

EU CONSULTATION ON MICA

FUTURA POSITION PAPER





Who we are and why we contributed to the consultation

*Futura is a law firm focused on **legal**, **regulatory**, and **strategic** matters at the forefront of innovation. We advise companies dealing with new technologies, new business models and complex regulatory environments.*

Digital finance, DLT-based applications, and digital assets represent one of our core areas of work. All the professionals in our focus unit have worked in said field since the early days of the ICO era. We therefore experienced the pre-MiCA landscape and the transition first-hand, as did our clients.

MiCA created a common EU framework for crypto-assets and related service providers. Now that the Regulation is fully in application, the European Commission is reviewing how it works in practice and whether it remains fit for a fast-moving market, as mandated under the built-in review clause of MiCA.

Against this background, in **September 2026** we contributed to the **targeted consultation concerning the review of MiCA**, drawing on our direct experience from several different angles. We have worked with a range of businesses that fall within its scope, including issuers and applicant VASPs/CASPs. We also advise international DeFi projects that sit outside, or at the edge of, the MiCA perimeter. Moreover, we advise Tier-1 EU market infrastructures active in both tokenised securities and crypto-assets. This gives us a practical view of where the framework works well, where uncertainty remains, and where some rules may need to become more proportionate, while also considering the interplay with related frameworks (MiFID II, CSDR, the DLT Pilot Regime, PSD2, DORA, etc.).

This paper summarises our main positions set out in full in the questionnaire submitted through the European Commission's consultation portal. The approach we illustrate below is to preserve what works, clarify areas of uncertainty, reconsider certain strict requirements, and avoid additional regulation where there is no demonstrated need.



■ **Crypto-assets and financial instruments: MiCA vs MiFID, or MiDA?**

One of the most difficult questions in practice remains the line between a crypto-asset under MiCA and a financial instrument under MiFID II. Our position is that **financial instruments should remain under existing sectoral financial-services legislation**. Moving them into MiCA simply because they are issued or transferred using DLT would go against technology neutrality and create more room for tech-based regulatory arbitrage than it would actually eliminate, especially considering that legacy financial regulation is much more demanding than MiCA when taken together.

This does not benefit the credibility of the industry, and will inevitably leave room for interpretative uncertainty in a rapidly evolving technological landscape, where different types of DLT and similar technologies exist and may differ significantly from one another.

We consider that MiCA, taken in isolation, provides a sufficiently clear framework for identifying the crypto-assets falling within its scope. Challenges arise, however, when MiCA is considered in conjunction with the MiFID II framework (and related ones, including Prospectus Regulation, fund legislations, etc.), where the boundaries between the relevant asset categories are less clearly defined and the directive-based nature of the regime favours divergence in implementation and interpretation across the EU.

In our experience, this creates legal uncertainty with regard to certain borderline cases, including liquid staking (or restaking) tokens under certain liquid staking (or restaking) arrangements, certain 'wrappers', and claims over lending protocol vaults. In addition, certain applications of the ART category, depending on the composition of the relevant basket, appear to overlap with the category of financial instruments in specific cases, such as ARTs referencing certain commodities or performance indices. This has created significant legal uncertainty in practice, for instance when advising on gold-related tokenisation projects.

ESMA's guidelines and the ESAs' classification test have helped. But guidance alone is not enough. The relevant legal categories should be refined and harmonised directly in the Level 1 texts.

In light of the above, **we strongly recommend updating the MiFID II/MiFIR framework** to take into account the evolution of digital finance, including DLT-based



implementation and tokenisation, with a view to harmonising the concept of financial instruments and its sub-categories across the Union. **Evolving that framework into a fully fledged regulation would be a remarkable step forward.**

The idea of a 'Markets in Digital Assets' framework, *i.e.* a 'MiDA' regulation covering the entire spectrum of tokenisation is certainly interesting. However, we consider that the evolution of the regulatory framework for financial instruments should remain on a separate track from that applicable to crypto-assets.

■ **Title II of MiCA: white papers, accountability and post-issuance transparency**

Title II significantly improves investor protection and market integrity for public offers and admissions to trading of crypto-assets other than ARTs and EMTs. In our view, however, some targeted calibrations would further improve the balance between investor protection, innovation and legal certainty. These are issues that we have encountered directly in our advisory work alongside issuers.

A. The 'person seeking admission to trading' should be genuinely connected to the project. The open-ended formulation of this concept has led to a market practice whereby white paper service providers offer, as a commercial service, to assume responsibility for the white paper, while some trading platform operators notify white papers on their own initiative for the purpose of listing tokens.

While legally permitted under MiCA's provisions, the result is that a substantial share of white papers is being notified by a few entities that become the principal **points of concentration for the liability regime under Article 15**. We do not believe that MiCA was meant to cover that risk or that its prudential requirements were calibrated accordingly. Such entities often have no ongoing relationship with the issuer. This raises **serious doubts as to whether they are positioned to keep white papers updated** as projects or token designs evolve.

For example, the token of one of the best-known DEX protocols has changed the functioning of its governance token in recent months (reflecting changes to the fee scheme), activating economic rights that were previously only potential and have now materialised into a specific mechanism. The white paper of this token does not currently reflect this change.



This structural gap materially increases the risk of misrepresentation to investors and the risk that a token may change its legal nature without supervision.

We therefore propose narrowing the concept of “person seeking admission to trading” to entities genuinely accountable for and continuously connected to the underlying project, such as the issuer, project foundation, group holding company or development company. Preparation and maintenance of the white paper may be outsourced, but primary responsibility should remain with an entity having a substantive and ongoing connection to the project. Entities external to and distant from the project should be explicitly excluded. Differentiated treatment could, however, be considered for incumbent crypto-assets native to widely used L1 blockchains (such as ETH or SOL) and for early-stage projects, taking into account whether an identifiable issuer or project entity exists that is capable of assuming and continuously performing the relevant obligations.

- B. The Article 8(4) explanation should become a legal opinion.** We propose replacing the Article 8(4) ‘explanation’ of why a crypto-asset does not qualify as a financial instrument with a formal legal opinion, **consistently with the ART regime. The difference in treatment is difficult to justify.**

An ART is a sophisticated instrument that requires the very intent of building it. You do not create it by chance, just because of a misinterpretation. Its potential issuer will typically have determined its legal nature before advancing the project. The same cannot be said for the ‘other than’ category, where the boundary with security tokens is not always straightforward and may inadvertently be misrepresented by offerors or persons seeking admission to trading.

A formal legal opinion **issued by a qualified professional subject to the rules of a bar association and disciplinary oversight in an EU Member State** would introduce an additional layer of third-party accountability and enhance transparency as to the legal characterisation of the token.

- C. White papers should remain accurate throughout the life of the token.**

Title II provides a relatively strong framework for initial disclosure, particularly where the white paper is notified by the issuer itself or by another entity genuinely connected to the project.



In our view, Title II should therefore introduce: (i) an explicit obligation to update the white paper following material changes to governance, tokenomics, vesting arrangements, economic or control rights; (ii) sufficiently clear criteria for identifying material changes; (iii) a harmonised mechanism for publishing the updated information and notifying the relevant NCA; and (iv) adequate NCA powers to require updates and enforce non-compliance.

The objective should be to ensure that the disclosure available to investors continues to reflect the actual characteristics of the token throughout its relevant lifecycle, rather than only at the time of the initial offer or admission to trading. **That is crucial to prevent the white paper regime from being reduced to a tick-box exercise.**

D. The NCA review period should be extended. The five-business-day period currently available to NCAs to examine white papers and accompanying marketing communications also appears too short for a meaningful supervisory review and an orderly process for requests for clarification or additional information.

We therefore support at least doubling that period.

E. Some operational requirements should also be reconsidered. Article 10(3) and (4), concerning the custody of funds and crypto-assets raised during an offer, create significant operational friction. It remains unclear whether this provision requires a formal escrow arrangement with a credit institution or CASP acting as custodian, or simply the opening of accounts in which the proceeds of the public offer are deposited. In practice, few credit institutions or CASPs are willing or operationally equipped to provide these services.

We therefore favour revising these provisions to allow more flexible arrangements that still ensure the segregation and protection of subscription proceeds.

More generally, simplification under Title II should focus on removing operational and procedural burdens rather than reducing the quality of disclosures or accountability. In some areas, the framework needs lighter processes; in others, particularly responsibility for white papers and post-issuance updates, it needs stronger accountability.



Stablecoins: the EMT issues and why ARTs have struggled

MiCA gave Europe a detailed framework for stablecoins. Our experience suggests that some parts of that framework need to become more flexible and more sensitive to the actual risks involved.

A. The EMT reserve regime should become more flexible and risk-sensitive. We consider the current 30–60% minimum bank deposit requirement overly rigid. It can create credit and counterparty risk and increase the link between stablecoin issuers and the banking sector. We would prefer a more flexible approach based on liquidity, safety, maturity and diversification, supported by appropriate daily and weekly liquidity requirements. Allowing reserve assets to be held directly with central banks could also reduce counterparty risk. Credit institutions issuing EMTs should also be required to maintain and segregate reserves, so that holders of the same token enjoy the same protection.

B. The prohibition on interest should be reconsidered. The economic model of stablecoins in the EU may be significantly constrained by the current prohibition on paying interest. This is **particularly relevant in multi-issuer schemes** involving EU and non-EU issuers, where differences in the regulatory treatment of remuneration could shift demand and liquidity towards the non-EU component of the scheme and create asymmetric pressure within the arrangement.

Against this background, consideration should be given to **relaxing the current prohibition for issuers and CASPs, subject to appropriate additional safeguards and requirements**. Similarly, lending protocols should remain able to pay interest on stablecoins, so as not to undermine the ability of decentralised markets to attract liquidity and collateral.

This view reflects the actual role currently played by stablecoins in the market: while interest-bearing stablecoins could compete to some extent with bank deposits and MMFs, stablecoins currently perform a distinct function and are predominantly used in connection with crypto-asset and DLT-native markets. Therefore, we do not believe that stablecoins are likely to displace a significant volume of bank deposits or pose a material risk to the banking system. The potential competitive impact on traditional savings and investment products should be assessed against the actual use and scale of stablecoins in the EU, rather than assumed in the abstract.



C. The territorial scope for euro-denominated EMTs should depend on actual EU targeting. We also consider MiCA's territorial approach too broad where it treats any EMT denominated in an EU currency as being offered in the EU. This approach may discourage the issuance and use of euro-denominated EMTs outside the EU and therefore **limit the international role of the euro**.

A euro-denominated token may be issued and used entirely outside Europe. The application of MiCA issuer requirements should instead depend on whether the token is actually offered to, or targeted at, EU users, rather than solely on the currency in which it is denominated.

D. Multi-issuer stablecoins should remain permitted, but their specific risks need targeted safeguards. We support permitting multi-issuer models under MiCA. They can offer advantages in terms of scalability, innovation, competition and consumer choice, while the associated risks can be addressed through MiCA's reserve, governance, disclosure and supervisory requirements, complemented where necessary by targeted safeguards.

However, differences in redemption conditions or regulatory requirements across jurisdictions may shift liquidity and redemption pressures towards the EU issuer and create opportunities for regulatory arbitrage.

Multi-issuer structures may also create supervisory and data-tracking challenges where EU authorities have visibility over only part of an economically integrated arrangement.

Each issuer should therefore maintain sufficient locally available reserves and liquidity to meet its own redemption obligations, particularly in stressed market conditions, without relying excessively on transfers from other entities in the scheme.

Redemption liabilities should also be clearly allocated between EU and non-EU issuers, supported where appropriate by reconciliation between off-chain records and on-chain transaction data, and adequate verification of self-custodial wallets. These mechanisms should preserve the substantial fungibility of the token while ensuring that liabilities remain properly allocated across the arrangement.



E. Ensuring access to global stablecoins. Access to global stablecoins through EU-based and licensed issuers and CASPs is important for ensuring appropriate regulatory safeguards, but such access should not depend exclusively on the establishment and licensing of entities in the EU.

A framework that over-protects users while preventing access to global instruments used in international markets may produce the opposite of the intended result. Users may face incentives to migrate to third-country platforms, EU-regulated intermediaries may lose competitiveness, and supervisory authorities may have less visibility over relevant flows.

F. Equivalence mechanism for comparable third-country regimes.

Connected to the point illustrated above is MiCA's lack of comparability or equivalence mechanisms for third-country regulatory frameworks. An equivalence regime, alongside appropriate mitigation measures, could allow the EU to maintain high regulatory standards without unnecessarily isolating the EU market, improve compatibility with comparable third-country frameworks and facilitate the operation of global stablecoins in the EU while preserving appropriate safeguards for EU users. It should rely sufficiently on comparable third-country regimes to avoid duplicative compliance while retaining EU oversight over activities directly affecting EU consumers and financial stability.

G. ARTs are not inherently unattractive, but the current framework has made them difficult to implement. Having advised on projects in this area, we do not believe that the instrument itself lacks appeal. On the contrary, ARTs were initially perceived as a promising avenue for experimenting with new products. The difficulty becomes apparent once projects move from early design into implementation.

The regulatory requirements are extensive, the prohibition on paying interest significantly constrains potential business models and their attractiveness, and in many cases there is significant overlap with the financial-instruments framework. The threshold for proceeding without authorisation, subject only to the notification of the white paper, can barely accommodate pilot transactions aimed at testing the technology. It is not enough to test the traction of the business model before making a greater commitment.

The fact that certain Level 2 rules have still not been adopted has also created



significant legal uncertainty around an instrument that has struggled to accommodate the tokenisation needs of the industry.

This does not mean that the ART regime should be dismantled. The overall prudential architecture remains broadly appropriate, but authorisation and prudential requirements, including reserve requirements, should become more proportionate and risk-sensitive.

CASPs: between rules and supervision

For CASPs, we do not see a strong case for substantially amending the MiCA framework. The Level 1 rules are broadly proportionate, and in several areas it is simply too early to conclude that major changes are needed. Capital and prudential requirements, for example, should be reassessed only once there is enough supervisory and market experience. There are, however, some clear gaps, as discussed below.

- A. The list of crypto-asset services should be expanded.** We do not consider the current list of services exhaustive in light of the risks posed by staking, restaking, lending and borrowing in their different forms. At a minimum, the framework should cover staking and restaking in both custodial and non-custodial forms, as well as lending in its different forms, including principal lending, agent lending, and lending markets.

- B. Staking should be regulated as a distinct category of crypto-asset service, similarly to the approach taken in the UK.** This is particularly important because **staking can be provided independently from custody**, including through non-custodial on-chain arrangements and smart contracts. EBA and ESMA have identified that the DeFi staking market amounts to approximately EUR 3.6 billion. The risks are therefore not limited to custodial models, and restaking may generate material risks even where the service is not combined with custody. It is worth remembering that the most debated and systemic DeFi incident of 2026 originated precisely from a restaking protocol. Where staking is provided on a custodial basis, additional concerns also arise, including the concentration of staking power in the hands of CASPs, influence over the underlying blockchain, and the impacts of possible slashing events. Appropriate disclosures and obligations should cover these issues and also address unbonding periods, expected withdrawal timelines,



and other restrictions affecting users' ability to recover or transfer their staked crypto-assets.

C. Crypto-asset lending and borrowing should also be brought within the regulatory perimeter. The failures of major crypto lending providers in 2022–2023, including Celsius, BlockFi and Voyager, demonstrated material risks relating to liquidity, credit and counterparty risk, transparency and consumer protection. Regulation should address these risks while remaining sufficiently proportionate to accommodate different lending models and preserve innovation. As regards on-chain DeFi variants, EBA and ESMA have identified an EU DeFi lending and borrowing market of approximately EUR 1.8 billion. The market size, the principle of technological neutrality and, more importantly, the role of on-chain arrangements in contagion events suggest that both on-chain and off-chain arrangements should be covered where the service is controlled by intermediaries.

D. CASPs providing EMT-related services should not need a second authorisation for what is substantively the same service. The legal equivalence between electronic money and EMTs does not, in itself, justify two separate authorisations. CASPs should instead be required to demonstrate compliance with the relevant payment-services requirements.

A model similar to that applicable to credit institutions under MiFID II could be followed, allowing CASPs to provide relevant EMT services without obtaining a separate authorisation under the payment services framework, provided that compliance with the applicable requirements is verified when those services are authorised or added to their existing scope.

E. Access to global liquidity should remain possible under appropriate safeguards. Excessive restrictions on global liquidity may reduce market depth, competitiveness and execution quality for EU investors. At the same time, unrestricted access may create investor-protection, supervisory and market-integrity risks where liquidity is provided outside the EU regulatory perimeter.

A model could therefore be considered whereby EU-authorised CASPs provide access to appropriately regulated global liquidity pools while remaining fully responsible for compliance with EU investor-protection and market-integrity requirements. Hong Kong's framework provides a useful



reference point: licensed platforms may provide access to global liquidity through shared order books with regulated overseas affiliates meeting certain requirements, while the local licensed entity remains accountable.

- F. The main concern is the divergent application of MiCA across Member States.** The level 1 framework is broadly proportionate, but national laws and supervisory practices continue to interact with MiCA differently in areas such as AML, suitability of management bodies, treatment of foreign officers, corporate structure, and the freedom of crypto-brokers to engage with offshore trading venues. These differences may lead to materially different authorisation and supervisory outcomes across Member States and create **incentives for regulatory arbitrage**.

Given the inherently cross-border and predominantly online nature of crypto-asset services, and consistently with the **principle of subsidiarity under Article 5(3) TEU**, we strongly support greater centralisation of **MiCA supervision at ESMA level**, where this can promote a more consistent and proportionate application of the framework across the EU.

- G. Multi-function groups also require greater supervisory visibility.**

Where crypto-asset services are combined with other regulated or unregulated activities, particularly within the same group, enhanced oversight may be justified. Group-level reporting and stronger cooperation between ESAs and NCAs may be proportionate tools to give supervisors a more complete view of the relevant activities and risks, without necessarily requiring consolidated supervision or new supervisory structures.

For us, the next phase of MiCA is therefore not mainly about adding more CASP rules. It is about filling a limited number of perimeter gaps and ensuring that the existing framework is applied consistently across the Union.

DeFi: hidden intermediaries and smart contract certification

DeFi can bring real benefits, including self-custody, access to global lending markets, programmable transactions and fully on-chain settlement. But these benefits come with significant risks. Operational risks may arise across the entire DeFi value chain, including from vulnerabilities in cross-chain bridges, inadequate collateral verification and dependencies between different protocols.



Such risks are illustrated by incidents such as KelpDAO, where vulnerabilities in a cross-chain bridge, combined with inadequate collateral verification and cross-protocol interactions, facilitated the circulation of unbacked assets.

Market-abuse risks should also not be underestimated, particularly given increasingly sophisticated maximal extractable value (MEV) strategies.

DeFi does not currently appear large enough to pose a material risk to broader financial stability, but its growing links with centralised crypto markets mean that major incidents can already generate contagion across the wider crypto-asset ecosystem.

Risks, interpretative uncertainties, and unclear allocation of liabilities make it difficult for this promising sector to scale and gain adoption among institutional players, which could bring the largest volumes to DeFi but are also the most sensitive to compliance and risk mitigation.

We therefore propose the following points.

A. No decentralisation test. Substantive control over the service should be the key criterion. Where a service is provided automatically through software or smart contracts, control over the program and its operational rules should amount to control over the service. For instance, for assessing the legal status of a DEX, one should consider, *mutatis mutandis*, ESMA's opinion on the trading venue perimeter and control over the program and rules embodying the multilateral system.

The fact that a protocol is formally governed by a DAO does not undermine this argument and may not, in itself, reflect how control is exercised in practice. Attention should also be paid to off-chain arrangements and to the entities that effectively manage, develop or promote the protocol. In practice, these functions may be concentrated among a limited number of entities, sometimes with a leading entity that also allocates portions of the token supply to commercial or technical partners. This may give the appearance of a decentralised project through the DAO, while behind the scenes things are rather different.

Custody should not be treated as a necessary condition for intermediation. A DEX or lending protocol may exhibit significant elements of centralised control even where users interact through unhosted wallets and retain self-custody.



Similarly, the fact that code is open source does not, in itself, demonstrate that a particular deployment is decentralised. Conversely, the absence of publicly available source code may be one relevant indicator of concentrated control.

B. Appropriate application of MiCA and DORA. Where identifiable entities exercise substantive control over smart contracts or provide regulated services through DeFi arrangements, the relevant risks should primarily be addressed through existing frameworks, notably MiCA and DORA. In our view, introducing missing regulated services such as staking and lending and revisiting the meaning of Recital 22 is a more appropriate direction than creating an entirely separate regime for partially decentralised arrangements.

C. A risk-based approach to CASPs providing access to DeFi. CASPs acting as access points should not bear full responsibility for risks arising from the entire underlying DeFi stack. They should, however, conduct appropriate due diligence on that stack, including the resilience of relevant protocols, exposure to unverified bridges or other dependencies, and the possible existence of concealed intermediaries behind purportedly decentralised arrangements. We therefore favour risk-based access rather than blanket restrictions.

Access to global or permissionless liquidity should not, in itself, justify more favourable treatment. By contrast, enabling global liquidity may introduce additional risks, including exposure to cross-chain bridges and smart contracts deployed by players far removed from EU territory. The relevant criterion should be the actual risk profile of the underlying architecture rather than the breadth of its liquidity pool. Pool verification and similar mechanisms may be useful risk-mitigation tools.

D. We do not support a dedicated smart contract certification regime at this stage. We have examined in detail the work of the ACPR-AMF Working Group on Smart Contract Certification and understand the rationale of such schemes. However, we do not support them at this stage, for several reasons, as illustrated below.

1. A significant part of DeFi is evidently only partially decentralised. Therefore, as argued above, where entities exercise substantive control or provide regulated services through DeFi arrangements, the relevant risks should primarily be addressed through existing frameworks. This would bring those entities within the scope of MiCA and, consequently,



make them subject to DORA.

2. Genuinely decentralised systems would therefore represent a narrower residual niche category. Given the niche size of fully decentralised systems, introducing a dedicated certification framework appears disproportionate.
3. Many relevant risks arise not from the technical security of the protocol itself, but from how protocols and their dependencies are operated, how hidden intermediaries manage the resulting risks, and interconnectedness. The contagion following the KelpDAO incident, for example, highlights two instances of inadequate risk management conduct: upstream, the operator of the restaking protocol had the bridge provider implement a fragile set-up relying on a single verifier; downstream, when unbacked assets were minted through the compromised bridge, other protocols failed to conduct adequate collateral verification and risk management. These conduct-related risks would become meaningfully more manageable if the entities involved in operating these protocols fell within the MiCA-DORA perimeter. We doubt that certification of individual protocols as static artefacts could achieve the same result.
4. **We caution against slowly transforming the supervision of financial services into product-based regulation.** Certification should therefore not operate as a substitute for MiCA or other applicable authorisation requirements where an entity substantively provides a regulated service. If a certification framework were introduced, its more appropriate role would be as an additional technical safeguard.
5. **If nonetheless introduced, any future certification framework should remain proportionate.** Private-sector certification may offer greater flexibility and technical expertise, while public-sector certification may strengthen legitimacy and consistency. Private entities should therefore be permitted to issue certificates only where appropriately accredited by a public body and subject to independence requirements and supervisory oversight. Any interested party should be entitled to request certification of a fully decentralised protocol. To avoid imposing disproportionate compliance costs on emerging protocols and start-ups, mandatory certification should apply only to truly non-controlled protocols exceeding



an appropriate significance threshold (based on TVL or other relevant parameters). Where such a regime applies, CASPs should generally be restricted from connecting clients to uncertified fully decentralised protocols exceeding that threshold, subject to proportionate transitional arrangements. Mandatory certification of non-custodial wallets, however, would represent an overly broad product-based approach.

The priority should therefore be to identify where substantive intermediation actually exists and apply the relevant regulatory framework to those persons and services, rather than create a new regulatory regime merely because the activity is truly delivered on-chain rather than through centralised ICT systems.

■ **New frontiers: prediction markets, tokenised deposits and more**

The same principle runs through these emerging areas: look at the economic function and the risk, not the technology used to deliver it. Below are our recommendations on some of these emerging business models.

A. Prediction markets do not fit neatly into a simple MiCA/MiFID divide.

Where event contracts qualify as financial instruments, MiFID II should in principle apply. The use of DLT or smart contracts should not, by itself, change that classification.

However, prediction markets raise a broader regulatory perimeter issue. Depending on the underlying event and the structure of the relevant contract, prediction markets may overlap with national gambling legislation, given that event contracts may also qualify as bets under certain national gambling laws. This creates a particular risk of fragmentation, given that MiFID II is a directive and gambling regulation remains largely governed at Member State level.

Given the above, in the longer term, bespoke and harmonised EU rules may be worth considering, potentially through a directly applicable regulation. Before moving in that direction, however, the market should be observed further and the interaction between financial and gambling laws across Member States assessed more closely.



B. Perpetual futures should remain within the MiFID II framework.

Perpetual futures are derivative instruments and should therefore remain subject to the existing financial-instruments framework where they meet the relevant MiFID II criteria. The fact that the underlying asset is a crypto-asset, or that the product is offered through DLT-based infrastructure, should not alter that classification. Where necessary, existing rules can be adjusted to reflect specific risks relating to leverage, liquidity, market integrity and investor protection. The objective should be to adapt the existing derivatives framework rather than create a separate regime solely because the underlying asset is a crypto-asset.

C. Tokenised deposits should remain within the banking framework.

Where a token represents a genuine bank deposit, its tokenised form should not alter its legal classification. We therefore do not support a separate regulatory regime. The priority should instead be to provide a clear and harmonised EU definition of tokenised deposits, clarify their boundary with EMTs and other forms of tokenised money, and remove unnecessary obstacles to their transferability and interoperability across regulated DLT-based infrastructures.

We see the strongest use cases in wholesale and capital markets. Tokenised deposits could provide a DLT-native cash leg for the settlement of tokenised securities and other financial instruments, particularly where settlement in central bank money is not practical or available. They could also support delivery-versus-payment and atomic settlement, intraday liquidity and treasury management, and on-chain collateral and margining.

For these reasons, supporting the growth of these instruments seems relevant to the evolution of the EU capital markets.

D. Other frontier areas do not necessarily require new regimes. We do not consider the current state of the NFT market sufficient to justify a dedicated regime for NFT-related service providers. NFTs that are not genuinely unique or non-fungible may already fall within MiCA, while tokens qualifying as financial instruments remain subject to financial-services legislation. The priority should therefore be correct application of the existing perimeter rather than creation of a new NFT-specific regime.

MiCA's environmental disclosure framework is a significant first step, but it could be strengthened through more standardised methodologies, verification



requirements and clearer coordination with broader EU sustainability frameworks. On cybersecurity, it is still premature to introduce additional DLT-specific requirements. However, over time, DORA could be informed by the risks posed by DLT and address them in technology-neutral terms, through targeted amendments.

Private law: towards a 28th regime for digital assets

MiCA has brought a high degree of harmonisation to crypto-asset regulation. Private law is a different story. Significant uncertainty remains in relation to both MiCA crypto-assets and tokenised financial instruments, including questions concerning ownership or equivalent entitlements, transfers, good-faith acquisition, third-party effects, collateral, custody, enforcement and insolvency.

Below, we outline some of our main concerns and ideas for possible solutions.

A. The applicable law of a token should remain consistent.

For crypto-assets subject to MiCA, the white paper framework requires the identification of the applicable law (e.g. field G.18 of the ITS template for tokens other than ARTs and EMTs). This raises the question of whether the national law selected is adequate to address the legal issues posed by tokens. MiCA is not equipped to address matters including proprietary effects, transfers of ownership, good-faith acquisition, enforceability against third parties, collateral arrangements and the treatment of token holders in insolvency.

A further difficulty may arise where the white paper is notified by a trading platform operator or another external white paper service provider assuming responsibility as the person seeking admission to trading. Such a person may indicate an applicable national law in the white paper, while the issuer may separately enter into transactions concerning the same fungible token, for example through SAFTs or private placements, under a different governing law. This may create uncertainty as to the interaction between different laws potentially applicable to transactions involving the same token.

As already indicated in our responses concerning Title II MiCA, Futura therefore recommends narrowing the concept of person seeking admission to trading to entities having a sufficiently close connection with the issuer or the underlying project. That is also instrumental to ensure consistency with regard



to the law applicable to the token. More generally, irrespective of the person notifying the white paper, the applicable law identified in relation to the token should remain consistent with that determined by the issuer, where an identifiable issuer exists.

B. An optional 28th regime establishing a harmonised private-law framework for digital assets. Futura supports a harmonised EU regime governing the issuance of digital assets, including both crypto-assets and DLT financial instruments, and the principal private-law consequences.

As regards crypto-assets, such a regime should address, in particular, the legal nature of token holdings, transfers and good-faith acquisition, effectiveness against third parties, the use of tokens as collateral, custody and intermediated holdings, enforcement of rights and the treatment of token holders in insolvency. Similar considerations apply to DLT financial instruments. Market participants could then choose this framework instead of navigating different national regimes.

Overall, we suggest that the 28th regime be set out in a legislative instrument separate from MiCA and comprise two coordinated components: one for crypto-assets and one for DLT financial instruments.

Such an initiative could also contribute to developing a more uniform concept of financial instrument across the Union where transforming the MiFID II framework into a fully fledged regulation is not currently feasible.

C. A combination of functional and “container” models. The aim of the 28th regime should not be to replace or comprehensively harmonise national property laws. We favour a combination of two complementary models. First, a **‘functional approach’** (**Model 3** of the questionnaire) should establish uniform legal effects for DLT entries and transfers, including entitlement, third-party effectiveness, protection against competing claims and collateral use, without requiring harmonisation of national concepts of property and ownership. Second, drawing inspiration from the Liechtenstein **‘container’ model** (**Model 4** of the questionnaire), the token should be capable of representing and carrying the rights associated with an underlying asset or legal relationship.

The two models should operate together. Model 4 makes the token the digital representation of a bundle of rights, while Model 3 addresses the legal effects attached to the recording and transfer of those rights through DLT.



This combination could provide a common legal layer across different categories of digital assets while allowing the nature and content of the underlying rights to continue to depend on the relevant asset and applicable sectoral framework.

D. Uniform conflict-of-laws rules are also needed. Traditional connecting factors are often difficult to apply to assets recorded on distributed and cross-border infrastructures. A clear and uniform conflict-of-laws framework would therefore be necessary both where the 28th regime has not been chosen and to govern its interaction with national and third-country laws. Existing EU rules, such as those under the Financial Collateral Directive and the Settlement Finality Directive, cover only specific assets and transactions. We therefore favour a hierarchy of connecting factors, broadly following Principle 5 of the UNIDROIT Principles on Digital Assets and Private Law: first, the law expressly identified in relation to the token; second, the law specified in the rules of the relevant DLT system; and, for issuer-based tokens, the law of the issuer's establishment as a fallback.

■ Conclusion: clarity, proportionality and consistency

Our response to the MiCA review does not call for more regulation everywhere. In many areas, MiCA is still too new for major changes, and new rules should be based on evidence rather than on the appearance of every new technology or business model.

But some issues are already clear.

The boundary between MiCA and financial-services law needs greater legal certainty. Stablecoin rules should become more risk-sensitive and certain requirements made more flexible. Staking and lending need a clearer place in the regulatory framework. CASP supervision should become more consistent across the Union. DeFi should be assessed by looking at who really controls the service, not by relying on hard-to-determine decentralisation criteria. Tokenised deposits should remain deposits. And Europe should start building a common private-law framework for digital assets to make the EU market easier to navigate and more appealing.

Across these issues, our approach is consistent: look at the substance of the activity, the risks it creates and the function it performs, not simply at the technology used.



MiCA gave Europe a strong starting point. The next step should not be a wholesale redesign of the framework, but a more coherent evolution of it: clearer rules, more proportionate requirements and more consistent supervision, in addition to opt-in opportunities to better navigate the EU market.

That is what we believe the next phase of European digital-asset regulation should deliver.

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