identifiable manager, collective management activity or investment strategy makes the application of traditional fund concepts particularly challenging.

- d. Wrapped or synthetic exposures, and representative or mirrored token structures. It is crucial that the naming, marketing communications and distribution rules associated with these tokens accurately reflect the offering and its inherent risks, to avoid misleading investors into investing in products that may not have the same performance and/or liquidity characteristics as the financial instruments they claim to represent. Investors, especially retail clients, should be able to distinguish straightforward tokenised financial instruments from genuinely borderline structures, particularly where this affects their substantive rights and the person or entity against whom those rights are enforceable.
- e. Instruments with money-market-like features.
- f. Assets marketed as NFTs but issued in series: uncertainty persists regarding the concepts of fungibility, uniqueness and "large series". Questions remain as to how a "large series" should be identified, whether NFTs with minor differences affecting value should nevertheless be considered non-fungible, and how highly interchangeable NFTs should be treated from a regulatory perspective.
- g. Tokens with governance or profit-right features.
- h. Stablecoins with contractual rights resembling financial claims.
- i. Tokenised derivatives: while the Guidelines appropriately classify tokenised perpetual futures and similar products as financial instruments under MiFID II, a practical challenge remains regarding the effective enforcement of such classification vis-à-vis third-country platforms actively targeting EU investors without being authorised under MiFID II and without being subject to the corresponding investor protection framework.

In addition, it would be important to provide a definition of "deposit" at EU level. Such a definition would help address remaining classification uncertainties and ensure greater legal certainty and consistent regulatory classification across the EU. Please also see our response to Question 77 where this point is addressed in more detail.

Against this background, please see possible steps mentioned under Q1. In any case, the objective should be to reduce legal uncertainty and regulatory arbitrage, while preserving the existing sectoral acquis applicable to financial instruments.

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?

a) Please assess each provision below along their adequacy:

	1 (completely inadequate)	2 (mostly inadequate)	3 (neutral)	4 (moderately adequate)	5 (fully adequate)	Don't know - No opinion - Not applicable
Exemptions for offers to <150 persons per Member State, small offerings (<€1m over 12 months), and qualified investors (Article 4 (2))	☐	☐	☐	☒	☐	☐
White paper disclosure framework (Article 6): issuer information, crypto-asset characteristics, tokenomics, risks, use of proceeds	☐	☐	☒	☐	☐	☐
Marketing requirements: identifiable, fair, clear, not misleading and consistent with the white paper (Article 7)	☐	☐	☐	☒	☐	☐
Ex ante notification model without prior regulatory approval (Article 8)	☐	☐	☒	☐	☐	☐
Obligation to modify/update the white paper for significant new factors, material mistakes or inaccuracies (Article 12)	☐	☐	☒	☐	☐	☐
Retail investor right of withdrawal (14 days), excluding assets already admitted to trading or after subscription period ends (Article 13)	☐	☐	☒	☐	☐	☐
Conduct obligations: honesty, fairness and professionalism, clear communications, conflicts management, and effective systems and security arrangements (Article 14)	☐	☐	☒	☐	☐	☐

Please explain your ratings in question 3 a), focusing on the issues you deem most significant regarding the overall balance between investor protection, market integrity and innovation:

Overall, EBF members consider that Title II strikes an appropriate balance between investor protection, market integrity and innovation. In several respects, it is considered less burdensome than comparable disclosure regimes applicable to traditional financial instruments. In particular, the notification-based approach, which does not require prior regulatory approval of the white paper, together with the proportionate disclosure framework, supports innovation and facilitates market access while ensuring an appropriate level of investor protection. More generally, the framework is consistent with the principle of "same activity, same risk, same rules", helping to promote a level playing field and reduce opportunities for regulatory arbitrage between traditional financial products and crypto-assets.

At the same time, effective investor protection depends not only on the availability of information, but also on its accessibility and usability in practice. In this respect,

some EBF members have highlighted practical limitations in the usability of the relevant ESMA register. Improving the accessibility and user-friendliness of the register would help ensure that the information made available under the disclosure framework can be effectively used by investors.

Some EBF members nevertheless consider that certain provisions could be further calibrated. In particular, the retail right of withdrawal is more restrictive than comparable regimes applicable to traditional financial instruments, as no direct equivalent exists under MiFID II or the Prospectus Regulation.

In addition, sustainability disclosure requirements should remain operationally feasible and focused on crypto-assets whose consensus mechanisms give rise to material environmental impacts. This would ensure that users receive meaningful information while avoiding disproportionate compliance costs.

b) Please assess each provision below along the direction of change you consider appropriate:

	1 (should be significantly weakened)	2 (should be somewhat weakened)	3 (should remain unchanged)	4 (should be somewhat strengthened)	5 (should be significantly strengthened)	Don't know - No opinion - Not applicable
Exemptions for offers to <150 persons per Member State, small offerings (<€1m over 12 months), and qualified investors (Article 4 (2))	☐	☒	☐	☐	☐	☐
White paper disclosure framework (Article 6): issuer information, crypto-asset characteristics, tokenomics, risks, use of proceeds	☐	☒	☐	☐	☐	☐
Marketing requirements: identifiable, fair, clear, not misleading and consistent with the white paper (Article 7)	☐	☐	☒	☐	☐	☐
Ex ante notification model without prior regulatory approval (Article 8)	☐	☐	☒	☐	☐	☐
Obligation to modify/update the white paper for significant new factors, material mistakes or inaccuracies (Article 12)	☐	☐	☒	☐	☐	☐
Retail investor right of withdrawal (14 days), excluding assets already admitted to trading or after subscription period ends (Article 13)	☐	☐	☒	☐	☐	☐
Conduct obligations: honesty, fairness and professionalism, clear communications, conflicts management, and effective systems and security arrangements (Article 14)	☐	☐	☒	☐	☐	☐
Civil liability for inaccurate, misleading or incomplete white paper information (Article 15)	☐	☐	☒	☐	☐	☐
Overall balance between investor protection, market integrity and innovation under Title II	☐	☐	☒	☐	☐	☐

Please explain your ratings in question 3 b), focusing on the issues you deem most significant regarding the overall balance between investor protection, market integrity and innovation:

Overall, EBF members consider that Title II strikes an appropriate balance between investor protection, market integrity and innovation. In several respects, it is considered less burdensome than comparable disclosure regimes applicable to traditional financial instruments. In particular, the notification-based approach, which does not require prior regulatory approval of the white paper, together with the proportionate disclosure framework, supports innovation and facilitates market access while ensuring an appropriate level of investor protection. More generally, the framework is consistent with the principle of "same activity, same risk, same rules", helping to promote a level playing field and reduce opportunities for regulatory arbitrage between traditional financial products and crypto-assets.

At the same time, effective investor protection depends not only on the availability of information, but also on its accessibility and usability in practice. In this respect, some EBF members have highlighted practical limitations in the usability of the relevant ESMA register. Improving the accessibility and user-friendliness of the register would help ensure that the information made available under the disclosure framework can be effectively used by investors.

Some EBF members nevertheless consider that certain provisions could be further calibrated. In particular, the retail right of withdrawal is more restrictive than comparable regimes applicable to traditional financial instruments, as no direct equivalent exists under MiFID II or the Prospectus Regulation.

In addition, sustainability disclosure requirements should remain operationally feasible and focused on crypto-assets whose consensus mechanisms give rise to material environmental impacts. This would ensure that users receive meaningful information while avoiding disproportionate compliance costs.

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)	2 (rather not serious concern)	3 (neutral)	4 (rather serious concern)	5 (extremely serious concern)	Don't know - No opinion - Not applicable
Inadequate or non-comparable disclosure clarity or complexity to retail investors in Title II white papers	☐	☒	☐	☐	☐	☐
Fraudulent or misleading crypto-asset offerings affecting EU investors	☐	☐	☐	☒	☐	☐
Lack of clear and enforceable investor rights for crypto-asset holders	☒	☐	☐	☐	☐	☐
Insufficient issuer governance or accountability in crypto-asset projects e.g. monitoring of the use of funds by issuers after the offering period	☒	☐	☐	☐	☐	☐
Regulatory arbitrage, including activity shifting outside the EU	☐	☐	☐	☐	☐	☐
Promotions by social media, influencers, sponsorships	☐	☐	☐	☒	☐	☐
Post-issuance token value erosion or project failure affecting EU retail investors	☒	☐	☐	☐	☐	☐
Market manipulation practices (e.g. wash trading, price manipulation) in crypto-asset markets	☐	☐	☒	☐	☐	☐
Misaligned incentives between crypto-asset issuers and investors (e.g. insider allocations, weak lock-ups)	☐	☒	☐	☐	☐	☐
Difficulty in assessing issuer quality and project credibility for EU investors	☐	☒	☐	☐	☐	☐
Cross-border enforcement and supervisory coordination challenges within the EU	☐	☐	☐	☐	☐	☐
Cross-border enforcement and supervisory coordination challenges with third countries authorities outside of the EU	☐	☐	☐	☐	☐	☐

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 (rather effective)	5 (highly effective)	Don't know - No opinion - Not applicable
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	☐	☐	☒	☐	☐	☐
Lock-up periods (e.g. 12 months) or vesting schedules for founder and early investor tokens	☐	☒	☐	☐	☐	☐

Please explain your ratings in question 5, and what (other) regulatory or supervisory actions you would consider useful either at the issuance stage and during marketing or distribution:

EBF members consider that no significant additional regulatory intervention is necessary at this stage. Priority should instead be given to the consistent implementation and effective supervision of the existing MiCA framework, while maintaining a proportionate, risk-based and technology-neutral regulatory approach that supports innovation, avoids unnecessary administrative burdens and enables market participants and consumers to make informed decisions.

EBF Members emphasise that transparency and disclosure obligations should be calibrated according to both the characteristics of the relevant crypto-asset and the role of the regulated entity within the value chain, in line with the principle of "same activity, same risk, same rules". This would help preserve a level playing field, prevent regulatory arbitrage across comparable financial activities, and support market integrity while ensuring appropriate investor protection.

Regarding marketing, some EBF members acknowledge that targeted restrictions on clearly misleading or aggressive retail promotion could provide additional safeguards. However, they note that MiCA already contains robust requirements on fair, clear and non-misleading communications. Effective supervisory enforcement should therefore remain the priority over additional legislative measures.

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

The EBF considers that the MiCA review should further strengthen the principles of proportionate and activity-based regulation by ensuring that regulatory requirements are calibrated to the nature, scale and risk of the activities performed, taking into account different business models. Institutions carrying out

more limited crypto asset activities should be subject to requirements that are proportionate to the risks they generate, while more extensive obligations should remain reserved for entities undertaking higher-risk activities. This would help reduce unnecessary compliance burdens while preserving effective investor protection and market integrity.

The EBF also considers that administrative burdens could be further reduced through simpler and more streamlined Level 2 and Level 3 measures and technical standards, as well as by improving the accessibility and usability of RTS and related documentation. Maintaining the documentation required under Title II, including white papers and marketing communications, can be operationally burdensome, particularly where minor or non-material technical modifications require corresponding updates across multiple documents before implementation. Streamlining these documentation requirements and introducing more proportionate update obligations would improve operational efficiency without undermining the objectives of the MiCA framework.

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)?

- a. Hybrid tokens, in particular tokens combining payment, investment, utility and store-of-value functions. Difficulties also arise where a token was legitimately classified as a utility token at issuance but subsequently acquires characteristics commonly associated with financial instruments through governance changes, additional rights or evolving economic functions; the Guidelines do not sufficiently address these situations.
- b. Tokenised fund interests, i.e. tokenised interests in collective investment undertakings.
- c. Liquid staking tokens: it remains unclear whether these arrangements could qualify as units in collective investment undertakings. In decentralised staking protocols, the absence of an identifiable manager, collective management activity or investment strategy makes the application of traditional fund concepts particularly challenging.
- d. Wrapped or synthetic exposures, and representative or mirrored token structures. It is crucial that the naming, marketing communications and distribution rules associated with these tokens accurately reflect the offering and its inherent risks, to avoid misleading investors into investing in products that may not have the same performance and/or liquidity characteristics as the financial

instruments they claim to represent. Investors, especially retail clients, should be able to distinguish straightforward tokenised financial instruments from genuinely borderline structures, particularly where this affects their substantive rights and the person or entity against whom those rights are enforceable.

e. Instruments with money-market or derivative-like features.

f. Assets marketed as NFTs but issued in series: uncertainty persists regarding the concepts of fungibility, uniqueness and "large series". Questions remain as to how a "large series" should be identified, whether NFTs with minor differences affecting value should nevertheless be considered non-fungible, and how highly interchangeable NFTs should be treated from a regulatory perspective.

g. Tokens with governance or profit-right features. h. Stablecoins with contractual rights resembling financial claims.

i. Tokenised derivatives: while the Guidelines appropriately classify tokenised perpetual futures and similar products as financial instruments under MiFID II, a practical challenge remains regarding the effective enforcement of such classification vis-à-vis third-country platforms actively targeting EU investors without being authorised under MiFID II and without being subject to the corresponding investor protection framework.

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.

EBF members consider that the current Title II framework generally provides an appropriate basis for ensuring that investors are informed of material changes after issuance, including where project governance, tokenomics, vesting schedules, control rights or other key features of a crypto-asset change. At this stage, no additional regulatory requirements appear necessary.

Rather than introducing further disclosure obligations, priority should be given to simplifying and streamlining the existing framework to improve its efficiency, effectiveness and usability. In particular, reducing unnecessary overlaps in disclosure requirements and ensuring that both current and archived documentation remains easily accessible in digital format could further enhance transparency for investors without reducing the quality or timeliness of the information provided.

EBF members also consider that further supervisory guidance on the application of materiality thresholds could promote greater supervisory convergence in determining when updates to white papers should be required, thereby supporting more consistent implementation across the Union.

PART 2. Requirements applying to Assets referenced tokens (ART) and electronic money tokens (EMT) and their issuers (MiCA Titles III and IV)

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?

	1 (strongly disagree)	2 (rather disagree)	3 (neutral)	4 (rather agree)	5 (strongly agree)	Don't know - No opinion - Not applicable
A mainstream digital means of payment for retail transactions within the EU	☐	☒	☐	☐	☐	☐
A mainstream digital means of payment for wholesale transactions within the EU	☐	☒	☐	☐	☐	☐
A complement to existing payment instruments, used mainly in specific use cases especially in international, cross-border payments	☐	☐	☐	☒	☐	☐
A core infrastructure layer for the digital economy and tokenised financial markets especially for settlement	☐	☐	☒	☐	☐	☐
A niche or transitional product, eventually displaced by other forms of digital money (e.g. CBDCs or commercial bank money innovations)	☐	☐	☒	☐	☐	☐
No clear long-term role can be identified at this stage	☐	☐	☒	☐	☐	☐
Others	☐	☐	☐	☐	☒	☐

Please specify to what other vision(s) you refer in your answer to question 9:

Although Euro-denominated stablecoin initiatives continue to develop (which suggests that their still limited place in the European ecosystem could increase overtime), we are still very much at the beginning of the development of digital money. The ecosystem is evolving rapidly, regulatory frameworks are still taking shape — MiCAR is already under review — and the full range of use cases has yet to emerge.

The suitability and success of each form of digital money for which business case is also dependent on the behavior and preferences of citizens across jurisdictions

(Single Market-EEA) vis-à-vis new forms of digital money (which may not change evenly, or swiftly enough, so as to predict the future at this stage). It is therefore premature to make a definitive assessment of which form of digital money is best suited to which business case. In the current state, what does seem clear is that different forms of digital money will serve different needs, and coexistence across segments is the more probable outcome.

Regardless of the use cases stablecoins may eventually support, especially for payments and settlements, two fundamental questions must remain certain:

- 1) Stablecoins should significantly not replace existing EU retail payment rails.
- 2) The migration of financial services to DLT should preserve the current two-tier monetary system, in which central bank money remains the ultimate risk-free settlement asset and commercial bank money created through lending, provides the elasticity of the money supply that finances the economy.

For these reasons, stablecoins should be designed and regulated as secure payment instruments for specific use cases (some still yet to emerge as previously stated). When assessing the evolution of digital money, and considering any eventual regulation (through MiCA), the EU should also consider developments in other major jurisdictions, and where appropriate, coordinate and/or react to those developments.

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 how beneficial stablecoins would be for EU users:

	1 (not beneficial)	2 (moderately beneficial)	3 (neutral)	4 (beneficial)	5 (very beneficial)	Don't know - No opinion - Not applicable
International payments (non-EU cross-border remittances or transfers)	☐	☐	☐	☐	☒	☐
Intra-EU payments (domestic and EU cross-border payments)	☐	☒	☐	☐	☐	☐
Crypto trading and liquidity provision	☐	☐	☐	☐	☒	☐
Retail payments - Person to Person	☐	☒	☐	☐	☐	☐
Retail payments - Person to Business (POI payment to merchants including e-commerce)	☐	☐	☒	☐	☐	☐
Retail payments - Business to Business	☐	☐	☒	☐	☐	☐
Wholesale payments (between financial institutions)	☐	☐	☒	☐	☐	☐
Settlement of tokenised financial instruments (e.g., digital bonds, securities)	☐	☐	☐	☒	☐	☐
Corporate treasury management	☐	☐	☐	☒	☐	☐
Access to programmable or smart contract-based financial services (DeFi applications)	☐	☐	☐	☐	☒	☐
Provision of financial services in underserved regions in the EU	☐	☒	☐	☐	☐	☐
Others	☐	☐	☐	☐	☒	☐

Please explain shortly your assessment and expectations in question 10 as regards the benefits of stablecoins for EU users and, where relevant, any potential risks:

Although Euro-denominated stablecoin activities continue to develop (which suggests that their still limited place in the European ecosystem could increase overtime), we are still very much at the beginning of the development of digital money. The ecosystem is evolving rapidly, regulatory frameworks are still taking shape — MiCAR is already under review — and the full range of use cases has yet to emerge.

Projection of benefits for use cases:

At this stage, depending on the projections, certain benefits are projected for certain use cases; the latter differing between uses cases.

Generally, stablecoins can provide fast (also atomic), 24/7, programmable, , transfers/settlements. These characteristics can potentially provide benefits to areas where solutions could prove efficient, such as:

- Cross-border transfers/settlement (notably with jurisdictions outside EU/Euroarea/SEPA)
- Settlement of tokenized securities
- Cryptoassets trading
- B2B use cases
- Corporate treasury management

Also, potential can be projected in some business environments (to purchase goods and services), including emerging agentic commerce, notably owing to programmability.

Together with privately issued stablecoins, wholesale CBDCs, could potentially play a role in tokenised financial services, including in the interbank sphere. The ECB is still exploring the potential incorporation of Wholesale CBDC in tokenized financial services through its ongoing Pontes and Appia projects, while the BIS develops its own: Agorá. At the same time, some commercial banks are investigating tokenised deposits in industry-led initiatives as complementary settlement solutions for tokenised financial markets, providing a digital representation of commercial bank money within the existing banking and regulatory framework.

Risks:

Stablecoins are not without risks for financial stability, the international role of the euro, monetary transmission, and the overall functioning of the banking sector. They may also entail a risk of losing their peg to the underlying fiat currency ("depegging"), a risk that MiCA is in principle designed to mitigate. When they are in unregulated environments, stablecoins can also be leveraged by criminals to commit fraud and money laundering. Therefore, although the MiCAR framework includes a number of safeguards, the evolution of stablecoin adoption should continue to be closely monitored by the EU, in order to identify any adverse effects, and respond accordingly.

Additional remarks: Regardless of the use cases stablecoins may eventually support, especially for payments and settlements, two fundamental questions must remain certain:

1) Stablecoins are not expected to replace significantly existing EU retail payment rails.

2) The migration of financial services to DLT should preserve the current two-tier monetary system, in which central bank money remains the ultimate risk-free settlement asset and commercial bank money created through lending, provides the elasticity of the money supply that finances the economy.

When assessing the evolution of digital money, and considering any eventual regulation (through MiCA), it is paramount that the EU should also consider developments in other major jurisdictions, and where appropriate, coordinate and/or react to those developments.

2.2 Prudential regime and capital requirements

Question 11.1 To what extent do you think the calculation methods are relevant?

	1 (not at all relevant)	2 (slightly relevant)	3 (moderately relevant)	4 (mostly relevant)	5 (highly relevant)	Don't know - No opinion - Not applicable
Minimum own funds of EUR 350,000	☐	☐	☐	☒	☐	☐
2% of the average reserve of assets	☐	☐	☐	☐	☐	☐
25% of the fixed overheads of the preceding year	☐	☐	☐	☒	☐	☐
Additional own funds for "significant" tokens	☐	☐	☐	☒	☐	☐

Question 11.2 To what extent do you think the calculation methods are appropriately calibrated?

	1 (not at all appropriately calibrated)	2 (slightly appropriately calibrated)	3 (moderately appropriately calibrated)	4 (mostly appropriately calibrated)	5 (highly appropriately calibrated)	Don't know - No opinion - Not applicable
Minimum own funds of EUR 350,000	☐	☐	☐	☒	☐	☐
2% of the average reserve of assets	☐	☐	☐	☐	☒	☐
25% of the fixed overheads of the preceding year	☐	☐	☐	☒	☐	☐
Additional own funds for "significant" tokens	☐	☐	☐	☐	☒	☐

Please explain your answers to question 11.1 and 11.2, 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):

While the existing level of calibration goes in the right direction, the existing multi-criteria approach is difficult to implement and its overall logic could be improved. The fixed overheads criteria is hardly commensurate with the importance of an issuer on the market and its specific risks. Additional funds for “significant” tokens would require a more appropriate definition of such category. Conversely, the reserve threshold is a simple and risk proportionate criterion which the regulation should focus on. There are no strong grounds to differentiate the calibration depending on the size.

The calibration of thresholds should be revisited since they come directly from E-money directive, which is not necessarily an ideal reference.

Besides, the current definitions are highly specific and may not fully reflect the heterogeneity of stablecoins, different issuer types, business models, and associated risk profiles. A more differentiated and risk-sensitive approach -taking into account issuer structure, scale and systemic relevance- could provide a more proportionate regulatory framework. This topic is also increasingly turning into a regulatory playing field issue, as the US, is examining changes in its regulatory approach and considering more tiered regulatory approaches under the Genius act, with requirements calibrated to issuer type and size. It is critical to enhance EU-US alignment to improve consistency, reduce fragmentation and support more effective global markets.

The above-mentioned safeguards are consistent with the fact that non-bank issuers of both EMTs and ARTs are not subject to the banking and prudential framework. A dedicated prudential framework is therefore necessary for the protection and resilience of token holders. In this context, the own funds requirements under MiCA compensating for the absence of banking-style prudential regime are essential.

By contrast, for credit institutions, MiCA operates alongside an already comprehensive prudential framework. From this perspective, the exemption of credit institutions from the own funds requirements applicable to non-bank issuers under Articles 35 and 46 of MiCA is consistent with an approach based on substance over form and technological neutrality, while avoiding unjustified regulatory duplication.

It is important to consider an increasingly common scenario: non-bank issuers controlled by, or part of, banking groups headquartered in the EU. Although these entities are not credit institutions, they are backed by shareholders that already fall within the prudential perimeter and have consolidated supervision. Applying the full MiCA own funds requirements to such entities may recreate the regulatory duplication that MiCA seeks to avoid for banks.

In this context, own funds requirements applicable to EMIs issuing EMTs should be calibrated by reference to the actual risk profile, primarily by reference to the operational risks associated with the activity rather than to the value of the reserve assets. Any additional own funds requirement for significant EMTs should be progressive to avoid cliff-edge effect. EBF recommends allowing -subject to appropriate supervisory validation- to net or offset capital requirements arising from different regulatory licences, including requirements falling outside MiCA, where the underlying risks are already covered. This could be offered when the entity whose capital is used to offset capital requirements also guarantees the stablecoin issuer. The consolidated own funds requirement should correspond to the highest applicable capital requirement across the relevant regulated activities, where the risks covered substantially overlap.

In another approach it would be appropriate to analyse the possible introduction of an intermediate category of issuers subject to less burdensome own funds requirements, when the parent banking group provides effective prudential support. Such support could take the form of an enforceable guarantee, a legally binding capital support commitment, or the recognition of the relevant risks at the level of prudential consolidation. To prevent regulatory arbitrage, competent authorities should retain the power to require higher levels of capital where warranted by the specific risk profile of the issuer. Any reduction in own funds requirements should be conditional upon support arrangements that are genuinely capable of absorbing losses and protecting token holders, rather than purely formal ones.

This approach could facilitate the participation of European banking groups in the tokenised money market through dedicated regulated vehicles, reducing market fragmentation and developing a credible European alternative. Importantly, such a measure would not reopen the framework to non-EU entities, as it would remain strictly limited to issuers backed by banking groups headquartered in the Union, thereby remaining fully aligned with the original rationale and policy objectives of MiCA.

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:

	1 (not at all a factor)	2 (rather not a factor)	3 (neutral/ uncertain)	4 (rather a factor)	5 (a major factor)
Market interests for ARTs	☐	☐	☒	☐	☐
Licencing and regulatory requirements for ARTs	☐	☐	☐	☒	☐

Overall, EBF members believe that the absence of authorised ARTs under MiCA should not be interpreted solely, or even primarily, as evidence of limited market interest in tokenised assets or distributed ledger technology. Rather, it appears to reflect a combination of regulatory and economic factors that have significantly reduced the attractiveness of the ART framework for potential issuers. Regulatory complexity, demanding operational requirements, implementation costs, business model considerations, and the availability of alternative token structures such as EMTs - which are specifically designed to maintain a stable value against a single fiat currency - are some of the main reasons behind the absence of authorised ARTs under MiCA.

This may indicate that the current regulatory framework was designed for a category of instruments whose potential use cases are more limited than those associated with EMTs. The MiCAR review therefore provides an opportunity to assess whether the current framework remains appropriately calibrated to the actual economic function and market demand for ARTs, while preserving the objectives of financial stability, market integrity and consumer protection.

This situation in the EU is also often compared to the less prescriptive and less burdensome US regime for instruments that would qualify as ARTs under MiCA, reinforcing the view that the MiCA framework may be comparatively unattractive for issuers.

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:

In practice, ARTs are more likely to serve as investment, store-of-value, diversification or hedging instruments than as means of exchange. Unlike EMTs,

the value of an ART may fluctuate against any individual fiat currency, making it less suitable as a stable unit of account for consumers and businesses operating in euro-denominated economies. Likewise, merchants are unlikely to price goods or routinely accept payments in an instrument whose value may drift against the euro over time. As a result, the commercial demand for ARTs is likely to be concentrated in investment-related use cases, which naturally involve a narrower issuer and user base than payment-oriented applications.

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**
- **“5” indicates that requirements should be made substantially more stringent (e.g. higher reserves, tighter risk controls, or enhanced safeguards)**

a) Please rate each aspect below as regard to non-significant ARTs:

	1 (should be significantly relaxed)	2 (should be somehow relaxed)	3 (current framework appropriate)	4 (should be made somehow more substantially more stringent)	5 (should be made more stringent)	Don't know - No opinion - Not applicable
Obligation to constitute and maintain a reserve of assets covering redemption and liquidity risks (Article 36(1))	☐	☐	☒	☐	☐	☐
Liquidity composition and maturity structure of the reserve (Article 36(4), RTS)	☐	☐	☒	☐	☐	☐
Minimum amount of deposits held (30% and 60%) (Article 36(4), RTS)	☐	☒	☐	☐	☐	☐
Auditing requirements (Article 36(9))	☐	☐	☒	☐	☐	☐
Custody requirements (Article 37)	☐	☐	☒	☐	☐	☐

b) Please rate each aspect below as regard to requirements for significant ARTs:

	1 (should be significantly relaxed)	2 (should be somehow relaxed)	3 (current framework appropriate)	4 (should be made somehow more substantially more stringent)	5 (should be made more stringent)	Don't know - No opinion - Not applicable
Obligation to constitute and maintain a reserve of assets covering redemption and liquidity risks (Article 36(1))	☐	☐	☒	☐	☐	☐
Liquidity composition and maturity structure of the reserve (Article 36(4), RTS)	☐	☐	☒	☐	☐	☐
Minimum amount of deposits held (30% and 60%) (Article 36(4), RTS)	☐	☒	☐	☐	☐	☐
Auditing requirements (Article 36(9))	☐	☐	☒	☐	☐	☐
Custody requirements (Article 37)	☐	☐	☒	☐	☐	☐
Enhanced liquidity management, stress testing, monitoring, and reporting obligations for significant ARTs (Article 45(3)-(4))	☐	☐	☒	☐	☐	☐

Please explain your answers to question 14 a) and b), 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):

Revisiting ART liquidity and reserve requirements does not appear to be a priority at this stage, given that other prerequisites need to be addressed to foster the

development of the ART market. Nevertheless, such a review could be relevant to better differentiate the regulatory treatment of ARTs and EMTs, and assess targeted refinements based on risk-management considerations, aimed at strengthening reserve diversification and mitigating concentration risks without altering the fundamental architecture of the existing regime.

Article 36(1) is a core safeguard underpinning confidence, redemption rights and consumer protection. Relaxing it could undermine trust, on the contrary, EBF believes it should be complemented, in order to:

- keep the liquidity within Europe;
- reduce heterogeneity in risks between stablecoins and make sure that stablecoins are a solid and safe payment instrument with low de-peg risk (avoiding a hierarchy of stablecoins with significant stablecoin specific discounts in case of stress);
- enhance the protection of EU holders;
- maintain European sovereignty.

At the same time, the liquidity and investment restriction applicable to reserve assets may, in certain circumstances, prevent reserve compositions from closely matching the underlying referenced assets. This may be particularly relevant where ART references assets exhibiting higher levels of market volatility, such as commodities or equity indices. In such cases, issuers may be exposed to basis risk arising from a structural mismatch between reserve assets and the referenced asset.

Consideration should also be given to the treatment of ARTs as collateral within regulated financial markets. Where reserve assets and referenced assets are closely aligned and the underlying assets themselves satisfy applicable prudential collateral eligibility requirements, the eligibility of such ARTs for collateral purposes should not be excluded automatically. A more risk-sensitive approach would better reflect the underlying economic characteristics of the instrument.

Independent audits under article 36(9) are fundamental to market confidence and transparency. The current framework strikes a reasonable balance between oversight and operational burden.

Segregation, safekeeping and protection of reserve assets under article 37 are essential. Given the importance of safeguarding reserves against operational and insolvency risks, the current requirements appear appropriate.

Greater clarity would nevertheless be beneficial regarding the legal, economic and prudential treatment of reserve assets, particularly where reserve funds are held

as deposits with credit institutions. While MiCA establishes robust segregation and safeguarding requirements for the benefit of token holders, uncertainty remains regarding the resulting legal, economic and prudential treatment of reserve assets, and the allocation of risks and responsibilities between issuers, custodians and deposit-taking institutions. Clarification in this area would strengthen legal certainty and facilitate consistent prudential treatment across the ecosystem.

Core reserve and liquidity requirements should remain strong, but calibration should better reflect issuer size, reserve composition, and redemption behaviour.

Any potential recalibration should remain technology-neutral and focus on investor protection, operational resilience, and legal certainty, rather than on the specific technological infrastructure used.

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**
- **“5” indicates that requirements should be made substantially more stringent (e.g. higher reserves, tighter risk controls, or enhanced safeguards)**

a) Please rate each aspect below as regard to requirements for non-significant ARTs:

	1 (should be significantly relaxed)	2 (should be somehow relaxed)	3 (current framework appropriate)	4 (should be made somehow more stringent)	5 (should be made substantially more stringent)	Don't know - No opinion - Not applicable
Obligation to constitute and maintain a reserve of assets covering redemption and liquidity risks (Article 36(1))	☐	☐	☒	☐	☐	☐
Legal and operational segregation of reserve assets from the issuer's own estate and from other token reserves (Article 36(2)–(3))	☐	☐	☒	☐	☐	☐
Liquidity composition and maturity structure of the reserve (Article 36(4), RTS)	☐	☐	☒	☐	☐	☐
Minimum amount of deposits held (30% and 60%) (Article 36(4), RTS)	☐	☒	☐	☐	☐	☐
Auditing requirements (Article 36(9))	☐	☐	☒	☐	☐	☐
Custody requirements (Article 37)	☐	☐	☒	☐	☐	☐
Excessive exposure / concentration between bank and token (Article 36(4) MiCA) Do you consider the 1.5% binding limit adequate? (RTS)	☐	☒	☐	☐	☐	☐

b) Please rate each aspect below as regard to requirements for significant ARTs:

	1 (should be significantly relaxed)	2 (should be somehow relaxed)	3 (current framework appropriate)	4 (should be made somehow more stringent)	5 (should be made substantially more stringent)	Don't know - No opinion - Not applicable
Obligation to constitute and maintain a reserve of assets covering redemption and liquidity risks (Article 36(1))	☐	☐	☒	☐	☐	☐
Legal and operational segregation of reserve assets from the issuer's own estate and from other token reserves (Article 36(2)-(3))	☐	☐	☒	☐	☐	☐
Liquidity composition and maturity structure of the reserve (Article 36(4), RTS)	☐	☐	☒	☐	☐	☐
Minimum amount of deposits held (30% and 60%) (Article 36(4), RTS)	☐	☒	☐	☐	☐	☐
Auditing requirements (Article 36(9))	☐	☐	☐	☐	☐	☐
Custody requirements (Article 37)	☐	☐	☒	☐	☐	☐
Enhanced liquidity management, stress testing, monitoring, and reporting obligations for significant EMTs (Article 45(3)-(4))	☐	☐	☒	☐	☐	☐
Excessive exposure / concentration between bank and token (Article 36(4) MiCA) Do you consider the 1.5% binding limit adequate? (RTS)	☐	☒	☐	☐	☐	☐

Please explain your answers to question 15 a) and b), including your reasoning and any suggestions for recalibration or alternative approaches:

The EMT framework is generally well aligned with the objectives of consumer protection and financial stability: ensuring redemption at par value and maintaining confidence in tokenised representations of fiat currency. The strongest case for adjustment lies in certain highly prescriptive liquidity and concentration provisions, where greater risk-based flexibility may improve operational feasibility without materially reducing consumer protection or financial stability safeguards.

Greater clarity should be introduced regarding the treatment of liquidity stemming from EMT reserve assets that are deposited by electronic money institutions with credit institutions. It would be helpful to expressly clarify that, once such funds are placed with a credit institution (30%/60% of the total reserve), they form part of the institution's ordinary deposit base and may therefore be managed and

deployed in accordance with the prudential framework applicable to banks. This is particularly important for LCR purposes, and, more generally, liquidity and treasury management.

Treating these deposits as subject to disproportionately conservative liquidity assumptions or excessively high outflow rates could fail to reflect their economic substance and result in an undue reduction of banks' liquidity capacity, constraining the ability of credit institutions to support the financing of the real economy. A prudential treatment that adequately considers the economic characteristics of these deposits could help ensure that the development of EMTs does not give rise to unintended consequences for the functioning of the banking intermediation model, while remaining fully consistent with the objectives of financial stability and depositor protection. Issuers should therefore freely allocate their reserve, provided the nature of these assets is framed.

This could be particularly relevant if the EU wishes to encourage regulated EMT issuance while maintaining high prudential standards.

Additionally, in order to contain liquidity outflow out of Europe, the highly liquid financial instruments eligible for the reserve fund shall be issued by entities established within the European Union (EU) or the European Economic Area (EEA).

Maturity: The maximum maturity of reserve assets should be maximum 3 months, to mirror the US requirements under Genius, and limit the level of risks of the investments.

Exposure limits: assess whether to replace the fixed percentage bank deposit requirement with a flexible risk-based allocation for introduce a counter party exposure limit on single names, reinforcing its level for significant stablecoins.

It should also be recognised that the market for MiCAR-compliant EMTs remains at a relatively early stage of development. While several EMTs have already been authorised and launched, there is not yet a sufficiently robust body of market data to allow for a comprehensive assessment of how the current framework performs under prolonged periods of stress or in the presence of significant systemic events.

Finally, greater international alignment with major jurisdictions such as the UK and the US would help establish a more consistent regulatory framework for stablecoins as inherently global financial instruments, supporting both financial stability and a level playing field for market participants.

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?

No option has been selected.

Please explain your answer to question 16, including your reasoning and any suggestions for other/alternative approaches:

This is a very important and complex issue with strategic implications that EBF is following closely, but need more time to analyse. The EBF will continue working towards a position, which we will submit as soon as possible.

2.4 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, and if so how?

Please rate each each quantitative criteria thresholds on a scale from 1 to 5, where

- “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)

a) Please rate how each quantitative criteria thresholds used to classify EMTs should be adjusted:

No option has been selected.

b) Please rate how each quantitative criteria thresholds used to classify ARTs should be adjusted:

No option has been selected.

Please explain your answers to question 17 a) & b), including your reasoning and any suggestions for other/alternative approaches:

Overall, as regards EMT, the current thresholds based on market capitalisation appear broadly appropriate, whereas the criteria based on the number of users and transaction volumes raise practical and conceptual concerns. Indeed, the criteria relating to the number of holders/users and daily transaction volumes are not necessarily well aligned with the actual risk profile of EMTs and ARTs. They rely on data that is often difficult to collect in a reliable and consistent manner, particularly in decentralised or intermediated distribution environments. In addition, these metrics are inherently volatile and may lead to frequent reclassifications and declassifications of tokens as “significant”, thus creating operational complexity and regulatory uncertainty. By contrast, market capitalisation constitutes a more stable and meaningful indicator of the economic importance and potential systemic relevance of a token. It better captures the scale of exposure and the potential impact associated with a given issuer. For these reasons, it would be preferable to remove from MiCA the use of user based and transaction-based thresholds and instead place greater emphasis on market capitalisation as the primary quantitative criterion for determining significance.

The current significance thresholds may result in EMTs and ARTs being classified as significant before they reach a scale that creates material financial stability concerns. This is particularly relevant for EMTs issued by credit institutions that are already subject to comprehensive prudential supervision, liquidity requirements, capital requirements, recovery planning and supervisory oversight. MiCA may trigger enhanced token-specific requirements at a relatively early stage of market development. A moderate increase in the user and transaction thresholds, and a more substantial increase in the EUR 5 billion outstanding-value threshold for EMTs, would better align regulatory burdens with actual systemic relevance while supporting the development of EU regulated digital money solutions. Details: Ten million users is not necessarily indicative of systemic risk for a payment token issued by a regulated bank. A successful retail payment product could achieve this scale relatively quickly without creating financial stability concerns. A moderate increase would allow broader adoption before enhanced requirements apply. For EMTs, EUR 5 billion is relatively low compared with: (i) the balance sheets of major EU banks, (ii) volumes processed by traditional payment systems, (iii) the GENIUS Act's use of a USD 10 billion threshold as an important supervisory benchmark. For a bank-issued euro EMT and subject to banking supervision, reaching EUR 5 billion outstanding does not necessarily imply systemic risk. – Suggestion to increase perhaps toward EUR 10-15 billion.

Multi-issuance schemes should be taken into account in the significance assessment. Cross-border fungibility combined with fragmented reserves brings additional risks, because redemption claims can concentrate on the EU issuer under stress regardless of the arrangement's overall scale.

However, the specific risks associated with multi-issuance schemes may justify separate considerations. In particular, given the potentially higher liquidity risks for the EU and for European token holders, considerations could be given to lowering the applicable outstanding-value threshold for such schemes from EUR 5bn to EUR 1bn.

About asset-referenced tokens (ARTs), the current level of market development and the limited availability of observable data make it particularly difficult to form a definitive view on the appropriateness of the quantitative thresholds used to determine significance. Given the diversity of potential ART structures and the still limited adoption of these instruments within the European market, a cautious approach appears warranted. It would be preferable to allow for a longer observation period before considering any amendments to the existing criteria.

Also, given the inherently global nature of stablecoins, promoting regulatory consistency across major jurisdictions is essential to support a level playing field and reduce market fragmentation. In particular, alignment with the evolving regulatory frameworks in the United Kingdom and the United States should be considered where appropriate. Should material divergences emerge once the UK and US frameworks have been finalised, the EU framework should remain sufficiently adaptable to allow for targeted recalibration. Such an approach would help preserve the competitiveness of the EU market while maintaining high regulatory standards and supporting the cross-border use of stablecoins.

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

Yes.

Please explain how you think the qualitative criteria for classifying EMTs or ARTs as “significant” should be adjusted:

The qualitative criteria remain useful as quantitative thresholds alone may not fully capture the potential systemic relevance of an EMT or ART. However, the current framework could benefit from greater objectivity, predictability and proportionality. The current qualitative criteria—such as the international relevance of the issuer’s activities or the degree of interconnectedness with the financial system—are inherently subject to interpretation. This creates a risk of

inconsistent application across competent authorities, potentially leading to regulatory fragmentation within the EU.

In particular, some qualitative criteria, such as interconnectedness with the financial system, significance of cross-border activities, substitutability, and importance for payment and settlement activities, may be subject to broad interpretation and may create uncertainty for issuers seeking to assess whether a token is likely to be classified as significant.

The criterion set out in Article 43(1)(g) - the fact that the same issuer issues at least one additional asset referenced token or e-money token and provides at least one crypto-asset service - should be reconsidered, as the mere fact that an issuer provides additional crypto-asset services or issues more than one token does not necessarily indicate systemic relevance or financial stability risk. The criterion may disproportionately affect integrated business models and create incentives for artificial organisational fragmentation without delivering a corresponding prudential benefit.

In addition, certain criteria, such as the issuance of multiple tokens, may be met relatively easily and do not appear sufficiently discriminating to reflect the actual risk profile or systemic importance of an issuer. In this context, it would be appropriate to streamline and simplify remove from MiCA the set of qualitative criteria. A more focused and harmonised approach. This would enhance legal certainty, ensure more consistent supervisory practices across jurisdictions, and better align the classification of "significant" tokens with genuinely relevant risk indicators.

Consideration should be given to:

- Providing more granular and measurable indicators supporting each qualitative criterion.
- Establishing clearer supervisory guidance regarding the circumstances under which qualitative criteria alone may justify a significance designation.
- Taking into account the nature and regulatory status of the issuer, particularly where EMTs are issued by credit institutions already subject to comprehensive prudential supervision, liquidity requirements, recovery planning, operational resilience obligations and ongoing supervisory oversight.
- Increasing transparency regarding the methodology used by authorities when assessing qualitative significance factors.

Multi-issuance schemes cause higher liquidity risks for Europe and higher risks for European holders than stablecoins that are issued only in Europe. For these schemes, the capitalization limit should be decreased.

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

No.

2.5 Interest payment

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

a) for EMTs:

No, interest and interest-equivalent remuneration should continue to be prohibited.

We support the current prohibition of interest and interest-equivalent remuneration for EMTs and ARTs contemplated in MiCA. At the same time, we call on the European Commission to closely follow developments in this area in other major jurisdictions, particularly the US and the UK, and react accordingly, when and where applicable. Any changes in this regard in these other jurisdictions should not lead to EU entities losing the level playing-field vis-à-vis third country entities.

In addition, it should be clarified that Article 50 does not restrict commercial arrangements between an issuer and its distributors (provided that they do not amount to interest or interest-equivalent remuneration of the holder). This would help support the uptake of euro-denominated stablecoins, particularly given the likely role of banks as key distributors.

b) for ARTs:

No, interest and interest-equivalent remuneration should continue to be prohibited.

EBF supports the current prohibition of interest and interest-equivalent remuneration for EMTs and ARTs contemplated in MiCA. At the same time, EBF members call on the European Commission to closely follow developments in this area in other major jurisdictions, particularly the US and the UK, and react accordingly, when and where applicable. Any changes in this regard in these other jurisdictions should not lead to EU entities losing the level-playing-field vis-à-vis third country entities.

In addition, it should be clarified that Article 50 does not restrict commercial arrangements between an issuer and its distributors (provided that they do not amount to interest or interest-equivalent remuneration of the holder). This would help support the uptake of euro-denominated stablecoins, particularly given the likely role of banks as key distributors.

2.6 Redemption

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?

EBF understands that other market participants have had to process such requests in practice and that the operational costs associated with these procedures can be significant, particularly with regard to KYC/AML checks, customer onboarding requirements and the provision of bank account details for redemption proceeds.

In this context, it would be reasonable to allow issuers to charge redemption fees reflecting the actual costs incurred in processing such requests, as already envisaged by certain market participants, including Genius. Such an approach would help ensure that the costs generated by individual redemption requests are borne by the requesting holders rather than by the broader user base.

Question 22. If you hold EMTs and wish to dispose of them, which of the following options would you most likely choose?

a) In a normal market situation

I would likely sell or exchange them with a broker or at a trading venue.

b) In a stressed market situation

I would likely turn to the EMT issuer or his agent to exercise my statutory redemption right.

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	Don't know - No opinion - Not applicable
Permanent right of redemption against the issuer, either at market value (ARTs) or at par (EMTs)	☐	☒	☐	☐
Timing of redemption (timeframe for redemption by the issuer)	☐	☒	☐	☐
Prohibition of redemption fees	☒	☐	☐	☐
Conditions, procedures, and transparency of redemption policies	☐	☒	☐	☐
Supervisory powers to intervene in or trigger redemption plans	☐	☒	☐	☐

Please explain your assessment to question 23, 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:

EBF supports greater flexibility in the practical exercise of EMT redemption rights, while ensuring that holders remain adequately protected and ultimately retain the ability to redeem their tokens. MiCA could provide clarity regarding redemption timing, improving legal certainty and confidence while preserving flexibility in stressed market conditions.

Regarding redemption fees, issuers should be permitted to pass on transparent, proportionate and verifiable execution or liquidation costs to redeeming holders. Such clarification would better reflect operational realities while remaining fully consistent with consumer protection objectives.

In this respect, certain differences between MiCA and non-EU frameworks deserve attention. Recent market events, including the Silicon Valley Bank episode, have highlighted the importance of robust redemption mechanisms under stressed conditions. While MiCA currently prohibits redemption fees, non-EU jurisdictions

often allow redemption fees under specific circumstances. This difference may warrant further consideration to ensure a level playing field, avoid regulatory arbitrage and preserve the competitiveness of EU-issued EMTs and ARTs, particularly in light of ongoing developments under the US GENIUS and CLARITY frameworks.

On the timing of redemption, MiCA should provide greater clarity. While holders have a right to redeem at any time, the framework does not currently provide sufficient certainty regarding the timeframe within which redemption requests should be processed and settled in normal market conditions. The framework could specify reasonable redemption timeframes, taking into account the type of token, operational arrangements and settlement infrastructure, while preserving flexibility for exceptional circumstances and stress situations.

2.7 Stability issues

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:

a) Current MiCA requirements for ARTs

	Weaken	Keep as is	Strengthen	Don't know - No opinion - Not applicable
Recovery plans	☐	☒	☐	☐
Redemption plans	☐	☒	☐	☐

b) Current MiCA requirements for EMTs

	Weaken	Keep as is	Strengthen	Don't know - No opinion - Not applicable
Recovery plans	☐	☒	☐	☐
Redemption plans	☐	☒	☐	☐

Please explain your assessment to question 24 a) & b), including if a different approach is warranted for significant vs non-significant tokens, and share any suggestions for adjustments you may have:

The current MiCA requirements regarding recovery and redemption plans for both ARTs and EMTs appear broadly fit for purpose and should be maintained. The framework already requires issuers to establish credible procedures for addressing situations where reserve requirements may no longer be met, including scenarios involving significant redemption requests, operational disruptions or other stress events. The MiCA framework already provides a high level of protection for holders of crypto-assets compared with other existing or proposed regulatory regimes globally, striking an appropriate balance with financial stability and market development.

At present, there is limited practical experience with authorised ARTs and EMTs under MiCA and insufficient evidence to conclude that the existing framework needs to be substantially amended. Therefore, a period of supervisory observation and practical implementation should precede any substantial recalibration of the requirements.

While the overall framework should remain unchanged, supervisory guidance could provide additional clarity regarding stress-testing methodologies, redemption scenarios, operational readiness expectations and interactions between recovery plans, redemption plans and broader prudential or resolution frameworks. This may be particularly relevant for credit institutions issuing EMTs, which are already subject to extensive recovery and resolution planning requirements under the banking regulatory framework. Therefore, recovery and redemption planning requirements should be proportionate and should avoid unnecessary duplication with existing banking recovery, resolution, liquidity and prudential frameworks.

The preparation of recovery and redemption plans can even, at times, become a rather, theoretical exercise. Issuers are required to consider and document a broad

range of severe stress scenarios, some of which are remote and highly hypothetical in nature. While such forward-looking planning is valuable, the operational relevance of certain contingency measures may be difficult to assess in advance and could ultimately depend on circumstances that are impossible to predict with precision.

The preparation, maintenance and regular updating of these plans also require substantial resources. EBF therefore believes that there may be merit in exploring ways to make these requirements more proportionate and operationally focused, with greater emphasis on the credibility and practical feasibility of recovery measures rather than on extensive documentation requirements.

In any case, redemption rights should remain strong, especially regarding timing transparency and operational certainty. Fast and predictable redemption maintains confidence during stress.

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:

	1 not at all desirable	2 slightly desirable	3 desirable	4 mostly desirable	5 highly desirable	Don't know - No opinion - Not applicable
Allowing EMT issuers to deposit their reserve assets directly into central bank accounts	☐	☐	☐	☐	☐	☐
Providing clear rules that ensure the continuity of redemption rights (reserves are safeguarded for the benefit of token holders and <u>are ring-fenced</u> in insolvency, giving these holders an exclusive claim against those assets) in case of insolvency of the issuer	☐	☐	☐	☒	☐	☐
Establishing a dedicated resolution regime for EMIs issuing EMTs	☐	☐	☒	☐	☐	☐
Allowing emergency liquidity support / lender-of-last-resort (LOLR) facilities for EMIs issuing EMTs	☒	☐	☐	☐	☐	☐
Others	☐	☐	☒	☐	☐	☐

Please specify to what other policy option(s) you refer in your answer to question 25:

Additional policy measures could focus on improving operational resilience, harmonising redemption and reserve reporting practices across the EU, and

facilitating the orderly transfer of EMT activities and reserve assets in situations of issuer distress. Overall, policy reforms should prioritise redemption certainty, reserve asset protection and operational resilience while supporting innovation, competition and the international competitiveness of the European digital asset market.

The MiCAR review could provide an opportunity to explore whether additional liquidity management tools may be appropriate for credit institutions involved in the distribution, custody or other servicing of regulated EMTs. As the role of banks in the tokenised money ecosystem continues to expand, it may be useful to assess whether the existing collateral and funding framework is still aligned to the specific features of these instruments and their underlying reserve arrangements.

Situations of stressed market conditions could give rise to significant redemption requests from EMT holders. Although EMTs are backed by high-quality reserve assets and remain redeemable at par value, large-scale redemption events may require the rapid mobilisation of liquidity. In such circumstances, banks acting within the EMT value chain could play an important role in facilitating the orderly management of redemption flows and in reducing the need for accelerated liquidation of reserve assets. Provided that EMT are eligible as ECB collateral, banks which hold EMT in their balance sheet could opt to repo the assets with the ECB and provide liquidity along the value chain. This mechanism could support CASPs or issuers facing mass redemption requests due to temporary shock while maintaining access to ECB facility to highly regulated institutions. The conditions of such collateral operations should be further scrutinised, to avoid creating circularity, where the collateral a bank provides is partly backed by its own deposits (given the MiCAR requirement to partly back stablecoins by bank deposits). Conditions might include limits on issuer deposits with individual banks and haircuts of the same percentage applied to the stablecoin collateral.

The objective would not be to modify the current institutional framework or the allocation of responsibilities between issuers, banks and central banks, but rather to ensure that temporary liquidity pressures can be absorbed through established market mechanisms, thereby reducing the risk of disorderly market adjustments.

Please explain your ratings in question 25, including potential benefits, risks, or implementation challenges:

The continuity of redemption rights in case of insolvency of the issuer is central to the credibility of EMTs. Token holders should have a clear, enforceable and preferential claim over safeguarded reserve assets and, for EMTs issued by e-money institutions, those assets should be ring-fenced from the insolvency estate of the issuer.

For EMT-issuing EMIs that reach significant scale, have material cross-border use, or become relevant for payment and settlement use cases, EBF would support exploring a proportionate dedicated framework for orderly resolution or wind-down. Such a framework should not mechanically replicate the bank resolution regime, as EMIs do not perform the same functions as credit institutions and do not take deposits or engage in maturity transformation in the same way. Instead, it should focus on preserving holders' redemption rights, continuity of critical payment and redemption functions, segregation and transfer of reserve assets, operational continuity, and coordinated communication with holders and competent authorities.

The regime should be proportionate and risk-based. It should apply primarily to significant EMTs or EMT issuers whose scale, interconnectedness or cross-border reach may create financial stability or consumer protection concerns.

There should be no lender-of-last-resort access to e-money institutions issuing EMTs because the assets in the reserve funds must be highly liquid and have a very short maturity. Such access should not become a general feature of the EMT framework, as it could blur the distinction between EMIs and credit institutions, and undermine the level playing field between bank and non-bank issuers. In addition, the existence of public-sector liquidity backstops could create expectations of implicit public support, weakening market discipline and potentially giving rise to moral hazard concerns.

Regarding EMT issuers' access to Central Bank accounts, the EBF is strongly committed to addressing this very important and complex issue with strategic implications. The EBF will continue working towards a position which we will submit as soon as possible.

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

Mostly appropriate / desirable.

Please explain your ratings in question 26 and add any suggestions for recalibration or alternative approaches:

The objective of ensuring that EMT issuers maintain a sufficient stock of highly liquid assets to meet redemption requests is appropriate and remains an important safeguard within the MiCA framework.

However, it could be assessed whether the current requirement for EMT-issuing EMIs to hold between 30% and 60% of reserve assets in bank deposits are overly

prescriptive and does not necessarily represent the most effective or risk-sensitive approach to liquidity management.

While bank deposits provide immediate liquidity, they also create concentration and counterparty exposures to the banking sector and may limit the ability of issuers to optimise reserve portfolios according to the characteristics, scale and redemption profile of the EMT. For large-scale EMT issuance, including EMTs denominated in major currencies such as EUR and USD, a rigid deposit requirement may therefore impose constraints that are not always justified by the underlying risk.

The regulatory objective should be to ensure that reserve assets remain highly liquid, diversified and capable of supporting timely redemption under both normal and stressed conditions. A more flexible and risk-sensitive framework would better accommodate different EMT business models and market developments while continuing to ensure robust redemption capacity and protection of token holders.

Depending on market conditions and operational arrangements, short-dated sovereign securities, and other highly liquid and low-risk instruments may provide an equivalent degree of safety and liquidity than commercial bank deposits. Focusing on the overall quality, the possibility to use liquidity and diversification of reserve assets rather than fixed minimum percentages could allow reserve management arrangements to be tailored closely to actual redemption risks for some EMT issuers, while preserving strong consumer protection and financial stability safeguards. Supervisors should retain the ability to require higher liquidity buffers where warranted by an issuer's risk profile, size or redemption patterns, but issuers should be able to demonstrate equivalent liquidity through different reserve compositions.

In light of the increasing importance of regulated stablecoins and the objective of supporting competitive EU based issuance, consideration should therefore be given to recalibrating the current deposit requirement towards a more risk-based and diversified framework.

Excessively prescriptive reserve composition requirements could limit operational flexibility, constrain innovation and place EU issuers at a disadvantage compared with issuers operating under other regulatory frameworks, without necessarily delivering commensurate benefits in terms of liquidity or holder protection.

For these reasons, the current requirement is considered moderately appropriate but could benefit from greater flexibility while maintaining robust safeguards for EMT holders. With a view to further strengthening both the prudential safeguards and the strategic dimension of the European framework, EBF believes it is key to

ensure that the entire EMT reserve ecosystem remains anchored within the European financial system. In particular:

- the portion of reserve assets invested through the banking system should be held and serviced by financial intermediaries established within the European Union;
- investments should, to the greatest extent possible, be directed towards euro-denominated assets issued by European entities and, where appropriate, support the financing of the European real economy.

Such an approach would be broadly aligned with emerging regulatory approaches in other jurisdictions (e.g., Section 4 of the US Genius Act), would contribute to maintaining supervision, control and risk management within the European regulatory perimeter. At the same time, it would support the Union's financial stability and strategic autonomy objectives while preserving the funding base of the European banking sector and the role of credit institutions in financing the real economy, without hindering the development and adoption of EMTs.

2.8 Global stablecoins arrangements and interactions with other regulatory frameworks

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	Don't know - No opinion - Not applicable
International payments (cross-border remittances or transfers,)	☐	☐	☐	☐	☒	☐
Intra-EU payments (domestic and cross-border EU payments)	☐	☒	☐	☐	☐	☐
Crypto trading and liquidity provision	☐	☐	☐	☒	☐	☐
Retail payments - Person to Person	☐	☒	☐	☐	☐	☐
Retail payments - Person to Business (POI payment to merchants including e-commerce)	☐	☒	☐	☐	☐	☐
Retail payments - Business to Business	☐	☒	☐	☐	☐	☐
Settlement of tokenised financial instruments (e.g., digital bonds, securities)	☐	☐	☐	☒	☐	☐
Corporate treasury management	☐	☐	☐	☐	☒	☐
Access to programmable or smart contract-based financial services (DeFi applications)	☐	☐	☐	☐	☒	☐
Provision of financial services in underserved regions in the world	☐	☐	☒	☐	☐	☐
Other potential use cases	☐	☐	☐	☐	☐	☐

We are still very much at the beginning of the development of digital money. The ecosystem is evolving rapidly, regulatory frameworks are still taking shape, and the full range of use cases has yet to emerge. It is therefore premature to make a definitive assessment of which form of digital money is best suited to which business case. What seems clear, however, is that there will likely not be a single winner - different forms of digital money will serve different needs, and coexistence across segments is the more probable outcome. Ultimately, the question of which form of digital money prevails comes down to where customer needs actually lie and which use cases emerge as dominant over time.

The term “global stablecoin” is not specifically defined under MiCAR and is more commonly associated with the terminology developed by international standard-setting bodies, notably the FSB.

Global stablecoins have the potential to generate significant benefits for EU users by enabling faster, more efficient and potentially lower-cost transfers of value across jurisdictions and across different types of financial infrastructure. Their benefits are particularly evident in use cases involving cross-border transactions, corporate payments, treasury management and the settlement of tokenised

financial instruments, where traditional payment and settlement processes can involve multiple intermediaries, fragmented operating hours and higher costs. Stablecoins can support near real-time settlement, improved liquidity management and greater interoperability between traditional and digital financial markets.

By contrast, their added value appears more limited for domestic and intra-EU payment use cases, where efficient banking and payment infrastructures are already available. However, some banks consider that, over time, stablecoins could potentially become effective competitors to domestic retail payment systems. The strongest benefits are likely to arise in wholesale and institutional use cases.

Overall, it is expected that tokenised deposits and tokenised central bank money will play an increasingly important role in the future, particularly in higher-value transactions within capital markets. In fully integrated on-chain ecosystems enabling smart contract-based orchestration of payments and settlement of tokenised instruments such as bonds, funds, and collateral, different forms of digital money are likely to coexist. In such a structure, stablecoins may primarily serve retail use cases and lower-value transactions, whereas tokenised deposits and tokenised central bank money are expected to be preferred for higher-value or systemically important transactions. At present, decentralised finance (DeFi) largely relies on stablecoins as a settlement asset. As DeFi becomes more integrated with traditional finance (TradFi), tokenised deposits may assume a more prominent role in this space.

In the interbank market, we expect wholesale Central Bank Digital Currency (wCBDC) to become the only relevant means of payment. Given the systemic importance of interbank settlements, the preference for central bank money, and the regulatory expectations around settlement finality, wCBDC offers a level of security and trust that private alternatives are unlikely to match in this segment. For retail customers, the situation is different. In everyday use, European private individuals are unlikely to depend on stablecoins. We expect that consumers will be slow to change their payment habits. Stablecoins in developing countries will continue to gain ground especially due to the person-to-person transactions and relatively low cost compared to other forms of cash transfers. Micropayments are also currently predominantly the realm of stablecoins again cost and on-chain ecosystems being the main driving force.

Beyond these considerations, it is important to ensure adequate protection of the European market vis à vis US-denominated or, more broadly, non-European stablecoins, in order to avoid potential liquidity outflows. Stablecoins also represent a particularly relevant solution for settlement on DLT, notably as a “cash leg” in tokenised transactions. In this context, the growing role of players such as

Circle illustrates the rapid development and scaling potential of global stablecoin ecosystems.

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?

	1 (not important at all)	2 (moderately important)	3 (neutral / no clear preference)	4 (rather important)	5 (highly important)	Don't know - No opinion - Not applicable
EU-based and licenced stablecoins Issuers	☐	☐	☐	☒	☐	☐
EU-based and licenced CASPs	☐	☐	☐	☒	☐	☐

Generally, EBF members consider it important that EU users be able to access global stable coins through both EU-based and licensed stablecoin issuers and CASPs.

Some Market participants are keen to see the emergence of a strong European stablecoin ecosystem. The regulatory framework should support this objective and avoid creating unnecessary barriers that could hinder the development, adoption, and competitiveness of EU-issued stablecoins.

Access to global EMTs through EU-based and licensed issuers ensures that users can access EMTs within a regulated and trusted framework, rather than being driven towards providers outside the EU. The absence of EU-based issuers and service providers would likely encourage the growth of non-EU stablecoins and issuers, including potentially unregulated offerings, without necessarily providing adequate safeguards for users. This reduces the risk of regulatory arbitrage and supports the development of a competitive and resilient European digital-asset ecosystem, which in turn supports the EU's drive for greater European sovereignty in payments.

Access through EU-based and licensed CASPs is equally important. Regulated European intermediaries can act as trusted access points for users and businesses, offering safeguards, compliance controls and complementary services such as foreign exchange and payment solutions. This will boost confidence in the market and ensure that economic activity linked to EMTs remains anchored within the EU regulatory framework. Ensuring that EU users can access global stablecoins through EU-authorised issuers and CASPs is therefore important from both a consumer protection and market integrity perspective.

Retail clients engaged in crypto trading or remittance activities are likely to prefer stablecoins issued by large scale providers, including those operating within the EU but ultimately backed by non-EU parent companies. This preference is primarily driven by broad distribution, perceived price stability, and wide market acceptance of these assets.

By contrast, business users are more likely to favour EU-based, licensed stablecoins issued by EU entities, alongside the use of EU-authorised crypto-asset service providers (CASPs). However, at present, market liquidity in EU-denominated stablecoins remains insufficient to fully support broader commercial adoption at scale.

EU issuers should therefore represent a key pillar of the regulatory framework, while allowing EU users access third-country global stablecoins. Such openness is also important to mitigate the risk of retaliatory measures by third countries in a context of likely reciprocity considerations.

For geopolitical reasons, EBF considers it essential that there are EU based and licenced stablecoin issuers to counterbalance the dominance of the US dollar to some extent, if stablecoins become a mainstream product in the future.

However, any measures considered should not unduly restrict access to non-EU global stable coins, in order to preserve holders' freedom of allocation and portfolio management. Such openness is also important to mitigate the risk of retaliatory measures by third countries in a context of likely reciprocity considerations.

At the same time, it is essential that global stablecoins remain freely transferable in order to preserve their efficiency and attractiveness as payment and settlement instruments.

The regulatory approach should therefore aim to frame and supervise these developments without unduly constraining or prohibiting them.

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

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather significant)	5 (very significant)	Don't know - No opinion - Not applicable
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)	☐	☐	☒	☐	☐	☐
Unbalanced reserve distribution across jurisdictions (e.g. fragmentation of reserves between EU and non-EU entities)	☐	☐	☒	☐	☐	☐
Cross-border reserve transfer restrictions (e.g. third-country limitations on moving reserves during stress events)	☐	☐	☐	☒	☐	☐
Regulatory arbitrage due to fungibility of tokens (e.g. operation across regimes exploiting differences in prudential or conduct rules)	☐	☐	☐	☒	☐	☐
Supervisory monitoring and data-tracking challenges (e.g. difficulty measuring EU-holdings, especially holdings in self-custodial wallets)	☐	☐	☐	☒	☐	☐
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.	☐	☐	☒	☐	☐	☐
Others	☐	☐	☐	☐	☐	☐

Please explain the reasoning behind your ratings in question 29. Describe the nature and importance of these risks, the underlying assumptions, market dynamics, or regulatory factors informing your view:

Generally, all the mentioned risks are relevant, however these can be mitigated, but not fully eliminated, through robust and sufficiently frequent (e.g. daily) monitoring of reserve assets across relevant jurisdictions and geolocations. Question 34 proposes different mitigants for the risks referred to in this question and EBF believes they would be adequate to effectively mitigate them.

In the context of global stablecoin multi-issuance models, the risks for the European Union's financial system could be significant, particularly during periods of market stress. These risks stem from the combination of token fungibility, the same issuers operating across different jurisdictions and the geographical fragmentation of reserve assets. Such architecture, under which the same stablecoin can be issued by the same entity authorised in different jurisdictions, creates vulnerabilities that are not fully comparable to those associated with a single-token model operating under a single regulatory and supervisory framework.

As recognised by some EU Member States, the main risk arises from a potential mismatch between the location where redemption requests materialise and the location where reserves are actually held. In a stress scenario, the fungibility of tokens may incentivise holders, especially those located outside the EU, to direct redemption requests towards the issuer operating within the European regulatory perimeter if that issuer is perceived as more robust or offering stronger protections. This could generate sudden pressure on reserves held within the Union. Even where the issuer group maintains adequate reserves on an aggregated basis, their fragmentation across multiple jurisdictions may limit the EU issuer's ability to meet redemption requests in a timely manner, potentially triggering run-like dynamics and undermining the confidence of European users.

If assets held within Europe prove insufficient, European holders may be compelled to seek redemptions in other jurisdictions, facing the additional costs, legal complexities, and enforcement challenges associated with asserting their rights abroad.

These risks are compounded by structural challenges arising from the fact that reserve transfers across jurisdictions may not be immediate and may not remain fully within the control of European authorities. Legal constraints, operational frictions or intervention by third-country authorities could impede the rapid mobilisation of reserves when needed. In such circumstances, the protection afforded to EU token holders could become dependent on regulatory and supervisory arrangements outside the Union, which may not provide safeguards equivalent to those established under MiCAR. This situation may create opportunities for regulatory arbitrage while weakening both financial stability and the Union's regulatory sovereignty.

An additional consideration is operational interoperability risk. The benefits of global stablecoins depend heavily on the ability of different issuers, infrastructures and jurisdictions to interact seamlessly. Inconsistent technical, operational or legal standards could reduce efficiency and limit scalability.

More specifically:

- Run risk and reserve depletion in the EU.
- Unbalanced reserve distribution across jurisdictions.
- Cross-border reserve transfer restrictions: regulatory arbitrage due to fungibility of tokens.
- Supervisory monitoring and data-tracking challenges.
- Issuer home jurisdictions lacking adequate prudential or conduct standards.

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.

Please explain the reasons for your response to question 30 and describe the potential implications for the EU market and relevant stakeholders:

EBF supports MiCA openness to multi-issuance; however existing safeguards should be maintained, or even additional ones should be introduced to mitigate any potential risks, including:

- Clear allocation of liabilities between issuers
- Enforceable redemption rights,
- Segregation and allocation of reserve assets
- Transparent disclosures to holders, robust liquidity and recovery arrangements, and effective supervisory cooperation.
- Equivalence Regime / Closest cooperation among supervisory authorities. The appropriate policy objective should therefore be to mitigate the risks associated with multi-issuance while preserving its potential benefits.

For sovereignty, innovation, financial stability and seamless efficiency considerations, it is critical that multi-issuance should be maintained or even promoted. Stablecoins allow safe (atomic), cheap, seamless transactions all around the world and are there a key instrument to support EU economy, financial market and currency. They should be allowed but safeguards should be provided for (such as proposed by the European Parliament in its position to the MISP).

A blanket prohibition would risk isolating EU users from global stablecoin liquidity, pushing activity offshore and weakening the competitiveness of EU-regulated CASPs and issuers. Prohibition could create incentives for users to access stablecoins through unregulated channels or outside EU-supervised channels, shifting activity beyond the effective scope of EU supervision and potentially reducing supervisory visibility, increasing consumer protection risks and weakening the EU's ability to monitor and manage risks that remain global in nature.

To ensure legal certainty and effective enforcement, such a framework should ideally be reflected directly in Level 1 legislation or, where appropriate, further specified through Level 2 measures. This would provide supervisory authorities with clear and consistent tools to assess and monitor multi-issuance arrangements while reducing opportunities for regulatory arbitrage.

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.

a) Does this approach continue to be justified in view of market developments?

Yes.

b) Does it discourage the international role of the euro?

Yes.

Please explain your answer to question 31 a) & b):

The principle that EMTs denominated in an EU currency should be subject to MiCA remains justified. As the euro is the currency of the European Union, it is reasonable that euro-denominated stablecoins are subject to EU prudential, governance, consumer protection and supervisory requirements, particularly where they are offered, distributed, admitted to trading or otherwise made available to EU users. This approach supports confidence in euro-denominated digital assets, promotes legal certainty and helps ensure that stablecoins referencing the euro operate within a robust regulatory framework.

At the same time, the current approach may have unintended consequences if it is interpreted as an unlimited extraterritorial rule. While euro-denominated EMTs may have direct implications for EU monetary sovereignty, consumer protection and financial stability, the mere fact that a token references an official currency of a Member State should not automatically lead to the conclusion that it constitutes a public offer in the Union (Article 48(2) MiCA). Greater clarity is needed regarding the circumstances in which an issuance falls within the scope of MiCA, in particular where there is no genuine EU market nexus, no active offering to the public in the Union, and no admission to trading or distribution to EU users. In parallel, the approach may also have implications for the international role of the euro. Global stablecoins increasingly operate across jurisdictions and support cross-border payments, treasury management and tokenised financial markets. If euro-denominated stablecoins are subject to significantly more burdensome

requirements than comparable stablecoins denominated in other major currencies, issuers and users may favour alternative currencies. This could limit the scale and international adoption of euro-denominated stablecoins and reduce the role of the euro in emerging digital ecosystems.

The framework should therefore strike a balance between preserving MiCA's anti-arbitrage objective and ensuring proportionality and international competitiveness. This includes providing greater legal certainty on the scope of application, clarifying the interaction between the concept of a public offer and the specific EMT regime and avoiding the automatic application of MiCA solely on the basis of denomination. At the same time, third-country issuers should not be able to circumvent MiCA where their tokens are effectively made available to EU users.

Greater clarity and proportionality would enhance legal certainty, support innovation and reduce the risk of divergent interpretations among competent authorities, while preserving MiCA's core objectives of consumer protection, financial stability and market integrity, as well as supporting the international role of the euro.

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

The main advantage of this approach is that it strengthens trust in euro-denominated stablecoins by ensuring that EMTs referencing an EU currency and offered or held in the EU are subject to MiCA requirements on authorisation, redemption, reserves, governance, supervision and consumer protection. This supports EU monetary sovereignty, reduces regulatory arbitrage and helps ensure a level playing field.

MiCAR provides a high degree of regulatory clarity, which contributes to increased trust, legal certainty, and overall market reliability. Euro-denominated stablecoins are still in an early stage of development. Notably, the largest market capitalisations for euro stablecoins are currently issued by US-based companies operating under MiCAR authorisation; however, the introduction of MiCAR has nevertheless supported growing interest in the development of euro-denominated stablecoins, including from European issuers.

The international success of euro stablecoins will ultimately depend on broader factors, including the global strength and attractiveness of the euro as a currency, as well as the ease of its integration into real-world payment systems and digital financial products both within and outside the EU.

With regard to the euro's share in the crypto-native market, it is important to recognise existing market dynamics realistically. US dollar-denominated

stablecoins have established a dominant position over more than a decade, well before the introduction of specific regulatory frameworks in either the US or the EU. This structural lead is therefore unlikely to be materially reversed solely through regulatory updates such as MiCAR. In addition, the GENIUS Act deepens a USD focus by not permitting issuance of, or sale into, the US of stablecoins in other currencies. It might be possible to work this into an argument that the EU is given a unique opportunity to attract local demand for EU stablecoins, and make the EU a centre, for example, of on-chain FX trading, considering that the US effectively bans stablecoins in other currencies.

On the downside, the implementation of such an approach would require careful and well-balanced negotiations on reciprocity. These discussions should be conducted with nuance and realism, avoiding overly rigid or unilateral positions that could trigger retaliatory measures or limit market access for EU actors.

In addition, specific questions arise in relation to stablecoins issued outside the jurisdiction of any single state (e.g. decentralised or globally structured arrangements). The treatment of such cases remains complex and would require further clarification to ensure both regulatory effectiveness and a level playing field.

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?

	1 (not at all)	2 (to a small extent)	3 (to a moderate extent)	4 (to a large extent)	5 (to a very large extent)	Don't know - No opinion - Not applicable
Strengthening EU payment autonomy in retail payments	☐	☐	☒	☐	☐	☐
Strengthening EU payment autonomy in wholesale payments	☐	☐	☒	☐	☐	☐
Enhancing the international role of the euro	☐	☐	☐	☐	☒	☐

The strongest contribution of euro-denominated stablecoins could be to enhancing the international role of the euro. As stablecoins increasingly become part of global digital financial infrastructure, the availability of regulated and interoperable euro-denominated stablecoins can help ensure that the euro remains relevant in emerging payment, settlement and capital market networks, thereby supporting its international role and the competitiveness of the European financial sector.

Stablecoins grew to \$ 310 Bln because they solve 3 core problems: can be sent anywhere in the world instantly at basically zero cost; give access to the US dollar (and/or other major currencies) to people who didn't have access before and needed a safe store of value; are programmable and can be used in Decentralized Finance. These are 3 problems that only stablecoins solve (not retail digital euro, not wholesale digital euro, not tokenized deposits). Building a large and liquid Euro stablecoin market is a very effective tool to:

- strengthen the international role of the Euro: people in Turkey, Ukraine, Nigeria etc. would be able to start saving and paying in Euro even without a bank account, while at present they do so in USD stablecoins
- strengthen payment autonomy: by regulating issuers of EUR stablecoin and using sufficiently decentralized public blockchains, Europe would retain full

control over the circulation of the Euro on chain, no other government would be able to shut down European payments (no one controls public blockchains) and only EU authorities can control issuers of EUR stablecoins.

Euro-denominated stablecoins may facilitate the use of the euro in cross-border payments, international trade, corporate treasury operations, tokenised securities settlement and programmable financial services. Examples include cross-border remittances, 24/7 treasury management for multinational companies, settlement of tokenised bonds and securities, and smart contract-based payment and settlement processes.

However, to maximize these benefits, euro-denominated stablecoins should operate within a robust regulatory framework and be able to scale internationally while maintaining high standards of consumer protection, financial stability and supervisory oversight.

Having a euro-denominated stablecoin would at least open up the possibility to counterbalance the dominance of the US dollar to some extent. Euro-denominated stablecoins can contribute to EU strategic autonomy, especially in wholesale payments, tokenised capital markets and cross-border settlement. Their retail impact is likely to be more moderate because existing EU retail rails are already efficient. Nowadays, majority of global stablecoin activity remains USD-denominated, which reinforces the monetary-sovereignty relevance of euro denominated alternatives. The United States has long recognised the strategic role of USD-denominated stablecoins in reinforcing the global position of the US dollar and in broadening access to a diversified investor base for US government securities. In this context, stablecoins are increasingly seen as part of the broader financial infrastructure supporting global demand for USD assets. Against this background, Europe should also ensure that it does not cede the global real-world payments market to other jurisdictions. Instead, the development and international use of euro-denominated stablecoins should be actively supported beyond the EU, in order to strengthen the international role of the euro and maintain competitiveness in global digital payment markets.

From an economic security perspective, the EU should encourage regulated euro-denominated digital money solutions in order to avoid excessive reliance on third-country or non-euro stablecoins. However, this should include not only EMTs and ARTs under MiCA, but also bank-led solutions such as tokenised deposits and other forms of commercial bank money on distributed ledger technology.

A detailed strategy should be discussed between European Market Participants and EU authorities.

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:

	1 (not at all effective)	2 (slightly effective)	3 (moderately effective)	4 (rather effective)	5 (highly effective)	Don't know - No opinion - Not applicable
Restriction of widely used ARTs and EMTs denominated in a currency that is not an official currency of a Member State (Articles 23, 58)	☐	☐	☒	☐	☐	☐
ECB binding opinion powers on withdrawing authorisation and limit the amounts of ARTs and EMTs (Articles 24(2)(3), 58)	☐	☐	☐	☒	☐	☐
EU establishment requirement for ART and EMT issuers (Article 16)	☐	☐	☐	☒	☐	☐
Reserve location, composition and liquidity requirements for ARTs and EMTs (Articles 36-38, 45, 54)	☐	☐	☐	☒	☐	☐
The powers of competent authorities listed in Article 94, especially to suspend or prohibit the trading of crypto-assets	☐	☐	☐	☒	☐	☐
National supervisory intervention powers (Article 105)	☐	☐	☐	☒	☐	☐
EBA temporary intervention powers (Article 104)	☐	☐	☐	☒	☐	☐

Multi-issuance raises specific risks that are not fully addressed by the current framework: identifying EU holdings, attributing tokens to issuers, managing EU/non-EU reserve pools, and ensuring reserve transferability in stress. Additional supervisory guidance and third-country cooperation arrangements are therefore needed.

In particular, the reserve location, composition and liquidity requirements are among the most effective safeguards because they directly support redemption capacity, reserve quality, liquidity management and consumer protection. Together with the EU establishment requirement, these provisions help ensure that stablecoins offered or held in the European Union remain subject to effective supervision, clear legal accountability and prudential requirements, even where the broader stablecoin arrangement operates across multiple jurisdictions.

The existing MiCA safeguards are important and should be preserved, but they should not be considered fully sufficient to address all risks arising from multi-issuance stablecoin models. Their effectiveness depends on the ability of EU

supervisors to identify EU holdings, ensure that sufficient reserves are located and ring-fenced in the Union, and prevent EU issuers from becoming exposed, legally or reputationally, to liabilities generated by third-country issuers within the same global scheme.

To address these gaps, EBF proposes a combination of measures that form a coherent whole, mainly aiming at keeping the liquidity within Europe; reducing heterogeneity in risks between MiCAR compliant stablecoins and making sure that stablecoins are a solid and safe payment instrument with low de-peg risk (avoiding a hierarchy of stablecoins with significant stablecoin specific discounts in case of stress). High heterogeneity makes European stablecoins less competitive vs foreign issued stablecoins, as they could be perceived as riskier, especially compared to US stablecoins backed by US Treasury bonds; maintaining European sovereignty.

EBF has identified the following gaps:

- (i) custody location in the EU does not prohibit investments in assets that allow the transfer of liquidity out of Europe;
- (ii) reserve composition: reserve composition is qualified only by risk metrics (art. 38) and not qualified by issuer location;
- (iii) access of foreign holders to reserves that back European holders;
- (iv) (iv) insufficient capability of the issuer to identify European holders of a global stablecoin (v) the international character of multi-issuance schemes creates a fragmentation risk. These gaps call for targeted amendments.

Multi-issuance schemes should be brought within the scope of MiCA to ensure that issuers maintain sufficient reserve assets within the European Union to adequately protect European stablecoin holders.

Issuers operating under such schemes should be required to identify and monitor holders on an ongoing basis to ensure compliance with AML/CTF obligations.

In addition, issuers should report daily on the distribution of stablecoin holdings and implement regular rebalancing mechanisms across issuing entities to ensure that the holdings of European users are consistently backed at least 1:1 by reserve assets held within the European issuing entity.

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?

Partially, but with some limitations (e.g., delays, estimation challenges).

Please explain your answer to question 35, including any specific remarks with regard to tokens held in unhosted wallets:

EU holdings can be estimated with reasonable accuracy when tokens are held through regulated intermediaries such as banks, e-money institutions, payment institutions, custodians or CASPs, as these entities generally know their customers and their location. This is particularly the case in controlled or intermediated models, where distribution and custody are performed by regulated entities with KYC information and reporting obligations.

However, it is difficult to determine EU holdings with complete precision at all times because stablecoins can move rapidly across borders and between different types of wallets. This is especially true in open, globally distributed or multi-issuance models involving self-custody wallets, non-EU exchanges, DeFi protocols, bridges or omnibus accounts, where the issuer has limited visibility over the underlying beneficial owner. The limitations primarily stem from reporting timelines and the technical constraints faced by platforms. It is not always possible to determine the place of issuance, particularly in the case of multi-issuance tokens which, although legally distinct, remain fully fungible and interchangeable across markets. In addition, certain constraints may arise from existing *pari passu* clauses, which must be respected and can limit the ability to introduce differentiated treatment or targeted safeguards.

This challenge is not unique to stablecoins. Traditional payment instruments, bank deposits and electronic money are also used across borders and regulators generally do not seek to identify the exact location of every unit of money at every moment. Instead, supervision typically relies on information available from regulated institutions, reporting obligations and reasonable estimates. A similar approach is likely to be appropriate for stablecoins, taking into account the scale of the issuance, the distribution model and the availability of reliable data.

The main challenge relates to unhosted wallets. While it is possible to identify the wallet address and token balance on a blockchain, it is generally not possible to determine the location or residency of the wallet holder with certainty. As a result, holdings in unhosted wallets can only be estimated indirectly. For this reason, compliance should be based on reasonable and risk-based methodologies rather than a requirement to determine the precise location of all tokens in real time. The framework should recognise the practical limitations of identifying EU holdings with precision and allow issuers to rely on such methodologies, supported where appropriate by information provided by regulated intermediaries.

This is a genuine gap, which justifies reinforcing KYC/AML/CTF requirements and reporting (real-time reporting on reserve location and transfer constraints) and white-paper transparency, and channeling access through EU authorised CASPs, which improves data quality, especially for redemption requests.

Supervisory expectations should remain proportionate and risk-based, recognising that full precision may not be achievable in all models. The objective should be to achieve a sufficiently accurate estimate of EU holdings for supervisory and reserve management purposes, rather than absolute precision, which may not be operationally achievable in a global stablecoin environment.

Self-hosted wallets, secondary market transfers and cross-border circulation make precise real-time identification difficult. MiCA should therefore avoid imposing impossible real-time precision, while requiring high frequency reporting, common wallet-attribution methodologies, issuer/CASP data reconciliation and supervisory access to relevant data.

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

No.

Please explain your answer to question 36:

MiCA redemption rights should not be limited to EU holders only. A prioritization of EU holders could be considered (as a safeguard).

Limiting redemptions rights could be contemplated as a legitimate and last resort measure in situations of stress to protect the financial stability of the EU; there could be a risk that non-EU holders may prefer to perform their redemption rights through EU entities owing to guarantees offered by the EU legal framework. Limiting the redemption rights could undermine the fungibility and the confidence towards stablecoins.

Should redemption rights be open to both EU and non-EU holders, MiCA should introduce safeguards such as:

- Reserve-balancing mechanisms
- Liquidity stress testing covering cross-border redemption flows
- Supervisory cooperation and information-sharing agreement between EU and third country authorities
- Prioritisation of clients of EU-CASPs in times of market stress (such mechanism should be carefully designed so as not to undermine market confidence)

A dialogue with the industry on safeguards would be essential.

Greater international convergence on key parameters such as redemption fees and related operational practices would be beneficial in reducing fragmentation. At the same time, issuers should be required to maintain robust redemption capabilities under stress scenarios that may arise across multiple jurisdictions simultaneously, reflecting the inherently global nature of stablecoin circulation.

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.

Please explain your answer to question 37:

Given that MiCAR does not have extraterritorial effect, insolvency proceedings or legal actions involving non-EU parent entities could potentially impact or restrict access to reserves held outside the EU.

The experience of the 2008 financial crisis shows that third-country authorities can restrict or suspend reserve transfers to ring-fence assets within their territory, to the detriment of EU holders. A purely contractual, private law rebalancing mechanism does not hold under those conditions. A legally binding, enforceable arrangement guaranteeing reserve mobility is strongly needed.

In practice, not all types of collateral are equally eligible or interchangeable, which may create constraints in the substitution and reallocation of reserve assets across jurisdictions and issuing entities. This introduces a structural mismatch between the near-instantaneous nature of token redemptions and the comparatively slower processes required for reserve liquidation and cross-border fund transfers, thereby creating potential liquidity risks. In stressed market conditions, these limitations could hinder the timely transfer or rebalancing of reserves, particularly where differences in collateral quality, eligibility criteria, or regulatory treatment apply. This may result in frictions in liquidity management and could affect the efficiency of multi-issuance models.

In addition, the ease with which stablecoins can be transferred across jurisdictions may lead to rapid depletion of reserves in a given region, potentially before all local holders are able to complete redemption. This dynamic underscores the

importance of robust liquidity management and cross-border contingency planning within stablecoin frameworks.

In a multi-issuer stablecoin scheme, the stability of ART or EMT relies on a reserve of assets that must be appropriately allocated and readily available. When these schemes operate across borders (involving EU issuers and third-country entities), rebalancing the reserves or meeting mass redemption requests requires the rapid sale of assets and international movement of funds. The primary concerns are operational delays, liquidity bottlenecks, intervention by third-country authorities, and loss of connectivity. If the financial entities backing these third-country schemes are unable to process cross-border transfers quickly, face liquidity bottlenecks when selling assets, or lose their access to international payment systems, the reserve's effectiveness is compromised. This could prevent the EU issuer from fulfilling its obligations in a timely manner, thereby threatening market stability and consumer protection.

Yet, in a well-designed multi-issuance model, each issuer should maintain sufficient reserves, liquidity resources and redemption capacity to meet its own obligations under the applicable local regulatory framework.

As a result, the stability of the arrangement should not primarily depend on the rapid transfer of reserve assets between jurisdictions during periods of stress. Instead, local reserves, effective liquidity planning and robust governance arrangements should ensure that redemption obligations can be met independently.

The key policy objective should therefore be to ensure robust reserve management, transparency, contingency planning and supervisory cooperation rather than to restrict multi-issuance models. As such, the issue of collateral substitutability should be carefully considered when designing and supervising such frameworks, with a view to ensuring sufficient flexibility while maintaining robust risk management.

In addition, an equivalence regime could support international interoperability and avoid fragmentation, but it must be outcomes-based, conditional and revocable. Equivalence should require comparable rules on reserve quality, segregation, redemption, governance, AML/CFT, sanctions compliance, prudential supervision and crisis cooperation. It should not be a substitute for EU safeguards where tokens are offered or held in the EU.

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

No option has been selected.

Please explain your answers to question 38:

Restricting direct redemption rights in the EU to holders who are clients of EU- authorised CASPs and differentiating redemption rights between retail and wholesale holders could provide some additional visibility regarding the identity of token holders and the management of redemption flows during periods of stress. These measures may facilitate supervisory oversight and operational processing in certain circumstances. However, their overall effectiveness is likely to be limited, as they introduce complexity and may create different levels of protection for holders of the same token. Such distinctions could reduce legal certainty, weaken user confidence and diminish the attractiveness of regulated stablecoins for cross-border and global use cases. Given that redemption rights are a core feature underpinning trust in stablecoins, restrictions based on wallet type, intermediary or holder category may generate unintended consequences that outweigh the potential benefits. Also, current open loop stablecoin schemes do not work/ operate like this and are not able to establish these limitations.

High-frequency reporting on reserves, including their location and any transfer constraints, and binding cooperation arrangements between home and host supervisors are, in our view, the most effective measures; we would make them conditions to authorisation rather than optional mitigants.

Requiring a dedicated liquidity buffer or additional reserve tranche calibrated to cover short-term redemption spikes in the EU may provide an additional layer of protection in specific stress scenarios and could strengthen confidence in an issuer's ability to absorb temporary increases in redemption activity. Nevertheless, the measure should be assessed in the context of the broader MiCA framework, which already includes reserve, liquidity, recovery and redemption planning requirements. The effectiveness of an additional buffer would depend heavily on its calibration and design, and there is a risk that excessive liquidity requirements could reduce reserve efficiency and increase costs without materially improving resilience. For this reason, such a measure may offer some benefits but is likely to be less effective than measures focused on transparency, supervisory cooperation and cross-border liquidity management arrangements.

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:

Any amendments to redemption rights should be assessed carefully in light of their operational feasibility, proportionality and potential impact on user confidence. Restricting redemption rights to clients of EU authorised CASPs or differentiating redemption rights between retail and wholesale holders may provide certain supervisory and operational benefits, but such measures could also introduce significant complexity. In particular, they may require issuers to identify and continuously monitor the status, location and distribution channel of token holders, which may be difficult in a global and interoperable stablecoin environment where tokens can move rapidly between custodial and non-custodial arrangements. Also, stablecoins can be maintained/ locked in smart contracts, which have no location or identified owner, therefore, resulting in non-efficient monitoring/ measures.

Any adjustment to redemption rights will require a high degree of flexibility in international negotiations, in order to mitigate potential adverse effects in terms of reciprocity.

In particular, measures such as prioritising EU holders or restricting access to EU-based redemption mechanisms for non-EU participants could trigger equivalent restrictions in third countries. This could ultimately limit market access for EU actors and reduce the global efficiency of stablecoin ecosystems.

From an operational perspective, differentiated redemption regimes may also introduce additional complexity in terms of implementation, KYC verification, and client categorisation. Legal implications - including consistency with existing contractual arrangements (e.g. *pari passu* treatment) and cross-border enforceability - would need to be carefully assessed.

Therefore, while targeted adjustments may be justified to address specific risks (notably in stress scenarios), they should remain proportionate, carefully calibrated, and, where possible, coordinated at the international level to avoid market fragmentation and unintended consequences.

At a minimum, the discussion on redemption rights (with a single issuer) should not be concluded saying only EU holders should have redemption rights. Rather, there should be flexibility to limit EU redemption IF the issuer has established sufficient reserves located outside which are accessible to other holders.

Question 40. Do you see merit in introducing an equivalence regime for global stablecoins in the EU?

Yes, in addition to mitigation measures.

Please provide reasons for your response to question 40, including any perceived advantages or disadvantages of equivalence regimes:

Advantages:

- Increases market efficiency and lowers cross border costs by avoiding corporate duplication.
- Deepens global liquidity and reduces regulatory arbitrage by harmonizing oversight.

Disadvantages:

- Reduces EU sovereign control and heightens ring fencing risk if foreign authorities freeze reserves – more likely during crisis.
- Cannot eliminate settlement delays when liquidating and wiring cross border banking assets during a run.

Given the international nature of stablecoins and their potential role in payments, treasury management and tokenised financial markets, the EU should remain open to recognising third-country regimes that achieve outcomes broadly comparable to MiCA. Recognition should be based on comparable regulatory outcomes, including reserve requirements, redemption rights, governance standards, liquidity risk management, operational resilience, supervisory powers and effective enforcement. In particular, an equivalence framework could provide a structured pathway for third-country stablecoin issuers operating under comparable regulatory regimes, while preserving a level playing field and avoiding unnecessary barriers to cross-border innovation.

However, equivalence should complement, rather than replace, existing safeguards under MiCA. It should be supported by strong supervisory cooperation, information-sharing arrangements and risk mitigation measures as well as the possibility for EU authorities to suspend or withdraw equivalence where the required standards are no longer met. Mitigation measures such as liquidity buffers, enhanced reporting, stress testing and supervisory coordination remain necessary to address financial stability risks associated with global or multi-issuance stablecoin arrangements.

To avoid regulatory dumping, any equivalence regime should not create a lower-standard regulatory route for third-country stablecoin issuers to access the EU market, as this could undermine the level playing field for EU authorised issuers and weaken the protection of European holders. In light of international developments such as the U.S. GENIUS Act, the EU should seek to combine regulatory openness with strong safeguards and effective cooperation with trusted

jurisdictions. Such an approach would help support innovation, competitiveness and the international role of the euro, while preserving the core objectives of MiCA and ensuring a robust and consistent regulatory framework for global stablecoin arrangements.

An equivalence regime could support international interoperability and avoid fragmentation, but it must be outcomes-based, conditional and revocable. Equivalence should require comparable rules on reserve quality, segregation, redemption, governance, AML/CFT, sanctions compliance, prudential supervision and crisis cooperation. It should not be a substitute for EU safeguards where tokens are offered or held in the EU.

It is strongly recommended that the supervisory authorities engage in the highest and closest possible cooperation; in particular focusing on the relevant third countries, it is deemed necessary to activate the cooperation to set up appropriate common safeguards, for instance regarding reserve management and data sharing.

Such an approach would allow the EU to address the financial stability and investor protection concerns associated with multi-issuance models without resorting to outright restrictions, while at the same time preserving the openness and competitiveness of European markets and supporting the broader international role of the euro in the digital economy.

European regulation often precedes the adoption of comparable frameworks in other jurisdictions. The United States, for example, has only recently developed a comprehensive regulatory framework for stablecoins. An equivalence requirement could therefore result in the exclusion of widely used global stablecoins from the European market, despite full compliance with MiCAR requirements, including the establishment of a regulated issuing entity within the European Union. USDC or EURC issued by Circle would be a relevant example.

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?

An equivalence regime under MiCA should be conditional and reciprocal.

Foreign issuers should get streamlined passporting and marketing rights into the EU (using home-country documents) only if they comply with EU conduct, consumer, and volume limits. In return, EU issuers must receive true mutual market access and non-discriminatory treatment in equivalent third countries.

To manage crisis risks, foreign issuers relying on equivalence should hold meaningful local reserves in EU banks or Eurozone sovereign debt, and the EU must keep unilateral powers to freeze distribution or payments if foreign authorities ring-fence global reserves.

In terms of crisis management of reserves a more tiered approach to the maturities of the HQLA would help potentially increasing the amount in short term maturities to protect against liquidation and impacting the broader bond market.

A possible equivalence regime should be based on regulatory outcomes rather than strict rule-by-rule alignment. Equivalence should be granted where a third-country framework achieves broadly comparable outcomes to MiCA in areas such as reserve management, redemption rights, governance, operational resilience, transparency and supervisory oversight. Where equivalence is recognised, issuers from equivalent jurisdictions should benefit from simplified market access and reduced duplicative compliance requirements, while EU issuers should receive reciprocal treatment in those jurisdictions.

At the same time, EU authorities should retain appropriate powers to obtain information, cooperate with third country supervisors and intervene where necessary to protect consumers or financial stability. Any equivalence regime should be approached with caution and should not rely excessively or automatically on third country regulatory framework. An equivalence regime should therefore maintain the obligation to establish an effective presence in the EU (branch or subsidiary) and oblige the third country issuer to respect EU obligations on redemptions, composition of the reserve and own funds. An outcomes-based and reciprocal equivalence framework would reduce regulatory fragmentation, support global stablecoin arrangements and promote the international competitiveness of EU-regulated issuers while maintaining the key safeguards underpinning MiCA.

In particular, careful attention should be paid to the effective equivalence of key safeguards, notably with respect to redemption rights and the localisation of reserve assets. These elements are central to financial stability and investor protection, and should therefore be subject to strict and verifiable alignment. Beyond formal regulatory comparability, it is essential to assess the practical enforceability of the third country regime.

This includes taking into account the legal framework, supervisory practices, and the broader political and institutional environment of the jurisdiction concerned. Equivalence should not be granted solely on a theoretical basis, but should reflect the ability to effectively enforce rules in practice, including in stress scenarios.

The recent EBA-NYDFS (the New York State Department of Financial Services) Memorandum of Understanding on supervisory cooperation for stablecoin activities illustrates that such cooperation is both possible and necessary for stablecoins issued or circulating across jurisdictions. Such arrangements should cover supervisory information exchange, reserve and redemption monitoring, stress coordination, issuer responsibility, crisis management and enforcement cooperation. This Member would support an outcomes-based equivalence or recognition approach for third-country stablecoin regimes that are comparable in substance to MiCA and where effective cooperation arrangements are in place. Equivalence should be conditional, revocable and limited to jurisdictions with robust rules on reserve assets, redemption, governance, AML/CFT, sanctions compliance and supervisory enforcement.

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?

No option has been selected.

Please explain your answers to question 42:

Overall, MiCA provides a robust framework for the authorisation of EMT and ART issuers and contributes to legal certainty, consumer protection and market confidence. However, there may be scope for targeted simplifications to reduce unnecessary duplication and facilitate the development of global stablecoin arrangements. In particular, greater consideration could be given to recognising equivalent third-country regulatory frameworks and existing authorisations where issuers registered in the EU are already licensed and supervised in the EU as e-money institutions or equivalent regulated entities under regimes that achieve outcomes broadly comparable to MiCA.

Such an approach could allow greater reliance on existing local authorisations, prudential supervision and governance frameworks, subject to appropriate equivalence assessments, supervisory cooperation arrangements and information-sharing mechanisms. This would reduce duplicative authorisation processes, support cross-border interoperability and facilitate the development of

global stablecoin arrangements while preserving the core safeguards relating to reserve management, redemption rights, operational resilience and consumer protection. An outcomes-based approach focused on regulatory equivalence rather than identical legal requirements would also be consistent with broader efforts to reduce regulatory fragmentation and promote internationally competitive stablecoin markets.

More generally, the authorisation process could be streamlined through greater standardisation of application requirements, clearer supervisory guidance and enhanced coordination between competent authorities, particularly for stablecoin arrangements involving multiple issuers operating across several jurisdictions.

Where possible, requirements imposed on credit institutions under MiCAR should be streamlined where equivalent obligations are already fulfilled under existing banking regulation. Avoiding duplication with other applicable prudential and supervisory frameworks would help reduce unnecessary regulatory complexity and ensure a more proportionate implementation approach for banks.

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?

No option has been selected.

Please motivate your answers to question 43 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):

Overall, the MiCA level 2 framework is broadly appropriate, but certain elements could be further simplified and calibrated to better reflect issuer size, business model and risk profile.

The current framework for determining “significant” ARTs and EMTs lacks clarity and precision. Some criteria remain open to interpretation, which may lead to inconsistent application across jurisdictions and supervisory fragmentation. In addition, certain indicators do not appear closely aligned with the actual risk profile or systemic relevance of issuers.

A simplification of above criteria, combined with clearer supervisory guidance, would enhance consistency and legal certainty.

In addition, the authorisation framework could place greater reliance on existing regulatory approvals and equivalent prudential regimes, particularly for licensed EMIs and entities that are already subject to robust supervision, while the own

funds framework could better recognise existing capital and risk management arrangements within regulated financial groups. Such adjustments would reduce unnecessary administrative burdens, support innovation and international competitiveness, and maintain the core objectives of consumer protection and financial stability.

The current complaints management requirements appear overly burdensome for credit institutions that already operate established digital complaints-handling systems through existing online portals. In such cases, the additional MiCAR-specific requirements may be disproportionate and risk duplicating existing, well-functioning processes.

With regard to the significance criteria for ARTs and EMTs, greater clarity would be beneficial. In particular, it would be helpful to provide issuers with a clearer framework specifying how different criteria interact and which combinations of factors would result in a token being classified as “significant”. This would enhance legal certainty and support more consistent application across the market.

Own funds requirements:

The current own funds framework appears relatively rigid and may not adequately reflect the actual risk profile of issuers. In particular, it may not sufficiently distinguish between different business models, reserve structures, and risk exposures. A more risk-sensitive and proportionate calibration would be desirable, allowing greater alignment between capital requirements and the underlying economic and operational risks.

ARTs: the duration of approval of the application by the regulator is 100 days and it is too long.

For EMIs issuing EMTs it should be authorised to provide wallets to clients without this being considered as a service of transfer of cryptoassets requiring an additional CASP license, as it is the case today.

Similarly, today the custody and transfer of cryptoassets are also considered as a payment service. This leads to require 2 licenses for the same activity: one CASP and one PSP. This double licensing should be abolished and the provision of these services should be categorized under one or the other of the Regulations.

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.

Please explain your answer to question 44:

Standardised APIs and reporting templates would improve compliance and supervision.

Where feasible, the development of common APIs or standardised communication protocols between crypto asset service providers (CASPs) and issuers would be beneficial. Such standardisation would help streamline operational processes, improve the consistency and reliability of regulatory reporting, and reduce implementation complexity. This would be particularly valuable in the context of a growing number of stablecoin issuers and increasing cross-platform interactions within the market.

PART 3. The appropriateness of the legal framework for crypto-asset service providers (CASPs)

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.

Please explain your answer to question 45:

Overall, EBF members consider that the list of crypto-asset services set out in Article 3(16) of MiCA adequately captures the main activities currently performed in crypto-asset markets and provides a sufficiently clear framework for services currently offered in the market.

However, EBF members note that additional legal certainty would be beneficial in certain areas, in particular:

a) the distinction between primary offers of crypto-assets and secondary market services, where further clarification would help avoid the unintended application of issuer-related obligations to crypto-asset service providers. Specifically, ESMA QA2404 as well as the corresponding Public Statement on provision of certain crypto asset services in relation to non-MiCA compliant ARTs and EMTs (ESMA 75-223375936-6099) introduced uncertainty around the term “offer to the public”, which is sufficiently defined in Art. 3 (12) MiCAR.

b) While crypto-asset transfer constitutes in principle a standalone service requiring a separate licence, the delineation of certain custody-related services, including the distinction between custody services and, technical tools that do not involve control over clients' crypto-assets, and especially the circumstances in

which a crypto-asset transfer should be regarded as ancillary to custody rather than as a standalone service would benefit from additional clarity. In EBF's view, a crypto-asset transfer relating to custody services should not require a separate licence. In this respect, the concept of custody and administration should remain centred on the safekeeping or control of crypto-assets or their means of access on behalf of clients, combined with position keeping and restitution obligations. By contrast, purely technical tools that do not give the provider control over the assets or the client's means of access should not be treated as custody services. Further clarification on this point would support a consistent application of the framework.

c) the treatment of crypto-asset custody-chain arrangements, including the distinction between sub custody, delegation and outsourcing.

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:

The EBF considers that, should additional crypto-asset services be brought within the regulatory perimeter in the future, the priority should be to ensure legal clarity, consistent implementation and the proportionate application of the regulatory framework, including through further supervisory guidance where appropriate.

No additional service category should be added merely to capture technical arrangements that are already covered by the existing notions of custody, administration, transfer or execution. New services should be addressed through targeted regulatory requirements and clear legal definitions, rather than by broadening existing CASP categories where these are not well suited to the nature of the activity.

Activities such as staking, crypto-asset lending, borrowing and certain DeFi-related services could be considered for inclusion within the regulatory framework. At the same time, staking would not necessarily require a new standalone MiCA service category where it is ancillary to custody. Any future framework should follow a proportionate, risk-based and technology-neutral approach, taking into account the nature, scale and risks of the activity concerned.

EBF Members do identify one gap in relation to the MiFID II activity of dealing on own account and the closest MiCA services (exchange of crypto-assets for FIAT money or other crypto-assets). These share the rationale whereby the provider acts as principal with its own capital at risk. But the MiCA definitions are framed

by reference to clients, so liquidity providers and market makers acting as principal in the EU without executing client orders fall outside the authorization requirement. Under MiFID II the equivalent firms are authorized, regulated and supervised, irrespective of whether they act on behalf of clients' orders or not. EBF Members see no difference in risk that justifies this asymmetry and consider it should be addressed, with ESMA promoting a harmonised supervisory approach in the meantime.

Overall, requirements should be calibrated to the specific characteristics and risk profile of the relevant activity and business model, including, where appropriate, appropriate transparency towards clients, governance, operational resilience and safeguarding arrangements.

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.

Please explain your answer to question 47:

Overall, EBF members consider that the introduction of an appropriateness test would contribute to enhancing investor protection, particularly for retail clients. However, introducing such requirement necessitates further analysis. The introduction of an appropriateness test should not result in a blanket requirement, which would create unnecessary friction for users, increase compliance costs for CASPs and inadvertently reinforce the perception that all crypto-assets are investment products, contrary to the functional distinctions established by MiCA, particularly as the current framework already includes extensive disclosure, conduct of business and governance requirements.

Any such requirement should be proportionate, risk-based and aligned with the existing MiFID II framework in order to ensure consistency across EU financial services legislation. Also, the framework should avoid unnecessary complexity (such as introducing complex client classification frameworks) and be appropriately calibrated to the nature of the crypto-assets and services concerned.

One element of consideration, for instance, would be whether any appropriateness test should be limited to crypto-assets presenting higher levels of complexity or risk, and not apply to e-money tokens (EMTs), given their primary function as a means of payment, their comparatively lower risk profile and the specific safeguards already provided under MiCA.

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?

No.

Please explain your answer to question 48, specifying what in your view could be a relevant alternative:

The main issue is not only the legal prohibition of unauthorised third-country services, but also practical enforcement. There remain concerns about the ability to effectively prevent non-EU, non-authorised providers from targeting or servicing EU clients. ESMA's reverse-solicitation guidance is useful, but it should be accompanied by effective supervisory and enforcement tools, coordinated warnings and cooperation between EU and third-country authorities. This should be done without preventing EU users from accessing global liquidity through EU-authorised CASPs.

Through the reverse solicitation mechanisms where the marketing initiation comes from the EU client, players unlicensed in the EU may de facto have a significant business within the EU. Admittedly, reverse solicitation is rather part of standard international cooperation. Reverse solicitation, however, is a double-edged sword: if an entire commercial strategy is built upon it, this can be risky. It operates within a limited framework subject to strict conditions, notably: (i) the service must be provided only after the client's initiative, and (ii) the provision of services must be strictly confined to those explicitly requested. It is therefore important to more clearly define and delineate the basis on which services are provided under reverse solicitation. The difference of approach when acting as principal when in scope of MiFID or within the scope of MiCAR led to a situation where important flows of liquidity are provided in the EU to EU clients by market makers, which are non-EU or EU financial entities not authorized under MiCAR.

3.2 Prudential requirements for CASPs

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 would be warranted to adjust the prudential stance.

Please explain your answer to question 49:

It is very important to highlight here that the exemption of credit institutions from MiCAR capital requirements must be retained under all circumstances. Credit institutions should remain subject exclusively to the applicable CRR/CRD prudential framework, without additional or duplicative MiCAR capital requirements. The rules applicable to a single entity holding multiple licenses—such as a CASP and an investment firm—deserve further clarification. In particular, it should be confirmed that the higher of the two capital requirements applies, and that a cumulative addition of the capital requirements from both licenses is excluded.

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)**

	1	2	3	4	5	Don't know - No opinion - ed) Not applicable
Minimum initial capital for Class 1 (EUR 50.000)	☐	☐	☒	☐	☐	☐
Minimum initial capital for Class 2 (EUR 125.000)	☐	☐	☒	☐	☐	☐
Minimum initial capital for Class 3 (EUR 150.000)	☐	☐	☐	☒	☐	☐

Please explain your answers to question 50, indicating, if necessary, how the amount of minimum capital should it be recalibrated:

The current minimum initial capital requirement of EUR 150,000 for Class 3 CASPs appears insufficient to fully safeguard market integrity and ensure adequate protection for retail clients, particularly in relation to custody services and the operation of trading platforms.

Applied to an entity of the size of the largest global exchanges, such a requirement would clearly be inadequate for institutions that may become systemic for the crypto-asset markets and increasingly interconnected with traditional finance.

Fixed minimums are, in any event, a poor measure of risk for this population, which ranges from small advisory firms to global platforms. EBF therefore suggests modelling the prudential regime of non-banking CASPs on the one applicable to investment firms under IFR/IFD. Own funds would be the highest of a permanent minimum capital, a fixed overheads requirement, and a risk-based requirement built on K-factors capturing, in particular, the client assets safeguarded and administered, the client money held, the order flow handled and, for trading platforms, the trading activity. Permanent minimum capital levels should at least be aligned on those applicable to investment firms providing broadly similar services. This approach would make requirements proportionate at both ends of the spectrum: it would not overburden small providers, while ensuring that requirements grow with the footprint of the largest ones, and it would avoid a regulatory gap between MiFID firms and non-banking CASPs as the two universes converge.

The rules applicable to a single entity holding multiple licenses—such as a CASP and an investment firm—deserve further clarification. In particular, it should be confirmed that the higher of the two capital requirements applies, and that a cumulative addition of the capital requirements from both licenses is excluded. In addition, the exemption of credit institutions from MiCAR capital requirements must be retained. More important however is the necessity to confirm that the requirements applicable to a single entity exercising functions listed in different “Classes” do not add up and that only the higher of the two capital requirements applies.

However, it should be authorized to net the various capital requirements between licenses, e.g. CASP, EMI, PSP, Investment Firm, and not add them.

The EU crypto-asset market is dominated by a small number of multi-function groups combining issuance, exchange, custody and related services at scale, most headquartered outside the EU. These groups currently fall outside any group-wide supervisory framework: prudential consolidation applies only to banking groups, the conglomerates framework does not capture e-money institutions or CASPs, and MiCA colleges are only for significant ART/EMT issuance. This creates an

unjustified asymmetry: a banking group carrying out crypto activities is subject to full consolidated supervision, while a global crypto-native group of comparable scale is not, even though the FTX failure showed how intra-group dependencies, conflicts of interest and opaque structures can propagate stress across an entire market.

It is critical to ensure a level playing field between the requirements established under sectorial legislation (MiFID/MiFIR) and those included in MiCA, in the interest of investor protection, financial stability and market integrity.

3.3 Multi-function groups

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? What kind of action would be appropriate?

There should be enhanced oversight and coordination in relation to such entities.

Question 51.1 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.

Please explain your answer to question 51.1 and provide any comments on the operational feasibility, legal implications, proportionality, or potential unintended consequences of the measures above:

Group-level reporting to a centralised authority: There are already reporting obligations directed to, and supervision carried out by, various authorities such as the ECB, ESMA, and national competent authorities (e.g. the AMF). This raises the question of how these authorities should interact and coordinate. Group-level reporting could be preferable, provided that reporting requirements across authorities are streamlined and harmonised, so as to avoid duplication and inconsistencies.

EBF supports a sequenced approach: in the short term, structured supervisory cooperation between the EBA, ESMA, NCAs and the ECB for non-bank groups including a significant issuer or CASP; in the medium term, as part of the MiCA review, a formalised framework with group-level reporting and binding cooperation mechanisms. Enhanced oversight should target crypto-native groups and not duplicate consolidated supervision already applicable to banking groups.

3.4 Reporting

Question 52. Should CASPs report regularly their activities?

	Yes	No	Don't know - No opinion - Not applicable
Direct holdings of crypto-assets by CASPs	☒	☐	☐
Large exposures to derivatives with crypto-assets as the underlying asset	☒	☐	☐
Volumes of leveraged contracts and the extent to which leverage is actually used on trading platforms	☒	☐	☐
Information on counterparty risk	☒	☐	☐

Please specify what kind of reporting would be useful and how often? Please explain:

The EBF considers that proportionate and risk-based reporting by CASPs can support effective supervision, market monitoring and financial stability. However, any reporting requirements should be carefully calibrated to supervisory needs and designed to avoid unnecessary administrative burdens or duplication with existing reporting requirements under MiCA and other relevant EU regulatory frameworks. In particular, any fraud related monitoring and reporting requirements should avoid overlaps with existing PSD2 requirements and future requirements under PSD3/PSR, especially in relation to e-money tokens (EMTs).

The EBF considers that direct crypto-asset holdings, significant derivative exposures, the use of leverage and counterparty risk. In this context, reporting on direct holdings should avoid requiring unnecessarily granular or sensitive information that could give rise to operational or cyber-security risks. Reporting on counterparty risk should focus on material exposures, risk concentrations and potential excesses. Reporting requirements should remain proportionate to the nature, scale and risk profile of the activities performed.

At the same time, broad new periodic reporting obligations for CASPs should be avoided. Where additional information is required, supervisors should instead rely

on targeted, risk-based information requests where justified by a clear supervisory need.

3.5 Environmental and sustainability reporting

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)?

Partially appropriate, but improvements could be considered.

Please explain your answer to question 53:

Although the transparency objective is clear and justified, its practical application remains challenging for legacy crypto-assets. For assets, such as BTC and ETH the environmental information required under the current MiCAR framework is generally not available in a uniform manner for a white paper, meeting the newer regulatory standards.

In many cases, the relevant disclosures can therefore only be based on estimates. This creates legal and operational uncertainty for CASPs offering services in relation to legacy coins, particularly where no harmonised white paper exists.

The same concern may also arise in cases of material technological modifications affecting assets, where the original disclosure no longer fully reflects the asset's current technological features.

Further clarification or a tailored approach for such assets would improve proportionality and practical applicability.

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?

Yes.

DORA is broadly appropriate as a baseline framework for digital operational resilience. However, further clarification regarding the interaction between MiCA's operational continuity requirements and DORA's ICT risk management obligations would help reduce regulatory uncertainty and ensure consistent implementation.

In addition, certain crypto-specific risk areas—such as smart contract security and private key management— may not be fully addressed within the current scope of

DORA. These aspects present distinct operational and cybersecurity challenges that are particularly relevant for crypto-asset service providers.

Joint ENISA/ESAs guidance on crypto-specific threats and incident classification would be valuable in the following areas: private-key management, blockchain outages forks, wallet compromise, smart-contract risk, oracle risk, bridge and cross-chain dependencies, chain congestion, settlement finality policies and incident response, validator or network dependencies, custody infrastructure, irreversible transactions and incidents affecting external wallet transfers. Further guidance would also be beneficial on the use of on-chain analytics and crypto-specific threat intelligence for monitoring and incident response, as well as on the classification and reporting of crypto-native cyber incidents, such as protocol exploits or losses arising from decentralised finance (DeFi) protocols, under the DORA and MiCA reporting frameworks.

In bank-CASP partnership models, guidance should also clarify the allocation of operational resilience responsibilities between the credit institution and the CASP partner, including incident notification, customer communication, outsourcing/third-party oversight, recovery procedures and liability for failures in the crypto specific infrastructure. For lower-risk closed-loop models, where clients cannot transfer crypto-assets to external wallets and custody/execution remains with a licensed CASP, the framework should recognise the reduced operational and financial crime risk profile, while still requiring robust governance, monitoring and incident response arrangements.

CASPs face a number of cybersecurity challenges that differ from those of traditional financial institutions and would benefit from further regulatory clarification. These include secure wallet and cryptographic key management (e.g. HSMs, MPC/multi-signature arrangements and cold storage), the security of smart contracts, bridges and oracles, and the operational reliance on public blockchain infrastructure, which does not always fit neatly within DORA's traditional ICT third-party risk framework.

In addition, for financial groups combining traditional banking and CASP activities, greater clarity on expectations regarding network segmentation, identity and access management, and change management between conventional ICT environments and blockchain infrastructure would promote a more consistent level of cyber resilience across the EU.

The regulatory framework should avoid introducing additional requirements that primarily increase administrative burden without materially enhancing ICT or cyber resilience. DORA already provides a robust and technology-neutral baseline for operational resilience, and any further requirements should be clearly justified

by identifiable crypto-specific risks rather than adding unnecessary regulatory complexity.

More generally, it would be important to ensure a level playing field regarding the application of DORA requirements across market participants. While proportionality is a key principle, cybersecurity, data protection and payment-related risks are not solely determined by the size of an institution. Even relatively small entities may process significant volumes of sensitive customer data or provide services that are critical from an operational and financial stability perspective. For this reason, EBF believes that fintech firms should not be subject to disproportionately lighter DORA requirements where this could result in weaker risk management standards or create regulatory inconsistencies across entities performing comparable activities. Although CASPs fall within the scope of DORA, additional cybersecurity issues may need to be further assessed, in particular in view of the specific features and risks associated with DLT-based infrastructures, wallets, tokens and smart contracts. Any such assessment should be carried out in full respect of the principle of proportionality. However, to the extent that these issues concern the security and operational resilience of infrastructures rather than crypto-assets or crypto-asset services themselves, MiCA may not be the most appropriate regulatory instrument to address them. A more suitable approach could be to consider targeted amendments to the relevant legislative frameworks, potentially through an omnibus text adopted alongside the MiCA review.

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?

Yes.

Please explain your answer to question 55:

The progress made through the PSD3/PSR proposals in clarifying the interaction between MiCAR and the payments framework is welcome. In particular with regard

to transfer services involving e-money tokens and the delineation of activities that may qualify as payment services, and the coordination of authorisation processes where CASPs are also required to obtain an authorisation under payments legislation. The approach adopted is also helpful in addressing the risk of duplicative authorisation requirements highlighted by the EBA and contributes to reducing overlaps and interpretative uncertainty between MiCAR and the payments framework, thereby improving overall regulatory coherence. Therefore, we believe that for the time being the same approach (where the EBA contributes to the clarification needs) should be followed to address the persisting issues on the interplay between MiCAR and PSD3/R instead of using a possible review, which will have effects only after at least 5/7 years.

Nevertheless, some important issues remain:

- Further clarification would be beneficial regarding the operational boundary between EMT transfers that qualify as payment services and transfers performed in the context of custody, trading or settlement activities falling within the scope of MiCAR. Likewise, EBF believes it is important ensuring consistency across different legislative frameworks, for instance by avoiding overlaps in reporting requirements between MiCAR and the PSD2/PSR/PSD3 framework, and that practical supervisory coordination between competent authorities will remain essential to avoid duplicative requirements and divergent interpretations across Member States, particularly as more complex EMT-based business models emerge.
- More clarity as regards the treatment of non-custodial wallets and the practical application of strong customer authentication (SCA) requirements in such contexts.
- Differences in the efficiency and timelines of authorisation processes for PSD licences across Member States may lead to fragmentation and unequal market conditions within the EU. Greater supervisory convergence in authorisation practices could therefore be beneficial in ensuring a more consistent and harmonised implementation of the framework. MiCA qualifies stablecoins as electronic money in certain cases, which has led the EBA to issue implementing standards. As a result, CASPs may be required to obtain authorisation as Electronic Money Institutions (EMIs) in order to provide specific services. This implies that market participants must submit formal applications to deliver such services. However, stablecoin-related services are not always treated as genuine payment services, which leads to the application of lighter and simplified review processes—although these still remain time-consuming in practice. In some cases, simplified procedures may apply, with the relevant framework governed by PSD3 and the PSR.

- MiCA should be aligned with the Settlement Finality Directive, PSD3 and insolvency law so that market participants know when a transfer of crypto-assets or stablecoins is irrevocable and enforceable. This is especially important for public ledgers, where finality may be probabilistic, and for L2 or cross-chain arrangements.
- Greater attention should be given to the interaction between MiCA and the PSD3/PSR, particularly regarding its practical implications for financial institutions. In particular, also considering what already reported under question 52 on fraud reporting and after having properly evaluated the different use cases, the provisions on fraud liability and reimbursement should be revisited to ensure that liability is allocated proportionately, reflects the actual degree of control exercised by the respective parties, and does not create undue legal uncertainty or unintended disincentives for institutions providing crypto-asset services. In order to introduce a harmonized liability regime for fraud cases between CASPs, issuers, infrastructure providers and PSPs, the principle of shared liability could be established, whereby liability for customer reimbursement is allocated according to each party's actual contribution to the loss and compliance with its respective duties of care. Accordingly, the obligation to reimburse customers should not automatically rest with the PSPs but should instead be determined on the basis of an assessment of the adequacy of the fraud prevention measures put in place by each party, AML/KYC controls, security arrangements, and the level of cooperation demonstrated by each intermediary in managing fraudulent events. Such an approach would promote a fairer allocation of risk and liabilities.
- Further guidance should also address the treatment of fiat payment legs, EMT transfers within closed-loop environments, redemption flows, merchant payments, wallet-to-wallet transfers and the allocation of responsibilities between banks, CASPs and payment service providers.

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?

No response.

Question 56.1 What are the advantages and disadvantages of focusing on EU liquidity or full access to global liquidity?

The reverse-solicitation regime can function as a limited channel for access to non-EU venues; however, its scope is inherently narrow. In addition, restrictions on the

transmission of orders to non-authorised third-country venues may limit EU consumers' and investors' access to global liquidity pools.

From a market structure perspective, overly restrictive access rules could inadvertently encourage institutional best execution activity to migrate towards less transparent or less regulated channels. This may reduce overall market efficiency and transparency.

In this context, the introduction of a clear and well-defined equivalence or adequacy regime for third-country trading venues that meet comparable supervisory and regulatory standards could provide a more balanced approach. Such a framework could help ensure both investor protection and continued access to global liquidity, while supporting the competitiveness of EU market participants.

The definition of MiCA's geographical scope would benefit from further clarification. Before restricting EU consumers' and investors' access to non-EU and global crypto-asset trading platforms and liquidity pools, careful consideration should be given to reciprocity issues. A thorough impact assessment should be conducted, with an open and consultative approach, to ensure that any such restrictions do not lead to unintended market distortions or competitive disadvantages for EU participants. Indeed, there is a dilemma between imposing that EU consumers should only access crypto assets services via EU MiCAR compliant entities in certain circumstances and not having access to global liquidity due to the fact crypto-assets markets have an intrinsic cross border nature.

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)	Don't know - No opinion - Not applicable
Authorisation of crypto-asset service providers	☐	☐	☒	☐	☐	☐
Prudential requirements	☐	☐	☒	☐	☐	☐
Governance arrangements	☐	☐	☒	☐	☐	☐
Obligations in respect of specific crypto-asset services	☐	☐	☒	☐	☐	☐
Other Title V rules	☐	☐	☒	☐	☐	☐

Please explain your ratings in question 57 and suggest how rules could be made simpler and more proportionate (e.g. legislative clarification, supervisory guidance, industry standards):

The requirements appear broadly proportionate for standalone firms. However, for credit institutions that are already subject to equivalent obligations under the Capital Requirements Directive (CRD), certain provisions may be duplicative and could benefit from further alignment to avoid regulatory overlap.

In particular, custody-related obligations would benefit from clearer consistency with existing frameworks such as the Central Securities Depositories Regulation (CSDR) and AIFMD depositary standards, in order to ensure coherence across EU financial services regulation.

In addition, a streamlined and more efficient authorisation pathway for CRD-regulated credit institutions seeking CASP authorisation would be desirable, reducing unnecessary procedural duplication while maintaining equivalent prudential and conduct standards.

Furthermore, MiCA allows omnibus accounts, and compliance with the segregation requirement should be assessed primarily through an accurate, continuously updated internal register rather than the wallet's physical separation alone.

Gas fees necessary to operate on DLT may be held temporarily in the same account without mixing proprietary and client assets, provided they are clearly identified and fully segregated in the internal records.

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 (rather disagree)	3 (neutral)	4 (rather agree)	5 (strongly agree)	Don't know - No opinion - Not applicable
RTS on complaint handling for CASPs (Article 71(5))	☐	☐	☐	☒	☐	☐
RTS on offering pre-trading and post-trading data to the public (Article 76(16)(a))	☐	☐	☐	☒	☐	☐
RTS on content and format of order book and records to be maintained (Article 76(16)(b))	☐	☐	☐	☒	☐	☐
RTS on records to be kept of all crypto-asset services, activities, orders and transactions undertaken (Article 68 (10)(b))	☐	☐	☐	☒	☐	☐
RTS on the continuity and regularity in performance of crypto services (Article 68 (10)(a))	☐	☐	☐	☒	☐	☐

Please explain your ratings in question 58 and suggest how rules could be made simpler and more proportionate:

Greater harmonisation of the requirements applicable to CASPs. At the same time, certain requirements would benefit from a more proportionate and risk-based application, taking greater account of the nature and scale of the services provided, the business model and the risk profile of the CASP.

In particular, the RTS on complaint handling may result in duplicative requirements for credit institutions, which are already subject to well-established complaints management frameworks under existing EU financial services legislation. Similarly, the RTS on pre- and post-trade transparency would benefit from closer alignment with the existing transparency framework under MiFIR in order to avoid overlapping requirements and reduce implementation complexity. Greater consistency should also be ensured in relation to record-keeping requirements, including record retention periods, particularly where CASPs provide services to regulated financial institutions.

More generally, the EBF encourages the ESAs to ensure greater consistency between MiCA Level 2 measures and the existing EU financial services framework, particularly where equivalent requirements already exist under other sectoral legislation. This would help avoid unnecessary duplication, support a more coherent, proportionate and efficient regulatory framework while maintaining a high level of investor protection and effective supervision.

Beyond the Level 2 measures specifically covered by this question, the EBF considers that proportionality considerations are also relevant in relation to the ESMA Guidelines on knowledge and competence, the framework for the prevention

and detection of market abuse, and the application of the reverse solicitation regime. In these areas, greater differentiation according to the nature of the service, the characteristics and risks of the crypto-assets concerned, and the applicable regulatory framework could help avoid disproportionate requirements and unnecessary overlaps.

PART 4. Policy areas beyond the current scope of MiCA

4.1 Decentralised finance

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?

- a) Exchange services**
- b) Payments and transactions services**
- c) Trading and investment services**
- d) Lending and borrowing services**
- e) Custody services**

No options have been selected.

Please detail the benefits or weaknesses you associate with the use of DeFi applications for these different services in question 59, and the actions you would consider appropriate to optimise these benefits or address the possible issues they raise:

In all of these functions, DeFi promotes liquidity pools and peer-to-peer exchanges by allowing the use of external protocols, for example for staking, borrowing, self-custody. It does so by better managing counterparty risks, protocol hacking, etc

Benefits/weaknesses:

The current absence of AML/CFT compliance frameworks, clear recourse mechanisms, and reliable counterparty identification presents significant limitations for the use of DeFi applications in bank-intermediated financial services such as lending, borrowing, custody, and payments. In their current form, these characteristics make DeFi applications challenging to integrate into regulated financial intermediation activities from a risk and compliance perspective.

However, DeFi-based exchange and trading functionalities may become increasingly relevant, particularly in a more automated and AI-driven financial environment. In this context, a regulatory approach aligned with MiFID principles could be considered appropriate for such activities, ensuring that core investor protection and market integrity standards are maintained while allowing for technological innovation.

MiCA excludes fully decentralized services from its scope. In practice, however, many DeFi set-ups have identifiable control points (wallet holders, concentrated governance, curators managing lending pools, etc.), which mean they are not genuinely decentralized yet, they currently fall under no clear regulatory regime. A dominant model in the market is a white-labelling pattern in which unregulated infrastructure providers supply the technical rails on which regulated institutions build and structure their products, which blurs who carries the regulated role and the associated liability.

Decentralised finance may offer significant efficiency gains and support the development of more open, automated and accessible financial markets, provided that appropriate safeguards are in place. Its potential benefits are particularly relevant in two areas: i) exchange, trading and investment services; and ii) lending and borrowing activities. In both cases, the use of smart contracts and blockchain-based settlement can reduce operational friction, shorten transaction cycles and broaden market access.

Regarding exchange, trading and investment services, DeFi may contribute to improving market efficiency by enabling a higher degree of automation and reducing reliance on certain traditional intermediaries. It may offer the following benefits:

- Drastic reduction of trading costs (zero operational costs, full automation, removal of intermediaries e.g. CSDs)
- Elimination of counterparty risk (atomic settlement)
- Significant reduction of issuance costs (making capital markets access easier for corporates, in particular SMEs)
- 24/7 liquidity
- Democratise access to asset classes only available to HNWI/institutional investors (e.g. private equity, venture capital).

About lending and borrowing activities, DeFi may also contribute to more efficient credit and collateral management processes. Automated protocols could reduce execution times, improve collateral monitoring and support more dynamic liquidity management. Potential benefits include:

- enable corporates, financial institutions and individual clients to borrow in a few seconds vs the current 1-5 business days
- significantly reduce risks for lenders thanks to instant liquidation of collateral 24/7
- improved price/interest rates formation
- expanded access to securities lending markets and credit markets
- enable intra-day liquidity management
- expand the range of collaterals that can be used

The EBF would favor an environment where banks are enabled to experiment with DeFi and progressively offer DeFi-based services to their clients with strong audits and appropriate risk disclosures, enabling the development of internal processes and risk assessment frameworks and ultimately bringing the benefits highlighted above to their end customers, providing safer, cheaper, faster financial services and granting a level playing-field with non-EU banks, that are quickly developing their digital assets and DeFi capabilities.

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

Decentralised finance may reduce certain operational risks linked to manual processes and traditional intermediation, since execution is largely automated through smart contracts. However, it also introduces specific technological, operational, governance and legal risks.

At this stage, DeFi does not appear to pose material financial stability risks in the EU, given its still limited scale and contained interconnection with the regulated financial sector. This assessment may, however, evolve if DeFi markets expand or become more closely connected with regulated financial institutions, payment systems or tokenised financial markets.

Money laundering and terrorist financing risks are particularly significant in the context of permissionless protocols, due to the absence of embedded KYC/AML controls and the resulting challenges in effectively identifying and monitoring participants.

Operational risks, including vulnerabilities in smart contract design and execution, may lead to irreversible loss of client assets, with limited or no possibilities for recovery. This is difficult to reconcile with established custody and safeguarding obligations under regulated financial services frameworks. As just mentioned, one of the main risks associated with DeFi is technical and smart-contract risk arising from faulty code and cyber-attacks. Smart-contract vulnerabilities caused more than \$3.1 billion in losses between 2023 and 2025, including through access-

control failures, logic and arithmetic bugs, compromised administrative keys, oracle manipulation and bridge exploits. To address these risks while preserving the benefits of DeFi, the EU should support the development of secure DeFi protocols in Europe, including by fostering a European digital-asset ecosystem based also on euro-denominated stablecoins and encouraging strong independent private-sector audits.

Market abuse Risk: Risks of price manipulation, insider trading, disclosure of false/misleading information, or other misconducts affecting market integrity (placing orders with no intention to execute, disclosure of false or misleading information on social networks, flash loans, exploitation of material non-public information regarding a technical vulnerability prior to public disclosure, front-running by validators and miners, etc.). Note: Some cases directly or indirectly related to the DeFi or linked to DLT technology do not appear to fall within the definition of market abuse insofar as the information has been made public (e.g., technological modification beneficial to holders/potential holders, trading based on publicly available technical information that is "on chain"...). A question remains regarding information that is technically visible to a minority of informed people but is not accessible to ordinary users.

In addition, investor protection considerations are weakened by opaque governance structures and the absence of clearly defined recourse mechanisms. These factors collectively create material challenges for integrating such protocols within existing regulated financial service models.

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

The assessment should be based on whether an identifiable person or group of persons exercises material control or influence over the protocol, its governance or the provision of the relevant service. The existence of an identifiable governance actor should not, in itself, be decisive; rather, the assessment should consider whether that actor has the practical ability, individually or acting in concert, to determine or materially influence key decisions or outcomes relating to the protocol. One of the most relevant indicators of effective control in a DeFi application is the ability of identifiable parties to exercise unilateral influence over the hardware components and/or key protocol functions, such as upgrading, pausing, or otherwise modifying core protocol parameters. Where such control exists, it may indicate a level of centralisation that should be taken into account for regulatory classification purposes.

In addition, where a protocol holds or controls user assets directly or indirectly, this may constitute a further strong indicator of centralisation and could justify the application of regulatory obligations, irrespective of the formal governance structure.

Furthermore, governance arrangements should be assessed in substance rather than form. In particular, concentration of voting power above defined thresholds may indicate effective control by specific actors and should be considered as part of any assessment of the degree of decentralisation.

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.

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

The most significant risk identified relates to illicit activities, which should be addressed through appropriate regulatory safeguards and enforcement mechanisms, particularly in relation to AML/CFT compliance.

Other risks are generally inherent to market-based systems and may be considered part of normal free-market dynamics. These do not necessarily warrant additional regulatory intervention beyond existing frameworks, provided that core financial integrity safeguards are effectively enforced.

Fully decentralised DeFi protocols should not be brought directly within the scope of MiCA where there is no identifiable legal or natural person exercising control over the protocol. However, where authorised CASPs facilitate or provide access to such protocols, they should be required to implement proportionate risk management measures reflecting the risks associated with those services.

These measures should include appropriate due diligence before integrating or facilitating access to a protocol, ongoing monitoring of material security or operational risks where reasonably practicable, and clear disclosures enabling clients to understand the characteristics and risks of the relevant DeFi application. CASPs should also make use of appropriate blockchain analytics and risk-monitoring tools and should be expected to discourage or discontinue access to protocols that are strongly associated with illicit activity or present significant and well identified risks to clients. At the same time, CASPs should not incur liability for incidents that remain outside their control. The objective should be to ensure

that regulated intermediaries manage the risks associated with the services they choose to facilitate, while preserving innovation and avoiding indirect regulation that would effectively prohibit access to decentralised finance.

Regulated intermediaries or CASPs facilitating access to DeFi applications should not be expected to assess or monitor every aspect of a fully decentralised protocol. Instead, they should ensure that the protocols they make available satisfy recognised minimum standards relating to security, operational resilience, governance and transparency.

A key issue in the development of DeFi concerns the predominance of permissionless protocols and liquidity pools. In practice, a substantial part of DeFi activity takes place in permissionless environments, while European users may increasingly access such services through non-EU intermediaries or platforms. This may create a paradoxical situation in which European DeFi innovation depends on non-EU distribution channels, and EU users access innovative financial products outside the EU regulatory perimeter.

In this context, an EU approach focused only on restricting access to permissioned environments could risk limiting the benefits of DeFi and pushing innovation and user activity outside the Union. Instead, the EU should aim to develop a safe and legally certain European DeFi ecosystem, allowing European builders to innovate and regulated CASPs to connect, under appropriate conditions, to DeFi applications. This should be subject to adequate risk disclosures, customer protection measures, cybersecurity safeguards and clear accountability rules.

The objective should not be to unduly restrict access to DeFi liquidity, but to ensure that interaction with DeFi protocols can take place in a transparent, supervised and risk-aware manner. A balanced framework would help retain innovation in Europe, support the development of euro-denominated on-chain finance and reduce reliance on non-EU intermediaries for access to decentralised financial services.

Roughly 99% of DeFi is permissionless. US firms like Coinbase and Kraken already offer permissionless DeFi access to their users, e.g. via the integration of Morpho and Aave (which are both European teams). We are in a paradox where the few European DeFi builders can only grow by leveraging the distribution of US firms. This means 2 things: innovation is happening outside the EU and EU citizens can only access better financial products (e.g. instant collateralized loans, trading) outside the EU. To fix this, EBF believes it is crucial to build a safe European DeFi ecosystem where builders can innovate without the risk of legal actions and CASPs can connect to DeFi applications to offer innovative products to their clients,

provided full disclosure of the risks involved. Only limiting access to permissioned liquidity would cut the benefits entirely since it means losing 99% of the liquidity.

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.

Please explain your answer to question 63, and explain for which types of DeFi services you support introducing certification schemes and for what reasons:

Certification schemes could be considered for DeFi protocols that provide functionalities equivalent to regulated crypto-asset services, particularly where these involve exchange, trading, or intermediation-type activities.

Where such schemes are introduced, certification should not be purely voluntary but instead mandatory for protocols with which regulated crypto-asset service providers (CASPs) interact on behalf of clients. This would help ensure a consistent baseline of trust and risk management across the ecosystem.

Minimum certification standards should include, at a minimum, robust smart contract security assessments, adequate AML/CFT risk mitigation where applicable, and sufficient transparency regarding governance structures. In addition, ongoing monitoring and periodic reassessment would be important to ensure continued compliance with these standards over time.

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

No option has been selected.

Please explain your answers to question 64:

Certification schemes could be considered for DeFi protocols that provide functionalities equivalent to regulated crypto-asset services, particularly where these involve exchange, trading, or intermediation-type activities. Where such schemes are introduced, certification should not be purely voluntary but instead mandatory for protocols with which regulated crypto-asset service providers (CASPs) interact on behalf of clients. This would help ensure a consistent baseline of trust and risk management across the ecosystem. Minimum certification standards should include, at a minimum, robust smart contract security assessments, adequate AML/CFT risk mitigation where applicable, and sufficient

transparency regarding governance structures. In addition, ongoing monitoring and periodic reassessment would be important to ensure continued compliance with these standards over time.

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

No option has been selected.

Please explain your answers to question 65:

Certificates should preferably be issued by qualified and independent private-sector entities operating under a harmonised European framework, with appropriate oversight by public authorities to ensure consistency, credibility and common technical standards.

Where a DeFi protocol is fully decentralised, certification should remain available on a voluntary basis and should be capable of being requested by any interested party, including protocol participants, governance bodies or other stakeholders. However, mandatory certification requirements should not be imposed solely because a fully decentralised protocol reaches a certain level of significance (e.g. based on TVL). Such an approach would be inconsistent with MiCA's treatment of fully decentralised crypto-asset services, which fall outside the scope of the Regulation where no identifiable legal or natural person exercises control over the protocol.

Finally, where an authorised CASP decides to facilitate access to DeFi protocols, it should do so only in respect of protocols that meet recognised minimum standards of security, governance and operational resilience. Certification would provide an objective and harmonised benchmark supporting the CASP's due diligence process and helping to ensure a consistent level of protection for clients. This would not transform certification into a prudential authorisation, nor relieve CASPs of their own responsibility to assess and monitor the risks associated with the protocols they make available. Rather, certification should be regarded as a minimum quality threshold that supports informed risk management and strengthens confidence in the DeFi ecosystem.

4.2 Staking, lending and borrowing of crypto-assets

Question 66. Do you think the current approach whereby staking services are not separately regulated is adequate?

Yes.

Please explain your answer to question 66:

The current approach, whereby staking services are not subject to a standalone regulatory regime, is considered broadly adequate.

However, where staking services are provided—particularly in combination with custody services — certain minimum requirements should be clearly defined. These should include enhanced disclosure of slashing risks and lock-up periods, clear rules on the segregation of staked assets, and an appropriate prudential treatment of potential slashing losses.

In addition, a clear distinction should be maintained between (i) standalone staking services and (ii) staking services combined with custody. The latter typically entails higher operational and counterparty risks and may therefore warrant more stringent safeguards.

At the same time, staking may also be provided as a standalone service, including through non-custodial or delegated staking arrangements where no custody of client assets is provided. Where staking is offered independently of custody, consideration could be given to introducing a specific regulatory framework or authorisation tailored to the particular risks of that activity. Such a framework should remain proportionate and should reflect the operational, governance and consumer protection risks associated with staking, without simply replicating the requirements applicable to custody services.

Crypto lending and borrowing activities are not comprehensively covered under the current MiCAR framework, although they may perform functions that are economically comparable to credit intermediation and may give rise to relevant risks for clients and market integrity. This creates a potential regulatory gap, particularly where such activities are provided through centralised platforms.

A dedicated and proportionate framework should therefore be considered for centralised crypto lending and borrowing services, based on the following core elements:

1. Segregation and custody of client assets. Clear rules should distinguish between on-balance-sheet lending models, where the platform assumes credit risk and the client may be treated as an unsecured creditor, and custodial or agency models, where client assets are segregated and protected in the event of insolvency. Clients should have clear contractual information on the legal status of their assets and the model applied.
2. Rehypothecation limits and disclosure. Where collateral or client crypto-assets are reused, re-lent or re pledged, this should be subject to appropriate limits and

explicit disclosure. Clients should have sufficient transparency on how their assets are deployed and on the risks arising from such reuse.

3. Liquidity and concentration risk safeguards. Platforms should be subject to proportionate requirements aimed at ensuring adequate liquidity to meet redemption requests, margin calls or liquidation needs, as well as limits on excessive concentration towards single counterparties, collateral types or correlated crypto-assets.

4. Governance, capital and risk management requirements. Centralised crypto lending providers should be subject to governance, internal control, risk management and capital requirements proportionate to the size and risk profile of their lending activities. These requirements should reflect the specific volatility, liquidity and 24/7 nature of crypto-asset markets, without amounting to a blanket extension of banking rules.

5. Conduct and disclosure rules for retail-facing platforms. Where services are offered to retail clients, clear and standardised disclosures should be required on volatility, liquidation risk, rehypothecation, insolvency treatment and the fact that crypto lending products are not equivalent to deposits or guaranteed-return products.

Such a framework should be calibrated to the risks of the activity and should support responsible market development, while closing the most relevant gaps exposed by past market failures. Accordingly, where crypto lending and borrowing are provided through centralised platforms, they should be brought within MiCAR's scope as regulated crypto-asset services, subject to the relevant CASP authorisation and proportionate safeguards. Where such activities are carried out through decentralised protocols, the approach should be consistent with the broader treatment of DeFi, focusing on transparency, technical resilience, risk disclosure and appropriate accountability mechanisms. However, any future regulation of crypto lending and borrowing should in any case avoid unnecessary overlap with existing regulatory frameworks and ensure that economically comparable activities are not subject to multiple or inconsistent regulatory regimes.

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

Yes.

What do you believe should be the main elements of regulatory requirements applicable to lending and borrowing and why?

Lending and borrowing activities in the crypto-asset sector give rise to credit, liquidity, and concentration risks, which are not comprehensively addressed under the current MiCA framework. Given that similar activities in traditional finance—such as securities lending and repurchase transactions—are subject to strict regulatory requirements for credit institutions, a comparable level of oversight for crypto-asset lending activities would appear appropriate to ensure regulatory consistency and risk alignment. In this context, a framework inspired by the Securities Financing Transactions Regulation (SFTR), suitably adapted to the specific characteristics of crypto-assets, could provide a useful basis. Such an approach could help ensure appropriate risk management, transparency, and reporting standards while taking into account the technological and operational specificities of crypto-asset markets.

Lending and borrowing of crypto-assets should be regulated where provided as a service to clients. These activities can create risks similar to credit intermediation, securities financing, leverage or investment products, depending on their structure. The key regulatory requirements should include clear client disclosures, segregation and protection of client assets, rules on rehypothecation and use of client crypto-assets, counterparty risk management, liquidity risk management, conflicts of interest, collateral valuation, margining practices, default procedures and transparent information on whether client assets remain recoverable in the event of the service provider's insolvency. Particular caution is needed where lending or yield products are marketed to retail clients as low-risk or deposit-like products. Such products should not be allowed to create confusion with bank deposits or benefit from the trust associated with regulated banking products unless they are actually structured as deposits and subject to the banking framework. For bank-led crypto trading models, lending and borrowing should be clearly distinguished from simple non-leveraged trading. A closed-loop execution-only trading service should not become subject to lending/borrowing obligations unless such functionality is actually offered.

EBF believes the following elements should form the core of a dedicated regulatory framework:

1. Segregation and custody of client assets.
2. Rehypothecation limits and disclosure.
3. Liquidity and concentration risk requirements
4. Governance, capital, and prudential requirements for lenders.
5. Conduct and disclosure rules for retail-facing platforms.

Absent these requirements, crypto lending will continue to exist in a bifurcated market, well-capitalized, transparent institutional structures (e.g., lender-of-record models with proper collateral segregation) competing against opaque platforms with weaker risk controls, to the detriment of both retail protection and market integrity. A proportionate framework calibrated to loan book risk (rather than a blanket extension of banking rules) would support responsible growth of this segment while closing the most acute gaps exposed by 2022 2023 market events. Accordingly, where crypto lending and borrowing activities are provided through centralized platforms, they should be brought within MiCAR's scope as regulated crypto-asset services, requiring the relevant CASP authorization and subject to the proportionate requirements outlined above. Where such activities are carried out through decentralized platforms or protocols, the considerations and proposed approach set out above in relation to DeFi should apply. However, any future regulation of crypto lending and borrowing should in any case avoid unnecessary overlap with existing regulatory frameworks and ensure that economically comparable activities are not subject to multiple or inconsistent regulatory regimes.

4.3 Non-fungible tokens

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?

No.

Please explain your answer to question 68:

Given the recent slowdown in NFT market activity, the introduction of a heavy or overly rigid regulatory regime may be disproportionate to current market realities.

A more appropriate approach could be a flexible, principles-based framework that distinguishes genuine collectibles and assets with financial characteristics. Under such an approach, standard NFTs used primarily for digital collectibles or utility purposes could remain largely outside the regulatory perimeter.

Regulatory attention could instead be focused on cases where NFTs exhibit features of financial instruments or where there is evidence of highly speculative trading activity that may give rise to investor protection or financial stability concerns. This would allow for a proportionate and risk-based application of oversight.

4.4 Prediction markets and perpetual futures

Question 69. Do prediction markets present opportunities or risks for EU consumer and investors?

Yes.

Please elaborate on your answer to question 69:

Prediction markets present both potential opportunities and significant risks for EU consumers and investors.

From a risk perspective, many prediction market products offered to retail users exhibit characteristics similar to derivatives, yet may not always be subject to equivalent investor protection safeguards. This raises concerns related to product complexity, transparency of smart-contract execution, and potential market manipulation risks.

At the same time, these products can attract strong retail interest, as they are perceived by some users as analogous to gambling-like activities linked to real-world events. This may warrant particular attention from a consumer and investor protection perspective.

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

By MiFID.

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

Substantive regulatory requirements for providers of prediction market services could include appropriate AML /CFT obligations, safeguards against market manipulation, and clear disclosure requirements covering, where relevant, contract mechanics, settlement procedures, and counterparty risk.

Where retail clients are involved, additional proportionate safeguards could also be considered, taking into account the characteristics and risks of the products and services concerned. These could include, where appropriate, measures relating to appropriateness, position limits, smart contract robustness and effective dispute resolution mechanisms.

Given that certain prediction market products may present characteristics similar to derivative instruments, any regulatory approach should take into account the principle of technological neutrality and seek to ensure consistent levels of investor protection and market integrity for functionally equivalent activities.

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

By MiFID.

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

EBF members consider that perpetual futures on crypto-assets generally exhibit the characteristics of leveraged derivative instruments and should therefore be assessed accordingly from a regulatory perspective. Where such products qualify as financial instruments, the applicable MiFID/MiFIR framework should continue to apply, in line with the principles of technological neutrality and substance over form.

EBF members further consider that substantive requirements should appropriately address the risks associated with leverage and volatility, including through robust margining and risk-management arrangements, transparency requirements and, where appropriate, position limits. Appropriate investor protection safeguards should also be ensured, particularly where retail clients are permitted access to such products.

More generally, the EBF considers that the regulatory treatment of perpetual crypto-asset futures should be based on their economic and legal characteristics rather than on the technology used, thereby supporting the consistent treatment of functionally equivalent products and reducing the risk of regulatory gaps or arbitrage.

4.5 Tokenised deposits

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:

	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)	Don't know - No opinion - Not applicable
Person to person payments	☐	☒	☐	☐	☐	☐
Retail POI payments (domestic, day-to-day point of interaction transactions)	☐	☒	☐	☐	☐	☐
Intra-EU cross-border payments (non-POI)	☐	☐	☒	☐	☐	☐
International payments and remittances (third countries)	☐	☐	☐	☒	☐	☐
Settlement of tokenised securities and other financial instruments	☐	☐	☐	☐	☒	☐
Delivery-versus-payment (DvP) and atomic settlement	☐	☐	☐	☐	☒	☐
Intraday liquidity management (real-time funding and liquidity optimisation)	☐	☐	☐	☒	☐	☐
Treasury and liquidity management services for corporates and financial institutions	☐	☐	☐	☐	☒	☐
Programmable payments and smart-contract-based use cases	☐	☐	☐	☒	☐	☐
On-chain collateral or margining in regulated markets	☐	☐	☐	☒	☐	☐
Improved settlement speed and operational efficiency	☐	☐	☐	☐	☒	☐
Reduction of counterparty and settlement risk	☐	☐	☐	☐	☒	☐

Please explain your answers to question 74:

The current legal regime is not sufficiently harmonised or clear to support large-scale deployment. The definition of tokenised deposits and the prudential, accounting and regulatory rules applicable to them should be clarified directly in legislation, with the objective of ensuring that tokenised deposits are treated in the same way as traditional deposits. Supervisory guidance alone may not provide the level of legal certainty required. More broadly, a comprehensive legislative initiative on distributed ledger technologies could help address remaining barriers and support the development of a coherent European framework for tokenised finance.

Tokenised deposits (tokens mirroring existing traditional deposits) and deposit tokens (bank liabilities issued directly on DLT and circulating within a contractual network of whitelisted participants) [have the potential to play a significant role across virtually all the main use cases currently associated with tokenised money, although their development remains subject to certain limitations, particularly

regarding circulation on public DLT networks. Their broader adoption will also depend on the achievement of two key enabling conditions: the establishment of common legal and technical standards and the availability of appropriate integration with central bank money.

While many of these use cases can also be served by EMTs, tokenised deposits offer a few distinguishing advantages. As a form of commercial bank money, they represent a claim on the issuing bank, benefit from the protections associated with the banking framework, including deposit guarantee schemes where applicable, and contribute to supporting the traditional credit intermediation function of banks. In this respect, tokenised deposits may help ensure that the growth of tokenised money occurs in a manner that preserves the role of the banking sector in financing the real economy and avoids an excessive migration of liquidity towards non-bank sectors.

Tokenized deposits are expected to deliver their greatest value in wholesale and institutional use cases rather than in retail payments.

Capital markets represent perhaps the most immediate and compelling use case. As a settlement asset for DLT based financial instruments, tokenised deposits can facilitate atomic settlement, instantaneous primary market subscriptions, continuous and potentially 24/7 secondary market settlement beyond traditional T+1 or T+2 cycles, and more efficient collateral management through the automated processing of margin calls and liquidity movements. More broadly, tokenised deposits can support the development of fully digital and interoperable on chain financial ecosystems while ensuring that liquidity remains within the perimeter of regulated financial intermediaries.

In the payments space, tokenised deposits may generate important benefits, particularly in relation to corporate treasury automation and interbank payments. In the European context, where the Eurosystem already provides highly efficient instant payment infrastructures, the main added value of tokenised deposits lies not in faster payments as such, but in enhanced programmability and native interoperability with other tokenised assets, including tokenised financial instruments and real-world assets. By contrast, in the cross-border context, where inefficiencies remain more pronounced, the potential benefits are likely to be considerably greater.

Tokenized deposits are also highly relevant treasury and liquidity management activities, where programmability, atomic settlement, 24/7 availability and integration with tokenized assets can generate meaningful operational and risk-management benefits. Their ability to support Delivery-versus-Payment (DvP) settlement, intraday liquidity optimization, cash pooling and on-chain collateral

management, positions them as a particularly valuable instrument for corporate and financial institution use cases.

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

- Settlement of tokenised securities and other financial instruments.
- Intraday liquidity management (real-time funding and liquidity optimisation).

Please explain why the case(s) you selected in your answer to question 75 are the most promising in the EU:

Several of the benefits listed in the list above are complimentary. One use case would be the settlement of tokenised securities and other financial instruments. This is underpinned by DvP and atomic settlement which can enable on chain collateral, improve operational efficiency and speed as well as reducing counterparty and settlement risk. In the EU, which has a fragmented capital market, tokenised money and assets could be particularly relevant to pursue to enable common, EU-wide shared infrastructure that private and public tokenised money and assets can live on. This is also what the ECB is planning to examine with its upcoming Appia direction.

Settlement of tokenised securities and other financial instruments is attractive because tokenised deposits can facilitate the settlement of tokenised financial instruments on DLT infrastructure while maintaining a direct link to regulated commercial bank money. As securities, repo and other activity increasingly move onto distributed ledger infrastructures, tokenised deposits become a critical enabler of efficient on-chain settlement and provide the natural commercial bank money leg required in tokenised financial markets.

Intraday Liquidity Management: Use Case: Commercial banks executing real-time, automated cash transfers to optimize balance sheet funding minute-by-minute instead of waiting for daily central bank clearing cycles. Benefit: It cuts corporate capital costs by eliminating defensive liquidity buffers, allowing institutions to dynamically program excess cash into yield-bearing structures the moment it becomes available.

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

Tokenized deposits are often presented as a natural extension of bank money into distributed ledger environments, but they retain many of the structural characteristics of the banking system that tokenization is meant to overcome.

The EBA should confirm that deposit tokens, as tokenised deposits, fall within the exclusion set out in Article 2 (4)(b) of MiCA and are therefore outside the scope of MiCAR's EMT rules remaining subject instead to the standard regulatory framework applicable to bank deposits. The main constraints are the lack of clear interoperability standards across banks, regulatory uncertainty, the need to modernise legacy banking infrastructure to support 24/7 programmable settlement, and the still-limited adoption of tokenised assets.

In addition, greater regulatory clarity would support further development, in particular through a clear delineation that tokenised deposits fall within the existing prudential banking framework and are not subject to the e-money token provisions under MiCAR. This would help avoid regulatory overlaps and ensure consistency with established banking supervision.

Also, the legal framework governing deposits is built on the ability to always identify the holder of the claim, a requirement that is closely linked to deposit guarantee schemes. The lack of a common European legal framework for deposits remains one of the most significant barriers to the development of tokenised deposit markets. At present, there is no harmonised EU-wide legal definition of a deposit that can be directly translated into a digital environment. As a result, tokenised deposits remain largely confined to national legal frameworks, limiting their cross-border circulation and scalability. The CBMT project provides a useful example. The German supervisor, BaFin, has publicly clarified that tokenised deposits meeting specific requirements under German civil law can be treated as deposits for regulatory purposes. However, this legal recognition cannot automatically be extended beyond German jurisdiction, creating uncertainty for cross-border use cases.

While this fragmentation is comparatively less problematic for traditional banking activities such as correspondent banking or interbank payments, where rights and obligations can be contractually defined between participating institutions. By contrast, the issue becomes much more significant when tokenised deposits are used in capital markets, particularly as a settlement asset for tokenised securities. The discussion highlighted that, in practice, settlement of securities on DLT infrastructures currently relies predominantly on stablecoins. Establishing a harmonised European framework for tokenised deposits would therefore be an important step towards enabling broader adoption in financial markets.

Another important constraint is the current lack of appropriate settlement infrastructure capable of supporting settlement in central bank money. The full benefits of tokenised deposits are likely to depend on the availability of interoperable infrastructures involving central bank money, such as wholesale CBDC arrangements. In this regard, initiatives such as the ECB's Project Appia and

the BIS's Project Agorá are particularly important and should continue to be supported.

Tokenised deposits are generally expected to fall outside the scope of MiCA and remain within the existing banking regulatory perimeter, as they are fundamentally different from EMTs and other stablecoins because they represent bank deposits issued by credit institutions and should therefore remain subject to the existing banking regulatory framework.

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:

Given that payments using tokenised deposits build on existing, well-established and regulated banking and payment infrastructures, additional regulatory requirements at this stage may not be warranted. Introducing new or specific regulatory burdens prematurely could risk creating unnecessary complexity and potentially hinder further innovation and market development. At present, there is no clear evidence of regulatory gaps that would justify a dedicated or more prescriptive framework for tokenised deposit-based payments. Accordingly, a proportionate approach based on existing regulatory regimes appears appropriate, while allowing sufficient flexibility for future adjustments should concrete risks or market failures emerge.

It should be clear for all regulators and supervisors that tokenised deposits should continue to be treated as deposits and remain subject to the banking regulatory framework applicable to credit institutions, including the relevant prudential, liquidity, depositor protection and resolution regimes, consistent with the principle of technology neutrality. The most appropriate response would therefore be a clear legislative or supervisory clarification at EU level confirming the regulatory treatment of tokenised deposits and their distinction from EMTs and other crypto-assets covered by MiCA and with e-money under EMD and securities under MiFID. Tokenized deposits must remain subject to the existing banking framework and fall outside MiCA, EMD and MiFID.

It would be important to provide a definition in the EU of "deposit".

Other regulatory issues that shall be mentioned:

- Is it possible to have e-money, other than EMT, on a DLT? (this question would help the qualification effort and would therefore directly discard EMD from the exercise)
- How to render the transfer of the deposit token irrevocable and enforceable? (a deposit token in the sense of a one-layer token-based model represents

a claim towards the issuing bank and any transfer will have to be netted at a specific time)

- The guiding principle should be strict technological neutrality: tokenised deposits sharing the legal and economic characteristics of traditional deposits should receive strictly equivalent legal and prudential treatment, ie identical capital, liquidity and deposit-guarantee treatment. Specifically: (i) establish a harmonised EU legal framework enabling standardised issuance of deposit tokens in all Member States; (ii) support industry coordination on a common smart-contract standard and an interbank conversion mechanism, (iii) revise the EU implementation of the Basel treatment as set out in our reply to Question 78, (iv) on the Eurosystem side, extend operating hours of payment and collateral systems, make tokenised assets eligible as ECB collateral without a CSD-registration condition, and pursue the availability of central bank money on-chain, leveraging PONTES and the Appia workstream as the settlement anchor.

Question 78. Do tokenised deposits raise any specific issues under the CRD /CRR framework?

Yes.

Please indicate what issues arise and what regulatory or supervisory action may be appropriate to address the issue(s) identified:

Tokenised deposits are risk-equivalent to traditional commercial bank deposits. They are a liabilities-side innovation that changes the technical recording method, not the economic or legal substance of the deposit. Credit institutions issuing tokenised deposits already comply with the full, strict prudential rules of the CRR/CRD framework (including capital, liquidity, and leverage requirements). Introducing additional or distinct capital charges specifically for the technical format of a deposit would be disproportionate and would unnecessarily stifle bank-led innovation.

It is highly concerning that international prudential standards governing digital assets fail to consistently uphold the principle of technological neutrality. To maintain a level playing field and foster European innovation, tokenized deposits must receive the exact same prudential treatment as conventional bank deposits provided their legal and economic substance remains unchanged, and regardless of the underlying Distributed Ledger Technology (DLT) utilized to record or transfer them. A deviation from technological neutrality in prudential frameworks risks unduly penalizing the traditional banking sector and stifling institutional adoption.

However, their issuance on DLT raises certain implementation issues that would benefit from further clarification, to be addressed in a manner consistent with the principle of technological neutrality. An issue relates to intraday liquidity management and continuous operations. The possibility of settling transactions on a 24/7 basis, including outside the operating hours of traditional RTGS systems, raises questions regarding the management of intraday liquidity and access to central bank money beyond the timeframes for which the current framework was originally designed. Against this background, it would be beneficial for the EBA, preferably through dedicated guidance, to clarify that natively tokenised deposits should receive the same prudential treatment as economically equivalent traditional deposits. Such guidance could also provide greater clarity on the calibration of liquidity outflow assumptions in light of the specific circulation model adopted, address the implications of continuous 24/7 operations for intraday liquidity management, and recognise final settlement in central bank money as an important risk mitigant for temporary interbank exposures arising from the circulation of tokenised deposits.

Traditional banking rails already handle instant payments 24/7 settlements under EU regulations, meaning high-velocity liquidity risk is inherent to modern fiat systems rather than unique to blockchain.

At the international level (BCBS) two issues arise:

- first, liquidity treatment: where tokenised deposits and deposit tokens share the same legal and economic characteristics as traditional deposits and fall within subgroup 1a of the BCBS standard (SCO60, December 2022), they should receive LCR and NSFR treatment strictly identical to that of their traditional equivalents. The current standard (SCO60.107(1)(b)) prevents issuing banks from classifying such liabilities as stable retail deposits, a divergence with no risk-based justification, contrary to technological neutrality;
- second, the discretionary infrastructure risk add-on applicable to group 1 assets should be removed: it addresses risks already captured by existing prudential requirements, creates regulatory uncertainty that discourages tokenisation initiatives, and invites unjustified cross-jurisdictional divergence and arbitrage.

Question 79. Do tokenised deposits raise any questions and challenges from a deposit insurance perspective?

No.

Please explain your answer to question 79:

In principle, tokenized deposits should benefit from the same deposit protection as conventional bank deposits. The mere fact that a deposit is represented through distributed ledger technology should not affect its legal qualification as a deposit nor the applicability of the Deposit Guarantee Schemes framework.

From a deposit insurance perspective, tokenised deposits may raise questions regarding their explicit treatment under the existing Deposit Guarantee Schemes Directive (DGSD), in particular with respect to legal clarity and consistent coverage across different implementations of tokenised liabilities, as well as regarding depositor identification. To address potential uncertainties, consideration could be given to clarifying within the DGSD that tokenised forms of eligible bank deposits are covered in the same manner and up to the same limits (EUR 100,000) as traditional deposits. Such clarification or ensuing guidance would help ensure legal certainty for depositors and maintain a level playing field across different technological forms of deposit-taking. It would also prevent potential operational challenges, strengthen confidence in tokenised deposits and ensure consistency with the current banking and prudential framework. Any such adjustment should aim to preserve technology neutrality while ensuring that existing depositor protection standards continue to apply consistently in a tokenised environment.

No structural adjustment to the deposit insurance framework is needed, as long as credit institutions ensure that tokenised deposits can be identified, reconciled, and audited with the same frequency and rigor as traditional book-entry deposits.

4.6 Legal treatment of tokens

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

Yes.

Question 80.1 Which of the following issues are most significant?

	1 (none or not significant)	2 (low)	3 (moderate)	4 (high)	5 (very high)	Don't know - No opinion - Not applicable
Issuing a crypto-asset token in compliance with national law	☐	☐	☐	☐	☐	☐
Issuing a tokenised financial instrument in compliance with national law	☐	☒	☐	☐	☐	☐
Transferring ownership (acquisitions, dispositions, earmarking etc) over a token, including good faith acquisition / bona fide ownership	☐	☐	☐	☒	☐	☐
Recognising ownership in a token towards third-parties	☐	☐	☐	☒	☐	☐
Using tokens as collateral	☐	☐	☐	☒	☐	☐

Possibility to differentiate between native and non-native tokens in national law	☐	☒	☐	☐	☐	☐
Recognising tokens as objects of property	☐	☐	☐	☒	☐	☐
Rights of token holders in intermediated custody chains	☐	☐	☐	☒	☐	☐
Enforcement and exercise of rights arising from /over tokens or the underlying assets	☐	☐	☐	☒	☐	☐
Custody of tokens	☐	☐	☐	☒	☐	☐
Treatment of tokens in insolvency proceedings including intermediary risk	☐	☐	☐	☒	☐	☐
Others	☐	☐	☐	☐	☐	☐

Please explain your answers to question 80.1 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:

The situation may vary across EEA countries and the EBF is not in a position to provide examples from national law, but generally speaking legal uncertainty

persists particularly in relation to tokenised financial instruments due to divergent national approaches across EEA countries, despite the overarching EU framework (with EEA relevance). This fragmentation is further compounded by the still limited scope and practical application of the DLT Pilot Regime.

As a result, regulatory treatment may differ depending on whether the token is classified as a native tokenised financial instrument issued and recorded directly on DLT infrastructure, or as a non-native crypto-asset that references or represents an underlying financial instrument. These distinctions can have significant implications for applicable requirements, including in relation to issuance, custody, settlement finality, and applicable licensing regimes.

In practice, the regulatory perimeter may also vary across jurisdictions depending on national interpretations of existing financial services legislation, which can lead to inconsistent treatment of otherwise similar token structures.

Legal uncertainty remains under national private law also in relation to the proprietary vs. contractual nature of clients' rights in omnibus wallet custody models. National approaches remain fragmented. Some jurisdictions have introduced detailed, and in some cases more stringent or bespoke, regimes for tokenised financial instruments, while others rely on the principle of technology neutrality and apply the same legal framework irrespective of the technology used. Consequently, similar assets may be treated differently within the same jurisdiction, depending if they are issued on-chain or off-chain.

Where a bank/CASP holds customers' crypto-assets in an omnibus address, the on-chain position is not attributable to individual clients and the bank/CASP is the formal holder/controller of the wallet. As a result, in an insolvency or resolution scenario of the bank/CASP, it may be unclear whether the end-investor (especially a retail client) can assert a direct proprietary claim (e.g., segregation/bailment/trust-type rights) over the relevant crypto-assets, or only an unsecured claim against the custodian.

This uncertainty is particularly significant in the absence of harmonised European protection schemes for crypto holdings comparable to national deposit guarantee schemes.

This uncertainty is not uniform across all token types, also due the law on financial instruments not being uniform. It is significantly greater for tokenised financial instruments than for crypto-assets already subject to a public law framework under MiCA. It is also greater where the token is not natively issued on-chain and instead represents or mirrors an asset legally constituted off-chain.

A further key issue is the need to distinguish clearly, in law, between native tokens and non-native or representative tokens. In our view, legal analysis should differentiate between: (i) a financial instrument natively issued on DLT; (ii) a technical token used to circulate an existing asset without itself being the legal asset; (iii) a tokenised intermediary representation of another asset; and (iv) a representative certificate. Legal certainty cannot be achieved without such distinctions.

From our own experience with few Member States on the issuance, holding and transfer of natively tokenized instruments, some are technology-agnostic and consider that a tokenized version of a financial instrument is the same as the one issued off chain. The main example is Luxembourg where titles can still be issued under the registered form even if it is done on-chain. New regimes may also be created in addition to existing one, such as what the Blockchain law IV has done for dematerialized titles.

Others do not have a technology-agnostic view and therefore create specific new legal regimes for exactly the same type of asset - which have as a consequence to reshuffle the understanding on how certain titles shall be issued, held or transferred on-chain. The main example is France with notably the article R 211-2 of the French Monetary Code. According to the new version of this article, units of funds – which are traditionally issued under the bear (au porteur) form off-chain and therefore held in custody – will only be able to be issued under the nominative form (nominatif) on-chain, hence not being able to be custodied.

Question 80.2 What is the urgency with which each issue should be addressed by regulators?

	1 (none or not urgent)	2 (low urgency)	3 (moderate urgency)	4 (high urgency)	5 (immediate / critical)	Don't know - No opinion - Not applicable
Issuing a crypto-asset token in compliance with national law	☐	☒	☐	☐	☐	☐
Issuing a tokenised financial instrument in compliance with national law	☐	☒	☐	☐	☐	☐
Transferring ownership (acquisitions, dispositions, earmarking etc) over a token, including good faith acquisition / bona fide ownership	☐	☐	☐	☒	☐	☐
Recognising ownership in a token towards third-parties	☐	☐	☐	☒	☐	☐
Using tokens as collateral	☐	☐	☐	☒	☐	☐
Possibility to differentiate between native and non-native tokens in national law	☐	☐	☒	☐	☐	☐
Recognising tokens as objects of property	☐	☐	☐	☐	☒	☐
Rights of token holders in intermediated custody chains	☐	☒	☐	☐	☐	☐
Enforcement and exercise of rights arising from /over tokens or the underlying assets	☐	☐	☐	☐	☐	☐
Custody of tokens	☒	☐	☐	☐	☐	☐
Treatment of tokens in insolvency proceedings including intermediary risk	☐	☐	☐	☒	☐	☐
Others	☐	☐	☐	☐	☐	☐

Please explain your answers to question 80.2 and from provide examples 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:

The situation may vary across EEA countries and the EBF is not in a position to provide examples from national law, but generally speaking legal uncertainty persists particularly in relation to tokenised financial instruments due to divergent national approaches across EEA countries, despite the overarching EU framework (with EEA relevance). This fragmentation is further compounded by the still limited scope and practical application of the DLT Pilot Regime.

As a result, regulatory treatment may differ depending on whether the token is classified as a native tokenised financial instrument issued and recorded directly on DLT infrastructure, or as a non-native crypto-asset that references or

represents an underlying financial instrument. These distinctions can have significant implications for applicable requirements, including in relation to issuance, custody, settlement finality, and applicable licensing regimes.

In practice, the regulatory perimeter may also vary across jurisdictions depending on national interpretations of existing financial services legislation, which can lead to inconsistent treatment of otherwise similar token structures.

Legal uncertainty remains under national private law also in relation to the proprietary vs. contractual nature of clients' rights in omnibus wallet custody models. National approaches remain fragmented. Some jurisdictions have introduced detailed, and in some cases more stringent or bespoke, regimes for tokenised financial instruments, while others rely on the principle of technology neutrality and apply the same legal framework irrespective of the technology used. Consequently, similar assets may be treated differently within the same jurisdiction, depending if they are issued on-chain or off-chain.

Where a bank/CASP holds customers' crypto-assets in an omnibus address, the on-chain position is not attributable to individual clients and the bank/CASP is the formal holder/controller of the wallet. As a result, in an insolvency or resolution scenario of the bank/CASP, it may be unclear whether the end-investor (especially a retail client) can assert a direct proprietary claim (e.g., segregation/bailment/trust-type rights) over the relevant crypto-assets, or only an unsecured claim against the custodian.

This uncertainty is particularly significant in the absence of harmonised European protection schemes for crypto holdings comparable to national deposit guarantee schemes.

This uncertainty is not uniform across all token types, also due the law on financial instruments not being uniform. It is significantly greater for tokenised financial instruments than for crypto-assets already subject to a public law framework under MiCA. It is also greater where the token is not natively issued on-chain and instead represents or mirrors an asset legally constituted off-chain.

A further key issue is the need to distinguish clearly, in law, between native tokens and non-native or representative tokens. In our view, legal analysis should differentiate between: (i) a financial instrument natively issued on DLT; (ii) a technical token used to circulate an existing asset without itself being the legal asset; (iii) a tokenised intermediary representation of another asset; and (iv) a representative certificate. Legal certainty cannot be achieved without such distinctions.

From our own experience with few Member States on the issuance, holding and transfer of natively tokenized instruments, some are technology-agnostic and consider that a tokenized version of a financial instrument is the same as the one issued off chain. The main example is Luxembourg where titles can still be issued under the registered form even if it is done on-chain. New regimes may also be created in addition to existing one, such as what the Blockchain law IV has done for dematerialized titles.

Others do not have a technology-agnostic view and therefore create specific new legal regimes for exactly the same type of asset - which have as a consequence to reshuffle the understanding on how certain titles shall be issued, held or transferred on-chain. The main example is France with notably the article R 211-2 of the French Monetary Code. According to the new version of this article, units of funds – which are traditionally issued under the bear (au porteur) form off-chain and therefore held in custody – will only be able to be issued under the nominative form on-chain, hence not being able to be custodied.

Question 81. Would you recommend increasing the legal certainty in the treatment of tokens?

Yes.

Question 81.1. What are the 3 most important elements that should be addressed in EU law?

Most important element number 1:

While greater legal certainty is desirable, full harmonization through directly applicable EU legislation may not be the most appropriate approach. Experience in the field of securities law demonstrates that property law is closely intertwined with broader principles of private law that differ significantly across Member States. Furthermore, the Union's legislative competence is fairly limited on the field of the general civil law. Therefore, the aim must be a targeted harmonization of selected proprietary effects relevant for cross-border tokenised markets. As a result, these areas are not well suited to comprehensive harmonization through EU Regulation.

To enhance legal certainty for cross-border transactions, a more effective approach would be to establish common policy objectives and minimum legal outcomes at EU level, allowing Member States sufficient flexibility to implement these principles within their respective national legal systems while promoting greater consistency across the internal market.

Issuance, transfer of ownership, custody, collateral eligibility and insolvency treatment would be good candidates for a sufficiently flexible, tough effective legal approach that would reduce fragmentation.

The first element that should be addressed by EU Law should be:

1. The principle of technology neutrality should be set as a guiding regulatory objective for Member States. Similar legal treatment for a same asset – whatever the technology used within national laws shall be the rule. As an example, some national regulations may lead to the issuance of units of a UCI within the same sub-fund but in different forms – while the investment strategy is the same and there is no CSD or specific structure involved – hence having an impact on the type of service a depositary will be able to provide.

Most important element number 2:

While greater legal certainty is desirable, full harmonization through directly applicable EU legislation may not be the most appropriate approach. Experience in the field of securities law demonstrates that property law is closely intertwined with broader principles of private law that differ significantly across Member States. Furthermore, the Union's legislative competence is fairly limited on the field of the general civil law. Therefore, the aim must be a targeted harmonization of selected proprietary effects relevant for cross-border tokenised markets. As a result, these areas are not well suited to comprehensive harmonization through EU Regulation.

To enhance legal certainty for cross-border transactions, a more effective approach would be to establish common policy objectives and minimum legal outcomes at EU level, allowing Member States sufficient flexibility to implement these principles within their respective national legal systems while promoting greater consistency across the internal market.

Issuance, transfer of ownership, custody, collateral eligibility and insolvency treatment would be good candidates for a sufficiently flexible, tough effective legal approach that would reduce fragmentation.

The second element that should be addressed by EU Law should be:

2. Similar assets should be treated consistently across EU Member States, based on a minimum functional approach. These assets circulate across borders, not within a single jurisdiction. It is true for tokenized financial instruments but even more for crypto assets. National frameworks should not create unnecessary obstacles for the financial sector when providing services related to these

assets/Therefore, to help the financial sector in providing services on these assets, the local legal treatment should not hinder this aspect.

Most important element number 3:

While greater legal certainty is desirable, full harmonization through directly applicable EU legislation may not be the most appropriate approach. Experience in the field of securities law demonstrates that property law is closely intertwined with broader principles of private law that differ significantly across Member States. Furthermore, the Union's legislative competence is fairly limited on the field of the general civil law. Therefore, the aim must be a targeted harmonization of selected proprietary effects relevant for cross-border tokenised markets. As a result, these areas are not well suited to comprehensive harmonization through EU Regulation.

To enhance legal certainty for cross-border transactions, a more effective approach would be to establish common policy objectives and minimum legal outcomes at EU level, allowing Member States sufficient flexibility to implement these principles within their respective national legal systems while promoting greater consistency across the internal market.

Issuance, transfer of ownership, custody, collateral eligibility and insolvency treatment would be good candidates for a sufficiently flexible, tough effective legal approach that would reduce fragmentation.

The third element that should be addressed by EU Law should be:

3. Request for clarification of the recognition of crypto assets by national laws (eg intangible movable assets or real object). This will help determine the legal treatment applicable to this kind of asset. In the best-case scenario, this recognition may be harmonized at EU level.

Question 81.2 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?

	1 (strongly disagree)	2 (rather disagree)	3 (neutral)	4 (rather agree)	5 (strongly agree)	Don't know - No opinion - Not applicable
Implementation of a 28th 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)	☐	☐	☐	☐	☒	☐
Full harmonisation of private law treatment of tokens in Member States	☐	☐	☒	☐	☐	☐
Partial harmonisation of private law treatment of tokens in Member States	☐	☐	☐	☒	☐	☐
Introducing a conflict of law regime for tokens under EU law	☐	☐	☐	☒	☐	☐
Other model	☐	☐	☐	☐	☐	☐

Please explain your answers to question 81.2 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:

A full harmonization of private law treatment appears premature and disproportionate at this stage, given the continued diversity of Member States' rules on company law, securities law and insolvency. By contrast, a combination of partial harmonization, a specific EU conflict-of-law rule, and a functional EU rule on the legal effects of DLT entries would be both more realistic and more effective. The objective should not be to replace national private law regimes, but rather to complement them with an optional and targeted EU framework designed for DLT-based assets.

It is necessary to avoid substitution of national law by EU laws in this respect. As such, full harmonization – while being an ideal target – may be unpracticable. In addition, it entails a full revamping of private law for all EU Member States – this kind of work will take decades.

Partial harmonization may be possible but only on new types of assets, such as crypto assets. The legal treatment of tokenised securities raises particular challenges because the category encompasses structurally different instruments, including native DLT securities and tokenised representations of existing financial

instruments. A uniform legal approach may therefore not be appropriate in all cases. As such, this option would be possible only within MiCAR.

One possibility would be to have a minimal functional approach through a dedicated regime that would be harmonized throughout the EU – the 28th regime would be the best candidate in this respect. However, this option would entail some consequences as the same type of asset may be issued through 2 different regimes (eg the 28th regime and a local regime) but may not face the same legal treatment.

A conflict of law regime is not sufficient by itself to create legal certainty. It helps in determining which regime shall apply, but the risks linked to the lack of harmonization of private law at EU level still exist. Therefore, this option is a necessity but shall go hand-in-hand with the creation of an ad hoc regime like the 28th regime.

A conflict-of-law rule should be regarded as a necessary baseline solution. However, legal certainty would be significantly enhanced if such a rule were complemented by harmonised provisions governing the legal effects of DLT entries and, where appropriate, by an optional EU-wide regime specifically designed for DLT-based assets.

The most appropriate instrument would likely be a new targeted EU regulation on a 28th regime of securities law on DLT or a dedicated legislative initiative, rather than the insertion of broad and insufficiently calibrated DLT references across multiple existing sectoral texts. The key risk of an overly ambitious EU ownership regime would be to destabilise well-established national and EU securities law concepts without providing operational certainty. This risk can be mitigated by limiting EU intervention to the legal effects of DLT entries and to cross border conflict-of-law issues.

The priority should not be the comprehensive harmonisation of national private law regimes. Rather, EU intervention should focus on the areas where legal uncertainty is most acute, namely the legal effects of DLT entries, the determination of ownership and transfer mechanisms, and conflict-of-law rules in cross-border situations. Such a targeted approach would provide meaningful legal certainty while preserving the coherence of existing national and EU securities law frameworks.

Question 82. There are different “ownership models ” that could be used to increase legal certainty over tokens.

Please listed below that you think EU law indicate maximum two models could apply if it were to improve the legal certainty of tokens in the EU:

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 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.

Please explain your answers for MODEL 3 and provide examples:

The EBF considers that Model 3 should constitute the general EU baseline.

Model 3 is the most suitable basis for native on-chain assets. It allows EU law to define the legal effects of a DLT record in a functional way, without requiring a complete and uniform redefinition of property law in all Member States. This model is best suited to ensuring legal certainty as to entitlement, transfer, third-party effects and the use of tokens as collateral.

MODEL 4 - 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?

a) Legal interoperability with national private laws.

A functional EU approach would be more interoperable with national private laws than a fully constitutive and uniform ownership regime. It would preserve national legal structures while ensuring that the legal consequences of DLT recording are recognised across the Union.

MODEL 4 - 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?

No option has been selected.

Please explain your answer to MODEL 4 b):

- b) Constitutive rules or functional rules.

Functional rules are preferable. EU law should primarily regulate the legal effects of recording an asset on chain, rather than attempting to create a single abstract and constitutive concept of ownership for all tokens in all Member States.

MODEL 4 - c) Are the different ownership models better suited for native or non-native tokens?

No option has been selected.

Please explain your answer to MODEL 4 c):

- c) Suitability for native or non-native tokens.

Model 3 is better suited for native tokens. Model 4 is better suited for non-native tokens, including representative and mirrored structures.

MODEL 4 - d) Can the same ownership model be implemented for all types of tokens (crypto-assets and DLT financial instruments)?

No option has been selected.

MODEL 4 - d) What would need to be different depending on the type of the token?

- d) Same ownership model for all types of tokens.

No. The same ownership model should not automatically apply to all tokens. Crypto-assets natively issued on chain and tokenised financial instruments representing off-chain rights do not raise the same legal issues. EU law should therefore allow for differentiated treatment depending on the type of token and the legal structure used.

Please explain your answers for MODEL 4 and provide examples:

Model 4 is better suited to non-native or representative tokens. Where a token represents rights over an underlying off-chain asset, the law should define the token as the legal carrier of those rights and ensure that transfers on the ledger produce the intended legal effects in relation to the underlying asset.

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:

The main differences between Member States concern the legal qualification of tokens, the validity of native on chain issuance, the legal role of the DLT register, the relationship between DLT and traditional forms of holding, and the treatment of transfers, good faith acquisition, collateral and insolvency.

Most jurisdictions adopt a functional approach and treat a token as a financial instrument when it confers rights equivalent to those of traditional securities. However, there is no harmonized EU definition of a “security token”, and some jurisdictions have created specific domestic categories while others have not.

In relation to the issuance, holding and transfer of natively tokenized instruments, some Member States are technology-agnostic and consider that a tokenized version of a financial instrument is the same as the one issued off-chain. The main example is Luxembourg where titles can still be issued under the registered form even if it is done on-chain. New regimes may also be created in addition to existing one, such as what the Blockchain law IV has done for dematerialized titles.

Others do not have a technology-agnostic view and therefore create specific new legal regimes for exactly the same type of asset - which have as a consequence to reshuffle the understanding on how certain titles shall be issued, held or transferred on-chain. The main example is France with notably the article R 211-2 of the French Monetary Code. According to the new version of this article, units of funds including those that are traditionally issued in bearer form (“au porteur”) (because admitted to the French CSD) must be issued in registered form (“nominatif”) when they are admitted to a DLT. In that latter case, they cannot be held in custody by intermediaries.

There are also significant differences regarding the coexistence of DLT and non-DLT representations of the same asset. Some jurisdictions allow parallel structures or conversions between formats, while others favour a stricter approach based on a single authoritative form of representation.

Another major difference concerns the event that legally affects the transfer. In most continental systems, the legally decisive event remains the entry in the relevant register, rather than the mere transfer of a private key. This is essential for ownership, third-party effects, collateral and insolvency.

Finally, the treatment of intermediaries, custody models, good faith acquisition and the impact of insolvency still vary significantly across Member States. These differences are a major source of legal uncertainty for cross border tokenised markets.

4.7 Questions on conflicts of law

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

Yes.

Question 84.1 please explain why the current conflict of law rules applicable in EU are not enough or sufficiently clear in its application to tokens?

Current EU conflict-of-law rules are not sufficient because they only address limited categories of situations and do not cover all token structures. They do not provide a sufficiently clear and comprehensive solution for determining the law applicable to ownership, transfer, collateral and proprietary effects in relation to tokens, especially outside the existing scope of the Settlement Finality and Financial Collateral frameworks.

At the same time, any new EU rule should remain limited to what is strictly necessary. It should not weaken the existing European securities law acquis by replacing well-established principles with overly contractual or technologically unstable connecting factors.

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).

	1	2	3	4	5
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 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 answers to question 84, 84.1 and 84.2 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:

The preferred connecting factors should be ranked as follows:

1. The law of the state under whose supervision the register is maintained, where a token must be registered.

2. The law of the state in which the legal entity operating the DLT-based system is established.
3. The law specified in the rules or principles of the system on which the token is recorded.
4. For tokens with an issuer, the law of the state where the issuer is established.
5. For tokens with an issuer, the law of the state under whose supervision the issuer operates.

The least relevant factors are those based solely on technology providers, system administrators with no direct legal role in the holding structure, master key holders, or a law expressed only in the token itself. These connecting factors appear too unstable, too technical or too detached from the legal reality of holding and transferring rights.

In our view, the correct scope of the conflict-of-law rule should focus on proprietary aspects: entitlement, transfer, collateral, opposability and insolvency-related effects. It should not attempt to regulate the contractual or regulatory aspects of tokens.

Question 85. If there are any other issues relating to legal certainty which are not mentioned above, please describe them here:

1. There is a need to clarify the legal concept of possession regarding digital assets. Token possession and legal ownership are not always synonymous; tokens are frequently held through complex arrangements, including custodians, omnibus wallets, smart contracts, exchanges, staking arrangements, and collateral protocols. Tokenised assets can technically accommodate two primary models of possession: a bearer model where possession of the asset equates to ownership, and a registrar model where an intermediary manages a register that tracks ownership. The regime should clarify: whether a person controlling the private key is presumed to be entitled, whether clients have proprietary or contractual claims against custodians, what happens where assets are lost because of compromised keys, smart contract bugs or operational failures.
2. Another issue concerns the legal distinction between the register conferring rights and the administration of the means of access to those rights. In DLT environments, legal certainty requires a clearer distinction between the constitutive role of the register and the operational role of intermediaries or administrators managing access, instructions and corporate actions.
3. A further issue concerns continuity of rights in the event of migration between technical environments, including conversion, bridge mechanisms, or changes

in the recording system. Legal certainty requires a clearer framework for such transitions, especially where the tokenised asset is expected to retain continuity of legal identity.

4. Furthermore, legal certainty also depends on the ability of tokenised systems to withstand the insolvency of participants or intermediaries. This point includes questions around professional obligations of CASPS, such as segregation. It remains critical wherever token arrangements operate outside a formally recognised finality framework. The moment of finality of transfer of crypto-assets must be determined.
5. Financial operations in relation to cryptoassets must be recognised legally, such as taking collateral and close out netting.

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:

BCBS prudential treatment of crypto-asset exposures now in the CRR is excessively conservative and misaligned with MiCA. It could push migration towards non-banking less regulated entities. In particular, the treatment of Group 2 crypto-assets raises concerns regarding the ability of EU banks to compete with authorised CASPs. Very high-RW and strict exposure limits linked to T1 capital may substantially constrain banks's crypto-asset services.

CRR III OpRisk regime treats financial and non-financial assets differently when calculating the OpRisk Business Indicator: The Accounting Approach, Art. 501d (2 c) CRR and IFRS treatment of proprietary trading in non-financial instruments creates a situation which inflates the Business Indicator compared with transactions involving assets with similar risk profiles (e.g. derivatives on other crypto-assets), accounted for on a net basis. Although having a similar OpRisk profile, other crypto-assets have significantly higher OpRisk capital charges, making trading considerably less viable.

1% T1 limit: regular-way settlement exposures should be excluded both from T1 capital limit under Article 501d (3) CRR and from RWA calculations. The inclusion of such transactions in proprietary and commission trading would unduly restrict overall trading volumes. Such positions constitute mere pass-through exposures without genuine risk transfer and should equally be exempt from credit and market risk capital calculations. This aligns with approach in Article 390(6)(b) CRR.

Since Article 501d CRR is only an interim solution, uncertainty persists regarding the future regulatory treatment of crypto-assets (treatment of permissionless vs permissioned blockchains).

The CRR prudential treatment of EMTs requires clarification. Art. 5a(4)–(5) CRR defines represented asset as ‘funds’ and MiCA ties each EMT to one official currency. EBF urges regulators to confirm that, for EMTs fully backed by such funds, Article 501d(2)(a) CRR operates as a look-through to the referenced currency, ensuring favourable RWA treatment and HQLA eligibility for compliant EMTs, incentivising banks to hold them.

Technology-neutral approach: EBF overall encourages policymakers to preserve a technology-neutral interpretation of MiCA, ensuring that the regulatory treatment of an asset is determined by its economic function, risk profile and actual use case rather than by the fact that it is issued or recorded on distributed ledger technology.

Specifications (Requirements of Art. 54 MiCA): according to our experience, there is a lack of clarity that funds received as reserve assets by an EMT-issuer can be deposited (in separate accounts) in every credit institution in the EU. MiCA should specify that accounts meeting the requirements of Art. 54 (and the national laws governing those accounts) shall not distinguish between issuers established within the same member state and issuers from other member states.

Clarification on loyalty programmes: In addition, MiCA should clarify that loyalty programs and similar arrangements do not become regulated crypto-assets merely because they are implemented using DLT. Recital 17 confirms that the European legislator did not intend loyalty programs to fall within MiCA’s scope.

Alignment with MISP and APIA: it should be ensured that the MiCA review remains aligned with the MISP and Appia workstreams. The EU should avoid creating fragmented regimes for MiCA stablecoins, tokenised deposits, DLT market infrastructures and wholesale central bank money.

The need for broader coherence between the MiCA review and other EU financial-sector initiatives relevant to tokenisation and digital assets. MiCA does not operate in isolation. Its future development should be aligned with the Market Integration and Supervision Package, the DLT Pilot Regime, CSDR, the Settlement Finality Directive, PSD3/PSR, DORA, the AML package, CRR/CRD and ongoing European work on wholesale central bank money.

MiCA (Private Law/tokenisation): private-law foundations for tokens should be stabilised before materially expanding the scope of MiCA to additional products or

activities. A predictable legal infrastructure is a precondition for tokenisation at scale.

Other comments on MiCA: MiCA would benefit from a clearer functional articulation between i) legal custody or safekeeping; ii) operational administration of access means, and iii) purely technical tools. The same terminology should not be used for materially different situations. Where a provider controls the assets or the means of access on behalf of clients, MiCA should require position-keeping, segregation, restitution arrangements and clear allocation of liability. By contrast, software or technical tools that leave exclusive control with the client should not be treated as custody services. This clarification is also important to ensure consistency with broader EU work on tokenised financial instruments and DLT-based holding models.