

# Response of the French authorities

Targeted consultation on the review of the Markets in Crypto-Assets Regulation (MiCA)

Direction générale du Trésor

Autorité des marchés financiers

Banque de France - Autorité de contrôle prudentiel et de résolution

## PART 1

### Scope and definitions, Title II crypto-assets

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

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 sectorial legislation

☐ No, all crypto-assets, or the services provided on such assets, should be covered by MiCA

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?

☐ Yes, sufficiently clear

☒ No, clarification is needed

1.2

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

Crypto-assets that meet the definition of a financial instrument must remain governed by MiFID II/MiFIR, MAR, the Prospectus Regulation and CSDR, whatever the technology used to record them. Recital 9 of MiCA lays down the principle of 'same activities, same risks, same rules' and Article 2(4)(a) excludes financial instruments from its scope. Since MiCA is less demanding than the financial services acquis, extending it to tokenised financial instruments would open the door to regulatory arbitrage and would give the same bond two levels of investor protection depending on whether or not it is recorded on DLT. Where certain MiFID rules are ill-suited to DLT, notably as regards distribution, it is MiFID or the DLT Pilot Regime that should be adjusted.

While maintaining separate frameworks is absolutely necessary, the French authorities support the convergence of the MiFID and MiCA frameworks, while relying on several key principles: (i) that this convergence take place gradually (ii) that it must not prevent adjustments necessary for the use of the DLT technology, (iii) that it must also allow, where appropriate, for a review of the MiFID framework where it is currently too restrictive (for example, in relation to distribution).

This convergence should primarily take the form of MiCA moving towards MiFID standards, not the reverse.

The French authorities also highlight the need for clarity on the articulation between MiCA and sectoral legislation such as MiFID, as there remain situations in which this articulation is still unclear, notably for firms operating under both MiCA and other financial regulation such as MiFID (e.g., providing services for both crypto-assets and tokenised financial instruments, PSD or CRD/CRR regulation, which face potential overlaps and conflicts in compliance obligations. The interaction between these regimes must be explicitly addressed to avoid regulatory duplication or gaps.

The boundary calls for clarification, without amending the definition of financial instrument: ESMA's guidelines should be enriched with examples drawn from the practice of national competent authorities and, for the categories where qualifications diverge between Member States (yield-bearing products, gold-backed tokens), the criteria should be made binding (see Question 2). However, the guidelines in their current form may not allow for definitive conclusions in some of the contentious cases (see answer to Q2 below). In practice, multiple interpretations may often be possible, which can lead to legal uncertainty for market participants. For instance, additional clarification on certain products should be provided to avoid any doubt, particularly for yield-bearing products, where the classification as financial instruments or non-financial crypto-assets remains ambiguous. An approach based on the most contentious products should be followed.

In addition, the French authorities do not support a reverse Article 60 gateway that would allow a CASP to provide investment services without meeting the full set of MiFID requirements.

## 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.**

ESMA's guidelines and the joint ESA classification test have reduced uncertainty for the simple cases, but not for the borderline cases, where qualifications still diverge between Member States. At the boundary with MiFID, the difficult cases remain yield-bearing products and liquid staking tokens, commodity-backed tokens, tokenised royalties, non-financial tokenised real-world assets, wrapped or synthetic tokens and hybrid tokens (see Question 7). At the monetary boundary, the distinction between EMTs, ARTs, tokenised deposits and other tokenised claims on regulated entities remains to be clarified, in particular between a tokenised deposit and an EMT issued by a bank, both of which confer a claim on that bank.

The joint ESA standardised classification test is a useful starting point to structure the analysis. However, as it largely restates the Level 1 MiCA framework, it could usefully be enriched with practical examples drawn from the experience accumulated by the EBA, ESMA and national competent authorities in the classification of token issuance projects. Such enrichment should support a more harmonised and technology-neutral approach to legal qualification across the Union.

The French authorities propose four measures: (i) enrich the ESA test and ESMA's guidelines with examples drawn from the practice of the EBA, ESMA and national competent authorities, without amending the definition of financial instrument; (ii) amend Article 2(5) to give ESMA a mandate for regulatory technical standards setting binding criteria for the categories where divergence is established, starting with yield-bearing products and commodity-backed tokens; (iii) publish, in a register maintained by ESMA, the qualifications adopted by national competent authorities, with their grounds and date, subject to professional secrecy; (iv) specify at Level 2 or Level 3 the criteria that distinguish a tokenised deposit from an EMT (see Question 76).

## 1.2 Transparency rules and ex post supervisory control regime

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?**

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

a) Please assess each provision below along their adequacy:

Scale: 1 = completely inadequate; 2 = mostly inadequate; 3 = neutral; 4 = moderately adequate; 5 = fully adequate

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:

The French authorities believe that the existing provisions on the notification of white papers are broadly inefficient as they stand.

The current system for token offerings requires issuers or offerors to notify their offers to NCAs, which must then transmit this information to ESMA, within very stringent deadlines and without clear indications on the extent to which the information provided should be reviewed by the home NCA before the offer starts in its own jurisdiction. Maintaining a notification regime at national level makes little sense, given that such offers are generally addressed to several, if not all, Member States, or are admitted to trading on platforms which are allowed to operate in all Member States. Basic checks carried out within such a constrained timeframe are more likely to constitute an additional administrative burden for NCAs, than to provide any meaningful improvement in investor protection. Finally, although white papers explicitly state that they are not approved by an NCA, the notification process may nonetheless lead investors to mistakenly believe that these documents have been reviewed or endorsed by an authority, when this is not the case.

Furthermore, notifications are accompanied with an explanation of the qualification of the crypto-asset (as per Article 8(4)), which is very often of poor quality. Indeed, contrary to stablecoins white-papers for which a legal opinion is required, crypto-assets other than stablecoins' white papers are not subject to the same requirement (only an "explanation" is required under Article 8(4)). This poses issues regarding the consistent qualification of tokens throughout EU Member States.

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

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

Scale: 1 = should be significantly weakened; 2 = should be somewhat weakened; 3 = should remain unchanged; 4 = should be somewhat strength-ened; 5 = should be significantly strength-ened

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:

As expressed in the AMF, Consob and FMA's position paper on MiCA published in September 2025, the French authorities support the centralization of the filing and management of token offerings (excluding stablecoins) at ESMA level, instead of the current approach where national authorities only act as relays. This approach would simplify the process for issuers, ensure uniform application of the rules, and avoid market fragmentation. In addition, the French authorities note that crypto-asset offerings are generally pan-European: they make heavy use of the passporting mechanism and almost systematically target most member states.

Maintaining a fragmented system, where each national authority receives similar passport filings or notifications, generates risks of inconsistent document processing, complexity for issuers or offerors, and unnecessary administrative costs for authorities. Therefore, the French authorities support the creation of a one-stop shop at the European level, under the responsibility of ESMA, beyond the centralized management of the "white paper" register. The enforcement powers associated with such offerings or admission to trading should likewise be transferred to ESMA. This new system could offer a streamlined procedure and provide consistent application of the rules.

The overall balance of Title II should be tilted towards investor protection. The ex ante notification model without approval is its weakest provision; the strengthening of the overall balance should come from enforcement and from the centralisation of filings and supervision at ESMA level rather than from additional disclosure obligations on issuers.

4

#### Based on initial implementation experience under MiCA, please assess the extent to which the following issues remain a concern:

|                                                                                                                                                    | 1 | 2 | 3 | 4 | 5 |
|----------------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|---|---|
| Inadequate or non-comparable disclosure clarity or complexity to retail investors in Title II white papers                                         | 1 | 2 | 3 | 4 | 5 |
| Fraudulent or misleading crypto-asset offerings affecting EU investors                                                                             | 1 | 2 | 3 | 4 | 5 |
| Lack of clear and enforceable investor rights for crypto-asset holders                                                                             | 1 | 2 | 3 | 4 | 5 |
| Insufficient issuer governance or accountability in crypto-asset projects e.g. monitoring of the use of funds by issuers after the offering period | 1 | 2 | 3 | 4 | 5 |
| Regulatory arbitrage, including activity shifting outside the EU                                                                                   | 1 | 2 | 3 | 4 | 5 |
| Promotions by social media, influencers, sponsorships                                                                                              | 1 | 2 | 3 | 4 | 5 |
| Post-issuance token value erosion or project failure affecting EU retail investors                                                                 | 1 | 2 | 3 | 4 | 5 |
| Market manipulation practices (e.g. wash trading, price manipulation) in crypto-asset markets                                                      | 1 | 2 | 3 | 4 | 5 |
| Misaligned incentives between crypto-asset issuers and investors (e. g. insider allocations, weak lock-ups)                                        | 1 | 2 | 3 | 4 | 5 |
| Difficulty in assessing issuer quality and project credibility for EU investors                                                                    | 1 | 2 | 3 | 4 | 5 |
| Cross-border enforcement and supervisory coordination challenges within the EU                                                                     | 1 | 2 | 3 | 4 | 5 |
| Cross-border enforcement and supervisory coordination challenges with third countries authorities outside of the EU                                | 1 | 2 | 3 | 4 | 5 |

Scale: 1 = not serious concern at all; 2 = rather not serious concern; 3 = neutral; 4 = rather serious concern; 5 = extremely serious concern

Please explain your ratings in question 4, focusing on the issues you deem most significant and add any additional issues that you deem highly important:

The most serious concerns relate to the enforcement of the rules rather than to the drafting of the obligations. Third-country offers directed at EU investors, often relayed by influencers, escape the white paper regime and the liability of Article 15; the answer lies in detection tools, such as automated online data collection, and in the regulation of influencers, not in a lightening of the obligations. Within the EU, the national notification of pan-European offers produces heterogeneous qualifications and controls and opens the door to forum shopping between Member States, which justifies centralisation at ESMA level (see Question 3). The erosion of token value is a matter of market risk and calls for clear warnings.

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

Scale: 1 = not at all effective; 2 = slightly effective; 3 = moderately effective; 4 = rather effective; 5 = highly effective

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:

Imposing marketing restrictions on high-risk and speculative crypto-assets targeting retail investors requires defining and identifying which crypto-assets are risky and speculative—a distinction that is not clearly introduced in MiCA. Such preliminary identification work, ahead of implementing marketing restrictions, could increase the burden on NCAs. Crypto-assets that are not classified as high-risk could also inadvertently be perceived as carrying a "low-risk label", which is inconsistent with the inherently volatile nature of crypto-assets.

The French authorities nevertheless see merit in a targeted framing of the marketing of high-risk or speculative crypto-assets to retail investors, provided that the category is defined at EU level and does not create a de facto 'low-risk label' for the other crypto-assets. Lock-up periods and vesting schedules for founders and early investors address a real misalignment of incentives but would be difficult to enforce for offers structured outside the EU; disclosure of these arrangements in the white paper is the more practical route. Standardised risk warnings across all channels of commercial communication remain a useful complement, without over-engineering them.

6

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

In the French authorities' view and as previously stated above, the current system for crypto offers which, under MiCA, requires issuers/offerors to notify their offers to NCA, who are then responsible for forwarding the information to ESMA within a set timeframe and without formal approval of the information provided, is misleading for investors. Indeed, NCAs are reduced to mere "transmitters" of notifications to ESMA, with no real capacity to intervene in such a short timeframe, and it is inefficient because it exposes the national authorities to unpredictable flows of filings.

Direct submission of offers to ESMA would be a logical optimization of the existing mechanism, avoiding duplication of processes between the national and European levels. Moreover, maintaining a fragmented system, where each NCA receives similar passport filings or notifications, generates risks of inconsistent processing of documents between different Member States, complexity for market players and unnecessary administrative costs for the authorities. A European one-stop shop managed by ESMA would offer a streamlined procedure and ensure uniform application of the rules. This would also be consistent with the future ESAP.

Centralising the notification of white papers - which has already been partially initiated through the maintenance of a European register of white papers by ESMA-and any related marketing communications (under Article 7) as well as transferring the relevant enforcement powers to ESMA, would also address the objectives of simplification and greater European integration. In cases where irregularities are identified at national level regarding an offer, NCAs should however still be able to request that ESMA take control and enforcement measures.

The ESMA register should present, for each crypto-asset, a single reference version of the white paper kept up to date, preferably the issuer's, without relieving each offeror or trading platform of its responsibility for what it publishes.

The widening of the exemptions of Article 4(2) (offers to fewer than 150 persons per Member State, offers below EUR 1 million over 12 months, offers to qualified investors) could usefully be examined as part of the simplification agenda.

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)?**

In practice, the French authorities often have to explore several types of classification of crypto-assets for a single project, as their legal qualification is often not straightforward and does not necessarily fit into a box.

The most difficult categories lie at the boundary between MiCA and MiFID. Six categories call for priority clarification. Yield-bearing products and liquid staking tokens may constitute units in collective investment undertakings. Wrapped, mirror or synthetic tokens follow the qualification of the asset they represent where they confer a right over it: a wrapped share remains a financial instrument, whether or not the issuer holds the share. Tokens backed by gold or other commodities may be qualified as ARTs in one Member State and as derivatives in another. Governance tokens that confer a right to profits or to assets held in common come close to equity. Hybrid tokens must be requalified where their rights evolve after issuance. NFTs issued in series, fractionalised or carrying economic rights fall outside the exclusion provided for unique assets.

The monetary boundary calls for the same vigilance, notably where a bank issues both tokenised deposits and EMTs. To reduce divergences, the explanation of qualification attached to the notification (Article 8(4)) should follow the standardised test of the European Supervisory Authorities and be reasoned by reference to MiFID II, and the qualifications adopted by national competent authorities should be recorded in a public register maintained by ESMA (see Question 2).

**8**

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

☒ **Yes**

☐ No

## 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

9

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

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

Scale: 1 = strongly disagree; 2 = rather disagree; 3 = neutral; 4 = rather agree; 5 = strongly agree

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

Others: without prejudice to the primacy of central bank money, in particular for wholesale transactions, stablecoins can play, alongside tokenised deposits, a useful and even necessary role in the development of a number of use cases including but not limited to tokenised finance in the EU, notably as a 24/7 settlement asset, as long as payment and settlement systems (TIPS and T2S) are not aligned with that standard.

Please explain your answers to question 9:

The French authorities' answers are given over a five-year horizon, beyond which it would be difficult, and undesirable, to prejudge market developments. It is too early in the development of the technology to take a firm and definitive view on the long-term role of stablecoins. Regulated e-money tokens are today the only form of money available on-chain 24/7, and the EU should cultivate all the options that can support the rapid digitalisation of its financial markets (central bank money, tokenised deposits and euro-denominated EMTs) on a neutral basis between the forms of private money, while preserving the primacy of central bank money as the reference settlement asset. This neutrality applies in particular between EMTs and tokenised deposits: the risk profile of each of these products should be assessed in the same way as that of any other financial asset.

The French authorities consider that regulated euro-denominated stablecoins, in particular EMTs, support specific use cases that are useful and complementary to existing payment instruments. These include cross-border payments with third countries, where euro-denominated stablecoins could contribute to strengthening the international role of the euro; certain tokenised finance use cases, especially where market participants do not have access to central bank money; and corporate treasury management.

However, within 5 years, stablecoins should not be expected to become a mainstream digital means of payment for retail transactions within the EU. Existing European payment infrastructures, including SEPA-based payment systems, instant payments and other account-based solutions, already provide efficient and widely accessible payment services. Their use as direct means of payment in the EU also remains limited in practice, in particular due to low merchant acceptance, integration challenges and the frequent need for conversion into euro.

Their future role should therefore be assessed in terms of coexistence and complementarity with other forms of digital money, rather than as a predetermined trajectory of substitution.

In this context, the development and adoption of regulated euro-denominated stablecoins should be encouraged in order to support the emergence of a sound and competitive European market.

Finally, particular attention should be paid to the current dominance of USD-denominated stablecoins. Excessive reliance on non-EU currency-denominated stablecoins may expose EU users to foreign exchange risk, reinforce the role of non-EU currencies in crypto-asset markets and tokenised finance, and raise broader concerns regarding monetary sovereignty and strategic autonomy.

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 | 2 | 3 | 4 | 5 |
|---------------------------------------------------------------------------------------|---|---|---|---|---|
| International payments (non-EU cross-border remittances or transfers)                 | 1 | 2 | 3 | 4 | 5 |
| Intra-EU payments (domestic and EU cross-border payments)                             | 1 | 2 | 3 | 4 | 5 |
| Crypto trading and liquidity provision                                                | 1 | 2 | 3 | 4 | 5 |
| Retail payments - Person to Person                                                    | 1 | 2 | 3 | 4 | 5 |
| Retail payments – Person to Business (POI payment to merchants including e-commerce)  | 1 | 2 | 3 | 4 | 5 |
| Retail payments - Business to Business                                                | 1 | 2 | 3 | 4 | 5 |
| Wholesale payments (between financial institutions)                                   | 1 | 2 | 3 | 4 | 5 |
| Settlement of tokenised financial instruments (e.g., digital bonds, securities)       | 1 | 2 | 3 | 4 | 5 |
| Corporate treasury management                                                         | 1 | 2 | 3 | 4 | 5 |
| Access to programmable or smart contract-based financial services (DeFi applications) | 1 | 2 | 3 | 4 | 5 |
| Provision of financial services in underserved regions in the EU                      | 1 | 2 | 3 | 4 | 5 |
| Others                                                                                | 1 | 2 | 3 | 4 | 5 |

Scale: 1 = not beneficial; 2 = moderately beneficial; 3 = neutral; 4 = beneficial; 5 = very beneficial

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:

The technology is not yet mature enough to allow a firm and definitive view on the use cases of stablecoins beyond a five-year horizon, over which the following assessment is made, without prejudice to the neutrality between EMTs and tokenised deposits (see Question 9).

For intra-EU payments, the expected benefits are more limited. The EU already benefits from efficient payment infrastructures, including SEPA-based systems, instant payments, card schemes and account-to-account payment solutions. This assessment is further supported by ongoing improvements in European account-based and instant payment solutions, which continue to enhance the efficiency, accessibility and integration of intra-EU payments. In addition, stablecoin-based payment journeys may remain more complex for users and merchants than existing payment solutions, particularly where they involve conversion steps or interaction with crypto-asset platforms. They therefore do not appear to be a mainstream payment instrument for domestic or intra-EU retail payments, whether person-to-person, person-to-business or business-to-business. However, for certain business-to-business or cross-border use cases, stablecoins may provide a workable solution.

Several lines nevertheless emerge. In international payments, stablecoins reduce costs and delays. For the settlement of tokenised assets and for corporate treasury management, they offer a programmable settlement asset native to DLT. Within the EU, SEPA, instant credit transfers, cards and account-to-account solutions make the efficiency gain marginal. Programmability also offers significant benefits even within the EU. Programmability is not specific to DeFi, access to which must go through authorised providers.

Overall, stablecoins may provide useful and complementary functionalities in specific areas, capable of supporting cross-border transactions, corporate liquidity management, the development of tokenised finance, but their added value appears limited for mainstream retail and wholesale payments within the EU.

## 2.2 Prudential regime and capital requirements

11.1

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

|                                                  | 1 | 2 | 3 | 4 | 5 |
|--------------------------------------------------|---|---|---|---|---|
| Minimum own funds of EUR 350,000                 | 1 | 2 | 3 | 4 | 5 |
| 2% of the average reserve of assets              | 1 | 2 | 3 | 4 | 5 |
| 25% of the fixed overheads of the preceding year | 1 | 2 | 3 | 4 | 5 |
| Additional own funds for "significant" tokens    | 1 | 2 | 3 | 4 | 5 |

Scale: 1 = not at all relevant; 2 = slightly relevant; 3 = moderately relevant; 4 = mostly relevant; 5 = highly relevant

11.2

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

|                                                  | 1 | 2 | 3 | 4 | 5 |
|--------------------------------------------------|---|---|---|---|---|
| Minimum own funds of EUR 350,000                 | 1 | 2 | 3 | 4 | 5 |
| 2% of the average reserve of assets              | 1 | 2 | 3 | 4 | 5 |
| 25% of the fixed overheads of the preceding year | 1 | 2 | 3 | 4 | 5 |
| Additional own funds for "significant" tokens    | 1 | 2 | 3 | 4 | 5 |

Scale: 1 = not at all appropriately calibrated; 2 = slightly appropriately calibrated; 3 = moderately appropriately calibrated; 4 = mostly appropriately calibrated; 5 = highly appropriately calibrated

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):

The set of aforementioned requirements appears relevant and proportionate for ART and EMT issuers acting exclusively in that capacity. This assessment should, however, be qualified in the case of ART issuers, given that no confirmed cases or concrete projects have been identified as of today.

Nevertheless, further clarification remains necessary regarding the prudential treatment of entities holding multiple authorizations, both within the MiCA framework itself (for example, entities simultaneously carrying out issuance activities and crypto-asset service activities) and in its interaction with other existing sectoral frameworks (PSD2, EMD2, CRD/CRR, IFD/IFR, and the soon to be implemented PSD3/PSR).

In order to avoid divergent interpretations among EU Member States - which could result either in an unjustified duplication of prudential requirements or insufficient risk coverage - the MiCA framework could usefully clarify the interaction between the various prudential regimes that may apply to the same entity. In this regard, it would be particularly appropriate to specify (i) whether own funds requirements should be applied on a cumulative or an alternative basis, (ii) how crypto-asset-related risks should be taken into account for entities already subject to other prudential requirements and (iii) the role of competent authorities in assessing the overall risk profile of such entities, whether on a consolidated basis or with regard to each of their individual activities.

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 | 2 | 3 | 4 | 5 |
|------------------------------------------------|---|---|---|---|---|
| Market interests for ARTs                      | 1 | 2 | 3 | 4 | 5 |
| Licencing and regulatory requirements for ARTs | 1 | 2 | 3 | 4 | 5 |

Scale: 1 = not at all a factor; 2 = rather not a factor; 3 = neutral/ uncertain; 4 = rather a factor; 5 = a major factor

Please explain your answers to question 12:

The absence of licensed ARTs appears to result from a combination of limited market interest, legal uncertainty regarding their classification, and demanding regulatory requirements.

From a market perspective, most of potential ART models do not offer clear use cases as means of exchange or payment. Since ARTs are typically linked to a basket of assets rather than to a single official currency, they are less suitable than EMTs for day-to-day payment purposes and may instead be perceived primarily as investment, structured or asset-backed products. This reduces their attractiveness as payment instruments, while also creating uncertainty as to their added value compared with existing financial instruments.

In addition, depending on their features, some ARTs may share similarities with financial instruments or other regulated products, creating uncertainty as to the applicable regulatory framework, including whether MiCA, MiFID II or another regulatory framework should apply.

Against this background, after nearly two years of application of MiCA, the absence of any authorised ARTs strongly suggests that the category does not correspond to a genuine market need. Combined with persistent classification difficulties, overlaps with other regulatory frameworks and the absence of equivalent concepts in most major jurisdictions, this experience argues in favour of exploring, on the basis of a prior impact assessment, the removal of the ART category from MiCA. Such a measure could substantially simplify the regulatory framework for stablecoins and contribute to greater regulatory clarity.

In particular, the removal of the ART category should however not mean that “multi-currency stablecoins” (which do not exist currently) fall into a regulatory gap. Two options should be considered in this respect: either prohibit multi-currency stablecoins or include them in the EMT category with minimal changes in MiCA. Use cases corresponding to multi-assets stablecoins could easily fall into the categories of MiFID (see answer to question 13). Use cases involving ART-based payments may be regulated through the provisions of Article 58 (3) of MiCA applicable to EMT (currently by reference to Article 23), with a view to ensuring their continued development as a regulated means of payment. In addition, converting the two criteria set out in that article 58 (3) from cumulative to alternative conditions would usefully strengthen this mechanism and help protect euro-denominated retail payment instruments.

Subject to a prior impact assessment, the French authorities would favour the second option, i.e. bringing multi-currency stablecoins within the EMT category with minimal changes to MiCA.

Should ART removal be envisaged, it would be crucial to ensure that the classification of these multi-currency stablecoins is clear (e.g. as either EMTs or financial instruments under MiFID).

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:**

From a consumer or investor perspective, ARTs would likely be used primarily for investment purposes rather than as alternative means of exchange or payment.

ARTs are typically linked to a basket of assets or other values rather than to a single official currency. As a result, they do not provide the same straightforward unit of account and payment function as EMTs, which are anchored to one official currency. This makes ARTs less suitable for day-to-day payment use cases and more likely to be perceived as products providing exposure to a basket of assets, diversification opportunities or asset-backed returns.

Their economic features may therefore be closer to those of investment, structured or asset-backed products than to payment instruments. This raises questions regarding the legal classification of potential ARTs and the articulation between MiCA, MiFID II and other regulatory frameworks. In this context, the removal of the ART category, to be explored on the basis of a prior impact assessment (see Question 12), could be a welcome simplification measure.

## 2.3 Liquidity and reserve requirements

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)**

|                                                                                                                   | 1 | 2 | 3 | 4 | 5 |
|-------------------------------------------------------------------------------------------------------------------|---|---|---|---|---|
| Obligation to constitute and maintain a reserve of assets covering redemption and liquidity risks (Article 36(1)) | 1 | 2 | 3 | 4 | 5 |
| Liquidity composition and maturity structure of the reserve (Article 36 (4), RTS)                                 | 1 | 2 | 3 | 4 | 5 |
| Minimum amount of deposits held (30% and 60%) (Article 36(4), RTS)                                                | 1 | 2 | 3 | 4 | 5 |
| Auditing requirements (Article 36(9))                                                                             | 1 | 2 | 3 | 4 | 5 |
| Custody requirements (Article 37)                                                                                 | 1 | 2 | 3 | 4 | 5 |

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

Scale: 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

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

Scale: 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

|                                                                                                                               | 1 | 2 | 3 | 4 | 5 |
|-------------------------------------------------------------------------------------------------------------------------------|---|---|---|---|---|
| Obligation to constitute and maintain a reserve of assets covering redemption and liquidity risks (Article 36(1))             | 1 | 2 | 3 | 4 | 5 |
| Liquidity composition and maturity structure of the reserve (Article 36 (4), RTS)                                             | 1 | 2 | 3 | 4 | 5 |
| Minimum amount of deposits held (30% and 60%) (Article 36(4), RTS)                                                            | 1 | 2 | 3 | 4 | 5 |
| Auditing requirements (Article 36(9))                                                                                         | 1 | 2 | 3 | 4 | 5 |
| Custody requirements (Article 37)                                                                                             | 1 | 2 | 3 | 4 | 5 |
| Enhanced liquidity management, stress testing, monitoring, and reporting obligations for significant ARTs (Article 45(3)-(4)) | 1 | 2 | 3 | 4 | 5 |

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):

With regard to ARTs, the absence of any confirmed cases or concrete projects, as of today, has not provided sufficient practical experience to assess the appropriateness and proportionality of the requirements relating to liquidity and to the reserve of assets. As a result, there is currently insufficient evidence to determine whether the framework should be relaxed or strengthened. Should the ART category be maintained, it would therefore be appropriate to keep the existing framework unchanged.

Nevertheless, the continued absence of recourse to the ART category raises questions as to the appropriateness of maintaining this category within the MiCA framework. The lack of market uptake suggests that there is currently no genuine demand for this regime, while projects that could potentially fall within its scope are already or could be covered by other existing sectoral regulatory frameworks, notably those applicable to financial instruments under MiFID. In this respect and as mentioned in responses to Question 12 and Question 13, a simplification of the regulatory framework could be envisaged through the removal of this crypto-assets category, subject to a prior impact assessment.

If the ART category were to be maintained, a clear distinction between ARTs and tokenized financial instruments should be established in order to enhance legal certainty and facilitate the classification of new projects by both issuers and competent national authorities.

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)**

|                                                                                                                                       | 1 | 2 | 3 | 4 | 5 |
|---------------------------------------------------------------------------------------------------------------------------------------|---|---|---|---|---|
| Obligation to constitute and maintain a reserve of assets covering redemption and liquidity risks (Article 36(1))                     | 1 | 2 | 3 | 4 | 5 |
| Legal and operational segregation of reserve assets from the issuer's own estate and from other token reserves (Article 36(2)–(3))    | 1 | 2 | 3 | 4 | 5 |
| Liquidity composition and maturity structure of the reserve (Article 36 (4), RTS)                                                     | 1 | 2 | 3 | 4 | 5 |
| Minimum amount of deposits held (30% and 60%) (Article 36(4), RTS)                                                                    | 1 | 2 | 3 | 4 | 5 |
| Auditing requirements (Article 36(9))                                                                                                 | 1 | 2 | 3 | 4 | 5 |
| Custody requirements (Article 37)                                                                                                     | 1 | 2 | 3 | 4 | 5 |
| Excessive exposure / concentration between bank and token (Article 36(4) MiCA) Do you consider the 1.5% binding limit adequate? (RTS) | 1 | 2 | 3 | 4 | 5 |

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

Scale: 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

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

Scale: 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

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

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

Regarding the MiCA liquidity and reserve requirements applicable to EMT issuers authorized as electronic money institutions (EMIs), the current framework appears broadly appropriate and does not, as such, seem to require substantial modifications, with the notable exception of the requirement to hold a minimum amount of deposits: the French authorities are ready to explore its replacement by minimum daily and weekly liquidity requirements, complemented by limits on the maturity of the reserve assets (see Question 26). Moreover, in the absence of the adoption of the two RTS envisaged under Article 36(4) and 38(5) of the MiCA Regulation, it would be advisable to clarify as soon as possible what constitute highly liquid financial instruments with minimal market risk, credit risk and concentration risk, in order to provide greater legal certainty to both competent authorities and issuers regarding the applicable requirements.

The assessment of reserve risks should no longer rest solely with national competent authorities: EBA guidance is needed on reserve assets, on the tools to be mobilised and on the conditions for their use.

Furthermore, considering the work carried out by the EBA at European level, the provisions of Article 45 concerning additional liquidity requirements applicable to significant issuers could be clarified so as to explicitly allow competent national authorities to impose an additional reserve asset requirement ("overcollateralization") where deemed necessary in view of the risks identified.

Finally, a clear reference in article 94(1)(m) to the issuance of EMTs would provide greater legal clarity on competent authorities' ability to block the issuance of new e-money tokens when they have reasonable grounds for suspecting that the provisions of the MiCA Regulation will be infringed. Similarly, granting competent authorities the power to oppose the publication of an EMT white paper during a 30-day period following its notification by the issuer would allow for a better protection of European token holders' rights. The granting of such clear enforcement powers to competent authorities is essential given that new stablecoin issuances may reach very significant volumes within a short period of time, including in situations where issuances are carried out by structurally non-compliant entities. In the absence of adequate ex ante intervention powers, competent authorities may not be able to intervene in a timely manner to prevent structurally non-compliant entities from entering the market and to ensure an adequate level of protection for holders. A prior notification procedure combined with an opposition power granted to the competent authority would therefore provide them with sufficient time to adopt appropriate measures to restrict, suspend or prohibit an issuance before it is launched.

Beyond these targeted adjustments, the French authorities would like to emphasize that, while ARTs and EMTs are based on distinct legal foundations, the current MiCA framework, which relies on a separation between Titles III and IV while also relying on cross-references between the two titles for specific key provisions (most notably article 54 on the investment of funds in exchange of e-money tokens), creates excessive complexity, regulatory overlaps and significant implementation costs, giving rise to practical and interpretative difficulties. This dual structure results in the coexistence of comparable regimes pursuing similar prudential objectives, without the resulting risk-mitigation benefits appearing fully proportionate to the complexity generated.

The French authorities stress the need to monitor developments under the GENIUS Act and at the Bank of England, which directly affect the attractiveness of the EU as a location for issuing stablecoins.

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?**

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

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

Others / alternative approach. While the current exemption of credit institutions should remain the default solution, the French authorities are open to an optional regime of on-balance-sheet segregation of reserve assets, allowing credit institutions issuing EMTs to segregate assets dedicated to reimburse holders where the use case requires it, without imposing such segregation on all bank issuers. It would nevertheless be essential to assess precisely all the conditions (e.g. legal enforceable solutions ensuring proper segregation) and consequences of such a regime, in particular its operational, prudential (e.g. hierarchy of creditors' claims) and balance-sheet implications for issuing credit institutions and its effect on the safety of commercial bank money as a settlement asset.

## 2.4 Criteria for determining significance

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)**

|                                                                                                                       | 1 | 2 | 3 | 4 | 5 |
|-----------------------------------------------------------------------------------------------------------------------|---|---|---|---|---|
| Number of holders / users exceeding 10 million (Articles 43(1)(a) and 56)                                             | 1 | 2 | 3 | 4 | 5 |
| Total outstanding value / market capitalisation exceeding EUR 5 billion (Articles 43(1)(b) and 56)                    | 1 | 2 | 3 | 4 | 5 |
| Transaction volume or value per day (average 2.5 million transactions and EUR 500 million) (Articles 43(1)(c) and 54) | 1 | 2 | 3 | 4 | 5 |

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

Scale: 1 = significantly decreased; 2 = somewhat decreased; 3 = kept as is; 4 = somewhat increased; 5 = significantly increased

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

Scale: 1 = significantly decreased; 2 = somewhat decreased; 3 = kept as is; 4 = somewhat increased; 5 = significantly increased

|                                                                                                                       | 1 | 2 | 3 | 4 | 5 |
|-----------------------------------------------------------------------------------------------------------------------|---|---|---|---|---|
| Number of holders / users exceeding 10 million (Articles 43(1)(a) and 56)                                             | 1 | 2 | 3 | 4 | 5 |
| Total outstanding value / market capitalisation exceeding EUR 5 billion (Articles 43(1)(b) and 56)                    | 1 | 2 | 3 | 4 | 5 |
| Transaction volume or value per day (average 2.5 million transactions and EUR 500 million) (Articles 43(1)(c) and 54) | 1 | 2 | 3 | 4 | 5 |

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

Overall, the quantitative criteria used to designate EMTs and ARTs as significant appear relevant and broadly well calibrated.

This assessment should nevertheless be qualified in respect of ARTs, as no confirmed cases or concrete projects have been identified as of today. In the absence of practical experience, these criteria have therefore not yet been meaningfully tested in practice. It therefore appears appropriate to keep the existing framework unchanged.

As regards EMTs, this assessment should also be treated with caution, particularly in relation to the criteria concerning the number of holders and transaction volumes, given the still limited reliability of the data reported by crypto-asset service providers (CASPs) and, consequently, by issuers. Since the majority of stablecoin flows are intermediated by crypto-asset service providers, issuers' access to complete and reliable data from these entities is a key prerequisite for assessing the appropriateness of the significance thresholds. However, many entities in France have benefited from the transitional regime and have only recently been authorized as CASPs. The reporting obligations applicable to these entities are therefore still relatively recent, which continues to limit the availability, completeness and reliability of the relevant data. In these circumstances, the level of experience required to fully assess the appropriateness of the significance thresholds remains limited.

In any event, and in the interest of legal certainty, it may be useful to clarify whether all of these criteria should be assessed on the basis of the issuer's overall activity, including activities conducted outside the European Union, or whether they should be limited to activities and transactions carried out within the Union.

18

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

☒ **Yes**

☐ No

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

Yes. The qualitative criteria used to classify EMTs and ARTs as significant should be adjusted in order to make them simpler, more objective and more operational, and to better reflect issuers' risk profiles and market dynamics.

First, the criterion relating to international significance (e) should be adjusted to better capture multi-issuance models and cross-jurisdictional issuance structures. In particular, the assessment should take into account situations where the same stablecoin, or another stablecoin, is issued by another entity of the same group located in another jurisdiction, including multi-issuance models or issuance activities conducted across several jurisdictions. Such arrangements may increase the EU's exposure to liquidity stress, run risks and contagion from non-EU entities or markets.

This criterion could be designed as a stand-alone significance trigger, allowing a token to be classified as significant without necessarily requiring the cumulative fulfilment of several other criteria, where multi-issuance or issuance across several jurisdictions materially increases the risk profile of the arrangement (See Question 38).

Second, the criterion relating to the interconnectedness of the token and its issuer with the financial system (f) should be complemented by more objective and operational indicators. These could include the use of the stablecoin within financial market infrastructures, including DLT market infrastructures; its use for interbank transfers; the issuance of the token by a systemically important EU bank or one of its subsidiaries; the composition and risk profile of the reserve assets; and the exposure of CASPs to financial activities or products involving the token.

Finally, the quantitative criteria should also be clarified, in particular as regards whether thresholds such as the number of holders, the number of transactions and transaction volumes should be assessed at EU level or globally. This clarification would improve legal certainty and ensure a more consistent application of the significance framework across the Union (See Question 17).

In addition, it should be clarified that the MiCA criteria for determining the significance of EMTs or ARTs should not be considered as relevant indicators of whether an EMT is suitable for use as a settlement asset within a financial market infrastructure. In itself, the classification of an EMT as significant under MiCA is not an adequate eligibility criterion for a settlement asset in a financial market infrastructure.

19

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

☒ Yes

☐ No

Please specify which criteria or metrics and explain why:

Yes. As set out in the response to Question 18, the international-significance criterion should be adapted to capture multi-issuance and issuance across several jurisdictions or several DLTs, and could operate as a stand-alone trigger. EBA supervision would secure a level playing field between multi-issuance schemes. In addition, issuers should be given the possibility to opt in, on a voluntary basis, to the significant-token regime and to the direct supervision of the EBA, notably where the token is intended to be used as a settlement asset in financial market infrastructures.

## 2.5 Interest payment

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

☒ **Yes, interest or interest-equivalent remuneration should be allowed under defined conditions**

☐ Yes, interest or interest-equivalent remuneration should be allowed fully

Please explain why you think interest or interest-equivalent remuneration should be allowed for EMTs, (including any benefits and risks) and specify the conditions under which it should be permitted:

The prohibition on the granting of interest or interest-equivalent remuneration by the issuer should be maintained for EMTs and, should the category be maintained, for ARTs.

First, such remuneration could transform stablecoins into investment-like products, rather than preserving their role as settlement asset. This shift would increase incentives for arbitrage and could lead to greater volatility in outstanding volumes, thereby raising the risk of large-scale redemptions, especially in periods of market stress.

Second, if adopted at scale, remunerated stablecoins could exacerbate deposit outflows from the traditional banking system. This disintermediation effect could have broader implications for financial stability, including reduced bank funding stability and increased systemic risk. Indeed, the ECB explicitly states that the growth of stablecoins could lead to a loss of bank deposits, making banks' funding structures more volatile and reducing the effectiveness of monetary policy transmission. In its Financial Stability Review, the ECB notes that the stablecoin market now exceeds USD 280 billion, with rapid growth likely to increase interconnectedness with the traditional financial system. A 2026 study by the Federal Reserve Bank of New York documents that stablecoins can erode banks' deposit franchise, increase their liquidity needs, and reduce their lending capacity. The ECB's Money Market Contact Group also notes that both the U.S. regulatory framework (the GENIUS Act) and the European framework (MiCA) prohibit the payment of interest on stablecoins, specifically to limit their competition with bank deposits.

However, the French authorities consider that indirect remuneration (rewards paid by third parties such as CASPs or platforms for holding or using EMTs, remuneration earned by funds holding EMTs among their assets, or returns linked to the use of EMTs for settlement) should be regulated rather than prohibited outright, as it tends to develop in any event, taking into account the approach followed in the United States under the GENIUS Act, which prohibits issuer interest but not third-party rewards. Indirect remuneration lowers the cost of holding EMTs and can thereby support the 24/7 extension of financial services; an EU framework stricter than its main competitors on this point could weaken the position of euro-denominated EMTs. The conditions under which such remuneration may be permitted (transparency towards holders, no promise of a guaranteed return, no marketing as a savings product, monitoring of the effect on bank deposits) should be defined at Level 1, with a mandate for the EBA to specify them.

This approach should also be read consistently with the responses to Questions 46, 66 and 67, which address the need to clarify and, where appropriate, regulate crypto-asset activities involving the generation of returns, including staking, lending, borrowing, yield or farming arrangements. Maintaining the prohibition on remuneration for stablecoins should not prevent the development of a clearer regulatory treatment for such activities; rather, it reinforces the need to ensure that yield-generating arrangements are not used to circumvent the prohibition applicable to EMTs and ARTs.

b) for ARTs:

- ☒ **No, interest and interest-equivalent remuneration should continue to be prohibited**
- ☐ Yes, interest or interest-equivalent remuneration should be allowed under defined conditions
- ☐ Yes, interest or interest-equivalent remuneration should be allowed fully

Please explain your answer to question 20 b):

See the response to question 20 a).

## 2.6 Redemption

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?**

The French authorities have no direct experience to report on this point.

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 spend them (e.g. on goods or services)
- ☐ I would likely sell or exchange them with a broker or at a trading venue
- ☐ I would likely turn to the EMT issuer or his agent to exercise my statutory redemption right

b) In a stressed market situation

- ☐ I would likely spend them (e.g. on goods or services)
- ☐ I would likely sell or exchange them with a broker or at a trading venue
- ☐ I would likely turn to the EMT issuer or his agent to exercise my statutory redemption right

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.**

|                                                                                                  | Weaken | Keep as is | Strengthen |
|--------------------------------------------------------------------------------------------------|--------|------------|------------|
| 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 consider, in particular, implications for financial stability, consumer protection, and cross-border usability.

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:

As regards the various redemption rights provided for under the MiCA Regulation, these appear to be broadly well calibrated and sufficiently clear. Accordingly, they do not, at this stage, call for any particular amendments.

## 2.7 Stability issues

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:**

|                  | Weaken | Keep as is | Strengthen |
|------------------|--------|------------|------------|
| Recovery plans   |        | •          |            |
| Redemption plans |        | •          |            |

a) Current MiCA requirements for ARTs  
b) Current MiCA requirements for EMTs

|                  | Weaken | Keep as is | Strengthen |
|------------------|--------|------------|------------|
| 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:

As regards ARTs, given that no confirmed cases or concrete projects have been identified to date, it remains difficult, in the absence of practical experience, to fully assess the appropriateness of the framework governing the recovery and redemption plans. In these circumstances, it appears appropriate to keep the current framework unchanged pending the availability of further evidence enabling a more informed assessment of its suitability.

By contrast, regarding the recovery and redemption plans applicable to EMTs, while the current framework appears broadly appropriate for issuers of significant size or importance, it appears relatively burdensome for smaller entities with limited resources.

In this context, the preparation and submission of recovery and redemption plans to the competent authority could be limited to issuers most likely to pose significant risks. To ensure consistency with the existing supervisory framework, the scope of this requirement could be aligned with the thresholds applicable to direct reporting to the EBA under Article 22(1) of MiCA and the EBA Guidelines EBA/GL/2024/16. Accordingly, it would apply only to EMT issuers whose outstanding EMT issuance exceeds EUR 100 million. Such an approach would ensure a more proportionate application of the framework while maintaining an appropriate level of supervisory preparedness for the most relevant issuers.

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 | 2 | 3 | 4 | 5 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|---|---|
| Allowing EMT issuers to deposit their reserve assets directly into central bank accounts                                                                                                                                                                              | 1 | 2 | 3 | 4 | 5 |
| Providing clear rules that ensure the continuity of redemption rights (reserves are safeguarded for the benefit of token holders and are ring-fenced in insolvency, giving these holders an exclusive claim against those assets) in case of insolvency of the issuer | 1 | 2 | 3 | 4 | 5 |
| Establishing a dedicated resolution regime for EMIs issuing EMTs                                                                                                                                                                                                      | 1 | 2 | 3 | 4 | 5 |
| Allowing emergency liquidity support / lender-of-last-resort (LOLR) facilities for EMIs issuing EMTs                                                                                                                                                                  | 1 | 2 | 3 | 4 | 5 |
| Others                                                                                                                                                                                                                                                                | 1 | 2 | 3 | 4 | 5 |

Scale: 1 = not at all appropriate / desirable; 2 = slightly appropriate / desirable; 3 = moderately appropriate / desirable; 4 = mostly appropriate / desirable; 5 = highly appropriate / desirable

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

With regard to enhanced monetary and financial safeguards that could be made available to EMTs issued by electronic money institutions (EMIs), the French authorities are not in favor of the various options presented.

With regard to the establishment of a dedicated resolution regime for EMIs issuing EMTs, the French authorities do not consider this option to be appropriate either. It would introduce additional regulatory complexity without any clearly demonstrated need. Furthermore, MiCA already provides several mechanisms aimed at addressing crisis situations, notably through recovery plans and redemption plans. At this stage, these tools appear adequate considering the risks associated with EMT issuers and contribute to ensuring an orderly management of potential distress situations.

26

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

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

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

The French authorities are ready to explore replacing the quota, at Level 1, with requirements based on the intrinsic liquidity of the assets: minimum daily and weekly liquidity ratios, maturity limits and counterparty diversification, in line with the approach adopted in other major jurisdictions (GENIUS Act).

In this respect, it may indeed be appropriate to replace the current requirement to hold a minimum share of reserve assets in the form of bank deposits with an approach more closely aligned with the intrinsic liquidity of those assets. Such an approach would involve removing the minimum bank deposit quotas and introducing minimum daily and weekly liquidity requirements, complemented by limits on the maturity of the reserve assets and counterparty diversification requirements.

These changes would preserve issuers' ability to meet holders' redemption requests while improving the profitability of their business model. They would also help reduce the contagion and dependency risks identified between stablecoin issuers and credit institutions, as well as mitigate the potentially adverse effects of such interconnectedness on financial stability.

## 2.8 Global stablecoins arrangements and interactions with other regulatory

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 | 2 | 3 | 4 | 5 |
|---------------------------------------------------------------------------------------|---|---|---|---|---|
| International payments (cross-border remittances or transfers,)                       | 1 | 2 | 3 | 4 | 5 |
| Intra-EU payments (domestic and cross-border EU payments)                             | 1 | 2 | 3 | 4 | 5 |
| Crypto trading and liquidity provision                                                | 1 | 2 | 3 | 4 | 5 |
| Retail payments - Person to Person                                                    | 1 | 2 | 3 | 4 | 5 |
| Retail payments - Person to Business (POI payment to merchants including e-commerce)  | 1 | 2 | 3 | 4 | 5 |
| Retail payments - Business to Business                                                | 1 | 2 | 3 | 4 | 5 |
| Settlement of tokenised financial instruments (e.g., digital bonds, securities)       | 1 | 2 | 3 | 4 | 5 |
| Corporate treasury management                                                         | 1 | 2 | 3 | 4 | 5 |
| Access to programmable or smart contract-based financial services (DeFi applications) | 1 | 2 | 3 | 4 | 5 |
| Provision of financial services in underserved regions in the world                   | 1 | 2 | 3 | 4 | 5 |
| Other potential use cases                                                             | 1 | 2 | 3 | 4 | 5 |

Scale: 1 = not beneficial; 2 = moderately beneficial; 3 = neutral; 4 = rather beneficial; 5 = very beneficial

Please specify to what other potential use case(s) you refer in your answer to question 27:

Other potential use cases: "bridge asset" between digital ecosystems

Global stablecoins may act as bridge assets between crypto-asset markets, tokenised financial environments and, to a more limited extent, traditional financial infrastructures. Their potential depends on the development of tokenisation and should not lead them to become the default interoperability layer for EU financial markets. Preference should be given to regulated euro-denominated solutions. Their use may also raise concerns regarding monetary sovereignty, strategic autonomy, operational resilience and contagion risks across ecosystems.

Please explain your answers to question 27:

The technology is not yet mature enough to allow a firm and definitive view on the use cases of stablecoins beyond a five-year horizon.

International payments (cross-border remittances or transfers)

Global stablecoins may bring meaningful benefits to cross-border payments by reducing costs, increasing speed and improving accessibility, particularly for remittances and transfers involving non-EU jurisdictions or less developed financial infrastructures.

Where stablecoins are used for cross-border payments involving EU users, the development of regulated euro-denominated stablecoins should be encouraged, as they will support the international role of the euro and reduce reliance on non-EU currency-denominated stablecoins.

#### Intra-EU payments (domestic and cross-border EU payments)

At this stage, global stablecoins offer limited added value for domestic and intra-EU payments, as the EU already benefits from efficient and widely accessible payment infrastructures, including card schemes, SEPA-based systems, instant payments and account-to-account payment solutions.

#### Crypto trading and liquidity provision

Global stablecoins play an important role in crypto-asset markets as trading, liquidity and collateral instruments.

However, non-EU currency-denominated stablecoins should not be viewed as a long-term solution for EU markets once euro-denominated stablecoins have achieved sufficient liquidity. Regulated euro-denominated stablecoins could provide a useful alternative and support the role of the euro in digital asset markets.

#### Retail payments - Person to Person

While European P2P payment solutions are still relatively recent and continue to develop, existing payment solutions already address most everyday person-to-person payment needs. In this context, global stablecoins currently offer limited additional value for domestic P2P payments within the EU.

#### Retail payments - Person to Business (POI payment to merchants including e-commerce)

Currently, global stablecoins are rarely used for everyday retail payments in the EU. Their practical benefits are limited by low merchant acceptance, integration challenges with existing payment infrastructures, and the frequent need to convert stablecoins into euro for settlement or end-use purposes. These factors significantly reduce their usefulness as direct payment instruments for EU users and merchants.

However, stablecoins may support certain use cases, for example in cross-border e-commerce, digital-native ecosystems or transfers involving non-EU jurisdictions, and should therefore be regarded as complementary and tools rather than substitutes for existing EU payment infrastructures or as core retail payment solutions.

#### Retail payments, Business to Business

In practice, global stablecoins are not widely used today for B2B payments in the EU. Their usefulness is limited by the need for euro-denominated accounting and settlement, integration challenges with existing enterprise resource planning, treasury and payment systems, and the frequent need to convert stablecoins into fiat currency. These frictions reduce their practical benefits compared with existing bank-based payment instruments.

#### Settlement of tokenised financial instruments (e.g., digital bonds, securities)

Global stablecoins provide certain functionalities that support the settlement of tokenised financial instruments and may offer a programmable and DLT-native means of settlement within tokenised platforms.

#### Corporate treasury management

Global stablecoins may offer benefits for intra-group transfers, international liquidity management and 24/7 fund availability.

Regulated euro-denominated stablecoins could be more relevant where they provide clear operational advantages.

#### Access to programmable or smart contract-based financial services (DeFi applications)

Global stablecoins play a key role in DeFi ecosystems as settlement assets, liquidity sources and collateral. While they may support innovation, their benefits have remained largely concentrated within the crypto ecosystem.

Provision of financial services in underserved regions in the world

Global stablecoins may provide benefits in underserved regions, particularly where access to banking services or cash is limited, cross-border payments are costly or slow, or local payment infrastructures are less developed.

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 | 2 | 3 | 4 | 5 |
|-------------------------------------------|---|---|---|---|---|
| EU-based and licenced stablecoins Issuers | 1 | 2 | 3 | 4 | 5 |
| EU-based and licenced CASPs               | 1 | 2 | 3 | 4 | 5 |

Scale: 1 = not important at all; 2 = moderately important; 3 = neutral / no clear preference; 4 = rather important; 5 = highly important

Please explain your answers to question 28:

For the purpose of this question, the assessment does not address the overall benefits and reservations of granting European users access to global stablecoins. It is limited to the regulatory status of the entities facilitating such access.

It is highly important for EU users to access global stablecoins through EU-based and licensed issuers and CASPs. This is a key condition for ensuring effective supervision, consumer protection, financial integrity and consistency with the EU regulatory framework.

EU-based and licenced stablecoins Issuers - Score: 5 (Highly important)

For stablecoin issuers, EU establishment and authorisation are particularly important because issuers are responsible for core features of the stablecoin arrangement, including reserve composition, custody and safeguarding of reserve assets, governance, redemption rights, information provided to token holders, and compliance with MiCA requirements, including the prohibition of granting interest on ARTs and EMTs. Access through EU-based and licensed issuers also helps ensure that EU users benefit from enforceable rights and that competent authorities can effectively monitor risks linked to liquidity, reserve management, operational resilience and financial stability.

This is also relevant from a strategic perspective. Global stablecoins may involve reliance on non-EU currencies, infrastructures or issuers, which may raise concerns regarding monetary sovereignty, foreign exchange risk for EU users and strategic autonomy. Where stablecoins are used by EU users, the development of regulated euro-denominated solutions should therefore be encouraged.

EU-based and licenced CASPs - Score: 5 (Highly important)

For CASPs, EU establishment and authorisation are equally important, as CASPs often constitute the main access point through which users buy, sell, hold or transfer stablecoins. Access through EU-based and licensed CASPs supports higher standards of transparency, conduct, consumer protection, AML/CFT compliance and operational resilience. It also facilitates supervisory monitoring and enforcement by EU competent authorities.

Along the same lines, reverse solicitation should be interpreted and supervised strictly in order to avoid circumvention of EU market access rules. Access to global stablecoins through EU-based and licensed CASPs should therefore be strongly favored, as it ensures that EU users benefit from MiCA safeguards and that competent authorities can effectively supervise the provision of stablecoin-related services.

This does not call into question the access of EU users to global liquidity, which must be guaranteed (see Question 56).

29

**Based on your experience and assessment, how significant are the following risks associated**

|                                                                                                                                                                                                                 | 1 | 2 | 3 | 4 | 5 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|---|---|
| Run risk and reserve depletion in the EU (e.g. cross-border migration of tokens during stress leading to sudden increase of redemption pressure on EU issuers)                                                  | 1 | 2 | 3 | 4 | 5 |
| Unbalanced reserve distribution across jurisdictions (e.g. fragmentation of reserves between EU and non-EU entities)                                                                                            | 1 | 2 | 3 | 4 | 5 |
| Cross-border reserve transfer restrictions (e.g. third-country limitations on moving reserves during stress events)                                                                                             | 1 | 2 | 3 | 4 | 5 |
| Regulatory arbitrage due to fungibility of tokens (e.g. operation across regimes exploiting differences in prudential or conduct rules)                                                                         | 1 | 2 | 3 | 4 | 5 |
| Supervisory monitoring and data-tracking challenges (e.g. difficulty measuring EU-holdings, especially holdings in self-custodial wallets)                                                                      | 1 | 2 | 3 | 4 | 5 |
| 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. | 1 | 2 | 3 | 4 | 5 |
| Others                                                                                                                                                                                                          | 1 | 2 | 3 | 4 | 5 |

[3]

with a multi-issuance model of global stablecoins for the EU financial system?

Scale: 1 = irrelevant; 2 = rather not relevant; 3 = neutral; 4 = rather significant; 5 = very significant

**Please specify to what other risk(s) you refer in your answer to question 29. Please elaborate:**

Finally, regarding “other risks”, the potentially amplifying role of CASPs during periods of stress should be highlighted. On the one hand, CASPs may enable holders located outside the EU to gain indirect access to the redemption mechanisms offered by the EU issuer by intermediating the transactions. On the other hand, their own activities -notably intragroup transfers and certain intermediation activities involving the temporary use of their own funds- may facilitate the transfer into the EU of tokens initially issued outside the EU. These various channels may therefore accelerate and amplify redemption flows towards the EU during periods of stress, thereby exacerbating the risks identified above.

**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:**

The French supervisory experience with issuers under its jurisdiction leads the French authorities to consider that all the risks identified in connection with multi-issuance models are highly significant for the financial system of the EU.

The main vulnerability of such models results from the perfect fungibility of tokens issued simultaneously within the EU and in third countries, combined with the unconditional redemption right provided for under the MiCA Regulation. In times of stress, this combination may create significant incentives for cross-jurisdictional arbitrage and generate substantial liquidity pressures for the EU issuer where the reserves held within the Union are insufficient to meet redemption requests from both EU and non-EU holders.

Such arbitrage may arise in particular from differences in the legal frameworks applicable to the various issuing entities, which may provide holders with differing levels of protection. In this context, holders located in third countries may be incentivized to redeem their tokens through the issuer established in the EU where redemption conditions are perceived as safer or more favorable. This is currently the case under the MiCA framework, which provides crypto-assets holders with particularly strong redemption rights. Such a situation could lead to a sudden and significant increase in redemption requests addressed to the EU issuer and adversely affect its ability to meet them.

This risk is even more significant where reserves are allocated asymmetrically across jurisdictions, particularly to the detriment of the entity established in the EU. Such situations, which have been observed in practice among issuers operating multi-issuance models, may result in liquidity risk becoming concentrated on the reserves held within the EU during periods of stress.

The risks associated with such reserve allocation arrangements are strengthened by uncertainties regarding the effectiveness of reserve transfer mechanisms. Given their largely contractual nature, these mechanisms may be inefficient in a crisis situation, particularly if the issuer established in a third country decides to suspend transfers or if the authorities of that jurisdiction impose restrictions on cross-border asset transfers. Moreover, even where such mechanisms function as intended, the difficulties associated with identifying and estimating holdings within the EU make it challenging to accurately determine the amount of reserves that should be maintained there (see Question 35).

All of these considerations support the need for the introduction of additional measures aimed at better addressing the risks stemming from multi-issuance models, in line with the proposals set out in response to Question 38.

30

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

☒ **Yes, the multi-issuance model for stablecoins should be permitted under MiCA**

☐ No, MiCA should disallow the multi-issuance model for stablecoins

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

Should MiCA Regulation be amended to explicitly and clearly allow and regulate the multi-issuance models, it would be essential, in light of the risks they may pose to the financial stability of the EU (see Question 29), to strengthen the current regulatory framework through the introduction of enhanced safeguards and requirements specifically tailored to such arrangements. In particular, any future regulatory framework for multi-issuance models should incorporate the safeguards and requirements set out in response to Question 38.

In the absence of such adjustments to the regulatory framework, and given the risks identified, multi-issuance models should be avoided.

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

☒ **No**

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

☐ Yes

☐ No

☒ **Don't know / no opinion / not applicable**

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

No. The French authorities propose to re-examine the application in principle of MiCA to EMTs denominated in an official currency of a Member State, considering the difficulty in enforcing such regime but also to promote the international role of the euro. However, the central banks competent for the currency of denomination of the stablecoins should retain their power in relation to these tokens.

Indeed, considering that any EMT denominated in or pegged to an EU currency is offered in the Union, wherever it is issued, imposes the full MiCA regime (including authorisation and establishment in the EU) on third-country issuers even where the token is not marketed to EU users does not promote the international role of the euro. Since the euro has no comparative advantage or existing user base that would allow euro-denominated EMTs to emerge spontaneously, compliance costs of this kind may deter international issuers from issuing in euro and thereby weaken, rather than strengthen, the international use of the euro in digital markets. The rule is moreover difficult to enforce against issuers with no presence in the Union.

The French authorities therefore suggest a targeted approach: MiCA requirements would apply to EMTs denominated in an EU currency where they are offered to the public or admitted to trading in the Union, or serviced by EU CASPs, with an explicit prohibition for EU CASPs to provide services on non-compliant tokens (see Question 86). The level playing field between EU and third-country issuers would be preserved through the equivalence and reciprocity regime described in the responses to Questions 38 and 40.

32

### What are the advantages and disadvantages of this approach for the EU and the international role of EU currencies?

The advantages put forward for the current approach (a consistent framework, the absence of regulatory arbitrage, the credibility of euro-denominated EMTs) rest on the assumption that international issuers need to be brought into the EU framework. If the EU framework is attractive, this is unnecessary; if it is not, the costs of compliance will discourage issuance in euro. The main disadvantage is therefore a possible negative effect on the international role of the euro, in addition to enforceability problems. The level playing field with issuers subject to less demanding regimes must nevertheless be taken into account; it should be addressed through equivalence and reciprocity rather than through extraterritorial scope.

## 2.9 Interaction with the EU's economic security and the international role of

33

### To what extent do you believe that euro-denominated stablecoins can contribute to the following objectives?

|                                                         | 1 | 2 | 3 | 4 | 5 |
|---------------------------------------------------------|---|---|---|---|---|
| Strengthening EU payment autonomy in retail payments    | 1 | 2 | 3 | 4 | 5 |
| Strengthening EU payment autonomy in wholesale payments | 1 | 2 | 3 | 4 | 5 |
| Enhancing the international role of the euro            | 1 | 2 | 3 | 4 | 5 |

Scale: 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

Please explain your answers to question 33:

The French authorities support the development of euro-denominated EMTs as a way of strengthening European autonomy, complementary to the other ongoing initiatives.

Euro-denominated stablecoins may contribute to these objectives. The need is greatest where the market has no other on-chain settlement asset: tokenised financial markets, 24/7 settlement and cross-border transactions.

Euro-denominated stablecoins may contribute to the development of specific digital finance and tokenised market use cases, provided that their role remains complementary and consistent with the primacy of central bank money as the reference settlement asset.

Strengthening EU payment autonomy in retail payments - Score: 2 (small extent): As noted before, stablecoins are not expected to become a mainstream retail payment instrument within the EU, given the efficiency, safety, and widespread adoption of existing payment infrastructures, notably card schemes as well as SEPA-based solutions and instant payments, because these systems already provide fast, reliable, and cost-efficient services that effectively meet the needs of users and merchants across the Single Market. The digital euro will be a tool to strengthen our payment autonomy.

From a public policy perspective, euro-denominated stablecoins are clearly preferable to stablecoins denominated in foreign currencies, notably with regard to monetary sovereignty and the smooth transmission of monetary policy. Nevertheless, the relatively limited uptake of stablecoins expected in retail payments suggests that euro-denominated stablecoins are unlikely to make a material contribution to enhancing the EU's strategic autonomy in the field of retail payments.

Strengthening EU payment autonomy in wholesale payments - Score: 3 (moderate extent) :

Euro-denominated stablecoins could also strengthen the EU's payment autonomy by providing an EU-based digital settlement asset for specific and limited wholesale and cross-border payment use cases that currently rely on non-EU currencies or infrastructures. While settlement in central bank money should remain the preferred solution for systemically important payment systems and high-value financial market infrastructures, euro-denominated stablecoins complement existing settlement assets for non-systemic transactions. Increasing the availability of euro-denominated settlement assets would reduce dependence on foreign currency stablecoins and support the development of autonomous European market infrastructures.

Enhancing the international role of the euro - Score : 4 (Large extent):

Euro-denominated stablecoins can contribute to the international role of the euro by facilitating its use in cross-border transfers and digital financial markets. Achieving this objective will require sufficient liquidity and broad market adoption. Encouraging the use of euro-denominated settlement assets in crypto-asset markets could help build this liquidity. At the same time, tokenised deposits issued by EU credit institutions may also play an important complementary role, particularly for wholesale cross-border payments through existing correspondent banking networks. Providing greater regulatory clarity for tokenised deposits would facilitate their development and complement the existing MiCA framework, thereby supporting the broader international use of the euro in digital finance.

## 2.10 Current safeguards in MiCA

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

Scale: 1 = not at all effective; 2 = slightly effective; 3 = moderately effective; 4 = rather effective; 5 = highly effective

35

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

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

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

To precisely identify stablecoin holdings within the EU remains inherently challenging, notably due to the use of un-hosted wallets, which limits the ability to reliably identify and locate the holders. While the risks arising from this challenge remain relatively contained under a single-issuance model, those risks become more pronounced in a multi-issuance context. In such a scenario, transfers of tokens from third countries to un-hosted wallets held within the EU may increase EU holdings while at the same time making it more difficult to assess the level of reserves that should be maintained in respect of those holdings.

Beyond these situations, estimating stablecoin holdings remains challenging as it relies to a large extent on data provided to issuers by CASPs, which intermediate the majority of stablecoin flows. However, the reliability and completeness of such data remain limited at this point in time. In France, many entities benefited from the transitional regime and have only recently obtained authorization as CASPs. As a result, the reporting requirements applicable to these entities are still relatively recent, and the availability, quality and completeness of the relevant data remain subject to improvement, thereby directly affecting the accuracy of estimates of stablecoin holdings within the EU.

Furthermore, it should be noted that the data transmission chain -which involves multiple intermediaries, with information being reported by CASPs to issuers and subsequently by issuers to competent authorities-significantly increases the complexity of reporting obligations and further complicates the establishment of a reliable and up-to-date measure of holdings within the EU.

In this context, the introduction of cohesive reporting requirements directly applicable to CASPs, combined with effective supervision by the ESMA or the relevant national competent authorities, would significantly improve the reliability, consistency and completeness of the available data and, consequently, enhance the accuracy of estimates of stablecoin holdings within the EU.

36

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

- ☒ **Yes**
- ☐ No

Please explain your answer to question 36, specifying what criteria should be used to determine who qualifies as an EU holder, and providing a rationale for your proposed approach:

In the context of a stablecoin single-issuance model, there is no need to restrict the right of redemption to holders located within the EU, given that the issuer is required to maintain, at all times, a reserve of assets covering the total amount of tokens in circulation, regardless of where their holders are located.

By contrast, in a multi-issuance model, such a restriction appears justified. In the absence of such a limitation, holders located in third countries could be incentivised to take advantage of the unconditional redemption right provided under the MiCA Regulation by seeking redemption from the European issuer for tokens issued outside the EU, especially in situations where any concern would appear regarding the soundness of the issuer outside the EU. Such a situation could give rise to significant liquidity risk for the European issuer if its available reserves proved insufficient to meet all redemption requests, whether originating from EU or non-EU holders.

Nevertheless, the French authorities support an explicit clarification within the MiCA Regulation of the notion of a “European holder”. This concept could, in particular, be based on objective and verifiable criteria, such as the holder’s habitual residence or tax residence within the European Union. It should encompass both natural and legal persons, including ultimate token holders as well as potential intermediaries that have taken full ownership of the tokens in the course of their activities. Such clarification would contribute to greater legal certainty, promote supervisory convergence and reduce the risk of circumvention of the regulatory framework.

## 2.11 Potential additional safeguards

37

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

☒ **Valid-substantiated**

☐ Not valid-not substantiated

Please explain your answer to question 37:

As noted in response to Question 29, the effectiveness of the mechanisms of reserve rebalancing arrangements, currently used to mitigate the risks associated with multi-issuance models, remains highly uncertain, particularly under stress scenarios. Given their largely contractual nature, these mechanisms may prove ineffective during periods of market stress, notably where the issuer established in a third country decides to suspend transfers or where the authorities of that jurisdiction impose restrictions on the transfer of reserves.

These considerations further substantiate the risks associated with multi-issuance models and support the need for the introduction of additional measures aimed at better addressing them, in line with the proposals set out in response to Question 38.

38

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

|                                                                                                                                                                                                                                                                                                                             | 1 | 2 | 3 | 4 | 5 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|---|---|
| Introducing requirements that would favour or strengthen the redemption rights of holders of stablecoins that are genuinely circulating in the EU, as opposed to redemption rights associated with stablecoins transferred to the EU in times of stress to take advantage of MiCA protections (including redemption rights) | 1 | 2 | 3 | 4 | 5 |
| Restricting direct redemption rights in the EU to holders who are clients of EU-authorised CASPs, while holders that keep the tokens in un-hosted wallets do not have a MiCA guaranteed redemption right in the EU.                                                                                                         | 1 | 2 | 3 | 4 | 5 |
| Differentiating redemption rights in crisis situations between retail and wholesale/professional holders                                                                                                                                                                                                                    | 1 | 2 | 3 | 4 | 5 |
| Requiring a dedicated liquidity buffer or additional reserve tranche specifically calibrated to cover short-term redemption spikes in the EU                                                                                                                                                                                | 1 | 2 | 3 | 4 | 5 |
| Strengthening real-time or high-frequency reserve and liquidity reporting to EU competent authorities, including granular disclosure of reserve location and transfer constraints                                                                                                                                           | 1 | 2 | 3 | 4 | 5 |
| Establishing binding cooperation arrangements between home and host supervisors to ensure rapid approval and execution of cross-border reserve transfers in stress scenarios                                                                                                                                                | 1 | 2 | 3 | 4 | 5 |
| Others                                                                                                                                                                                                                                                                                                                      | 1 | 2 | 3 | 4 | 5 |

Scale: 1 = highly ineffective; 2 = rather ineffective; 3 = neutral / uncertain; 4 = somewhat effective; 5 = highly effective

Please specify to what other possible additional measure(s) you refer in your answer to question 38:

In light of current and announced initiatives to establish multi-issuance models, and given the risks they raise - notably liquidity risks for the issuer established in the EU, as well as broader risks to the EU financial stability (see Question 29) - it appears necessary that, should the compliance of such models with the MiCA framework be confirmed, the revised Regulation also provides for a specific and harmonized regime governing multi-issuance.

In this regard, as part of the "other measures", it would be appropriate to incorporate into the MiCA Regulation specific provisions governing multi-issuance models, comprising both preconditions for their implementation, taking the form of an equivalence regime, under the responsibility of the European Commission, and requirements applicable once such models are deployed.

As regards the preconditions, the MiCA Regulation should clearly state that European issuers may only partake in multi-issuance arrangements with issuers established in third countries provided that (1) these third countries' regulatory frameworks have been recognized by the European Commission as providing equivalent safeguards against the specific risks posed by multi-issuance models to those of the MiCA Regulation and that (2) memoranda of understanding (MoUs) should be agreed between the supervisory authorities of the third countries and European competent authorities, covering information exchange, on-site inspections and enforcement assistance.

Minimum conditions for equivalence should include: (i) the existence of a regulatory requirement to set up a reserve rebalancing arrangement between the issuers partaking in multi-issuance models and the prohibition for third country authorities to unilaterally suspend the reserve rebalancing arrangement. The conditions to suspend the reserve rebalancing should be set in the MoU and subject to a joint agreement by both EU competent authorities and third country relevant authorities; in the absence of such a requirement to set up a rebalancing arrangement, the existence of additional regulatory mitigation measures such as but not limited to the possibility for supervisory authorities to impose additional reserve requirements ; (ii) comparable requirements regarding the composition, custody and safeguarding of the reserve of assets ; (iii) comparable redemption rights for token holders ; (iv) comparable information requirements vis-à-vis token holders ; and (v) the prohibition of granting interest.

The test for recognizing the equivalence should be outcome-based because no regulatory framework will be exactly the same as MiCA.

Once a multi-issuance model has been implemented, a set of specific safeguards should apply automatically. These should include: (i) the automatic designation of the relevant token as a significant token and, consequently, the direct supervision of the European issuer by the EBA ; (ii) the establishment of a robust reserve transfer mechanism, jointly approved by the EBA and the competent authority of the relevant third country ; (iii) the performance of liquidity stress testing and the possibility for the EBA to require an overcollateralization of the European issuer's reserve of assets should liquidity deficits be identified; (iv) the adoption by CASPs of robust policies, processes and systems for the identification, management, monitoring and internal reporting of the specific risks associated with multi-issuance models, as well as the management of any conflicts of interest arising from the provision of related services; and (v) explicitly limiting the redemption obligation of the issuer established in the EU to EU holders (see Question 36). The consequences of the role thus assigned to CASPs for their professional obligations such as the primacy of the client's interests should nevertheless be carefully assessed, and the effectiveness of such arrangements may prove limited, in particular where tokens are held in self-custody.

Accordingly, any deployment of a multi-issuance model should take place only within a harmonized regulatory framework based on clearly defined entry conditions and enhanced supervisory safeguards, with a view to ensuring adequate holder protection and preventing risks to the financial stability of the European Union.

The equivalence decision should be conceived as described in the response to Question 40: it opens co-issuance with an issuer authorised in the EU, not the distribution in the Union of tokens issued exclusively outside the EU, and it is conditional on reciprocal access for EU issuers to the third-country market.

**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:**

As regards the first two proposals of additional mitigation measures referred to in the table of Question 38, the French authorities remain cautious regarding their ability to effectively mitigate the risks arising from multi-issuance models. As indicated in response to Question 36, the French authorities nevertheless support an explicit clarification within the MiCA Regulation of the concept of a “European holder”. This concept could be based on objective and verifiable criteria, such as the holder’s habitual residence and/or tax residence within the EU. Such clarification would contribute to greater legal certainty, promote supervisory convergence across the EU, and reduce the risk of circumvention of the regulatory framework.

Regarding the introduction of requirements aimed at strengthening the redemption rights of stablecoins’ holders that are genuinely circulating in the EU, as opposed to redemption rights associated with stablecoins transferred to the EU in times of stress, such a measure could, in theory, help mitigate certain risks. In particular, it could limit the ability of holders of tokens issued in third-country jurisdictions to seek redemption from the European issuer during periods of stress in order to benefit from the protections afforded under the MiCA Regulation. Its proper functioning nevertheless hinges on the setting of clear requirements on CASPs to not partake in intermediation activities involving the temporary use of their own funds on behalf of clients located in third countries with the view of ultimately obtaining the redemption of multi-issued tokens from European issuers. As indicated in response to Question 38, the consequences of such requirements for the professional obligations of CASPs should nevertheless be assessed, and their effectiveness may be limited where tokens are held in self-custody.

As regards the second option, namely limiting the right to direct redemption in the EU to holders who are clients of CASPs authorized in the EU, this measure does not appear to effectively address the specific risks associated with multi-issuance models. First, it would seem undesirable to create different categories of holders having different rights depending on whether the relevant tokens form part of a multi-issuance model. Such an approach would risk increasing the complexity of the framework and reducing the clarity of the rights afforded to holders.

Second, this measure would face the same operational difficulties described above. CASPs established in the EU may act on behalf of clients located in third countries, perform intragroup transfers, or engage in intermediation activities involving the temporary use of their own funds. Consequently, the sole use of an intermediary authorized in the EU does not constitute a sufficiently robust criterion for establishing a holder’s “European” status or for preventing circumvention that would enable non-EU holders to benefit from the redemption rights provided for under the MiCA Regulation.

40

**Do you see merit in introducing an equivalence regime for global stablecoins in the EU?**

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

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

MiCAR was designed as a self-standing framework applicable to issuers and service providers operating within the EU. However, in an environment marked by the multiplication of crypto-asset regulatory regimes globally, the absence of an equivalence mechanism may lead to regulatory arbitrage, duplication of requirements and suboptimal supervisory outcomes.

Recognition of equivalence could allow for a more coherent treatment of cross-border structures, reduce incentives for regulatory circumvention and strengthen the EU's position in international standard-setting, while maintaining a high level of protection.

That being said, the priority should be given on first defining a narrower equivalence regime only targeted at multi-issuance models. The proposed criteria for such a targeted equivalence regime are set out in our response to Question 38. As outlined above, even then, the equivalence regime would only be used as a prerequisite for European issuers to be able to partake in multi-issuance arrangements. Provided that this first condition is fulfilled, only then will European issuers be allowed to deploy multi-issuance models and be subject to the additional safeguards against the specific risks of multi-issuance models that we propose to directly define in the revised MiCA Regulation. The test for recognizing the equivalence should be outcome-based because no regulatory framework will be exactly the same as MiCA.

The French authorities do not support the distribution in the Union of tokens issued exclusively outside the EU. Equivalence would give third-country issuers the right to co-issue a fungible token with an issuer authorised in the EU; that token may be admitted to trading and serviced by EU CASPs. It would give them neither the right to distribute in the EU without a European issuer, nor any relief from the caps of Articles 23 and 24, nor any limitation of the powers of the ECB and the EBA. In return, the equivalence decision would take into account the effective access of European issuers, notably of euro-denominated EMTs, to the third-country market. That access covers issuance, co-issuance and distribution, on conditions not materially more restrictive than those applied in the Union to issuers from that country. Any regression of that access or of the third-country regime would trigger the review, and then the withdrawal, of the decision.

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?**

The equivalence regime should target multi-issuance arrangements as a priority and be used as a prerequisite for the deployment of multi-issuance arrangements in the EU. For additional details, please see our response to Question 38.

Beyond that, rights and benefits should be symmetrical: EU issuers should obtain in the equivalent jurisdiction the same rights of issuance, co-issuance and distribution as those granted in the Union to issuers from that jurisdiction (see Question 40). Reliance on the third-country regime should remain limited to the preconditions listed in the response to Question 38; the safeguards applicable once a multi-issuance model is deployed are defined directly in MiCA and supervised by the EBA.

42

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

|                                                          | 1 | 2 | 3 | 4 | 5 |
|----------------------------------------------------------|---|---|---|---|---|
| Authorisation of ARTs and EMTs issuers                   | 1 | 2 | 3 | 4 | 5 |
| Prudential requirements                                  | 1 | 2 | 3 | 4 | 5 |
| Governance arrangements                                  | 1 | 2 | 3 | 4 | 5 |
| Obligations in respect of specific crypto-asset services | 1 | 2 | 3 | 4 | 5 |

Scale: 1 = strongly disagree; 2 = rather disagree; 3 = neutral; 4 = rather agree; 5 = strongly agree

Please explain your answers to question 42:

Prudential requirements need clarification. Administrative simplification and burden reduction under Titles III and IV could be supported through clearer guidance on prudential requirements, in particular regarding the aggregation and application of own funds for entities operating under multiple licenses (e.g. as electronic money institutions, payment institutions, CASPs, and investment firms), as current provisions do not explicitly clarify whether capital requirements should be applied on an alternative or cumulative basis. In this respect, it is noted that an EBA Q&A has already been submitted by the ACPR seeking clarification (under 2026\_7834 reference). Furthermore, while MiCA Level 1 generally provides a proportionate framework for EMT and ART issuers, additional clarification would be beneficial on the practical application of the dual regime (notification versus full authorisation) to ensure consistent supervisory expectations and reduce compliance uncertainty.

43

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

|                                                                                                          | 1 | 2 | 3 | 4 | 5 |
|----------------------------------------------------------------------------------------------------------|---|---|---|---|---|
| RTS on complaint handling by issuers of ARTs (Article 31(5))                                             | 1 | 2 | 3 | 4 | 5 |
| RTS on the minimum content of governance remuneration (Article 45 (7)(a))                                | 1 | 2 | 3 | 4 | 5 |
| RTS on the information to be submitted in an application for authorisation to issue ARTs (Article 18(6)) | 1 | 2 | 3 | 4 | 5 |
| COM Delegated Act on ART/EMT significance criteria (Article 43 (11))                                     | 1 | 2 | 3 | 4 | 5 |
| RTS on own funds for issuers of ARTs and EMTs (Article 35(6))                                            | 1 | 2 | 3 | 4 | 5 |

Scale: 1 = strongly disagree; 2 = rather disagree; 3 = neutral; 4 = rather agree; 5 = strongly agree

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):

The following responses are based on ACPR's experience on EMTs, as no ART has been issued in France.

RTS on complaint handling by issuers of ARTs (Article 31(5))

Article 31 of MiCAR required the EBA to develop draft regulatory technical standards (RTS) on complaints handling procedures of Issuers of ARTs and, where applicable, third-party entities. The mandate required the EBA also to specify the requirements, templates and procedures for handling complaints received from holders of ARTs and other interested parties, including consumer associations that represent holders of ARTs, and procedures to facilitate the handling of complaints between holders of ART and third-party entities, where applicable.

The French authorities are of the view that, should the ART category be maintained and in order to take into consideration the specific characteristics of ART issuers, it would be preferable to amend the RTS directly so that the text is legally binding and furthermore applied in a harmonized way throughout the EU.

However, the application of the principle of proportionality to ARTs issuers regarding complaints handling procedures should be well regulated/framed in the RTS to avoid risks of interpretation of the new regulation from small issuers.

#### RTS on the minimum content of governance remuneration

The French authorities remain neutral as no issuers in France have been subject to these specific requirements as of today. As a result, the French authorities have not yet had the opportunity to assess or implement these provisions in practice.

#### RTS on the information to be submitted in an application for authorisation to issue ARTs (Article 18(6))

The RTS generally provides an appropriate and proportionate framework for the assessment of applications for authorisation as issuers of ARTs. Given the potential implications of ART issuance for consumer protection and financial stability, it is legitimate to receive detailed information regarding the applicant's business model, governance arrangements, management body, ownership structure and risk management framework before granting an authorisation.

However, the application of the proportionality principle could be further clarified in certain situations. In particular, where an applicant is already authorised in respect of other regulated activities or financial products and is therefore already subject to a regulatory and prudential framework, some of the information requested may overlap with documentation that has already been reviewed by competent authorities as part of their supervisory activities. In such cases, it could be explicitly recognised that competent authorities may, where appropriate, rely on information and assessments already available in order to avoid unnecessary duplication and reduce the administrative burden. It may also be useful to provide further clarification on how the proportionality principle should be applied, notably in light of the applicant's regulatory status, size, complexity and risk profile.

#### Commission Delegated Act on ART/EMT significance criteria (Article 43(11))

Certain aspects would benefit from further clarification and refinement. As highlighted in responses to Questions 17, 18 and 19, it would be helpful, for the quantitative criteria, to clarify whether the quantitative significance criteria should be assessed on the basis of the issuer's overall activity, including activities and transactions conducted outside the EU, or whether the assessment should be limited to activities and transactions carried out within the EU (See response to Question 17). In addition, the qualitative criteria used to classify EMTs and ARTs as significant should be adjusted, and new criteria should be introduced in order to make the assessment framework simpler, more objective and more operational, while better reflecting each issuer's risk profile and market dynamic. The assessment should also better capture specific risk factors, including stablecoin use cases, multi-issuance arrangements, contagion risks and blockchain-related operational risks (See responses to Questions 18 and 19).

#### RTS on own funds for issuers of ARTs and EMTs (Article 35(6))

It provides a generally appropriate and proportionate prudential framework for ART and EMT issuers. Nevertheless, as indicated in greater detail in response to Question 11, further clarification remains necessary regarding the prudential treatment of entities holding multiple authorizations, both within the MiCA framework itself (for example, entities simultaneously carrying out issuance activities and crypto-asset service activities) and in its interaction with other existing sectoral frameworks, including PSD2, EMD2, CRD/CRR and IFD/IFR (see Question 11).

**44**

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

- ☐ Yes
- ☐ No

Please explain your answer to question 44:

Question addressed to issuers. See however the response to Question 35 on the need for reporting requirements directly applicable to CASPs.

## PART 3

## The appropriateness of the legal framework for crypto-asset service providers (CASPs)

### 3.1 Crypto-asset services

45

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

- ☐ Yes  
☒ No

Please explain your answer to question 45:

No. The list should be aligned with MiFID II: the creation of a service of dealing on own account and the merger of the transfer service into custody would make the exchange services redundant (see Question 46). In addition, the treatment of yield-generating activities offered or facilitated by CASPs (staking, lending, borrowing) should be clarified (see Questions 66 and 67).

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 French authorities believe that certain services should be removed or, at the very least, have their scope substantially clarified, while additional services could also be considered. In case of a change in services' definition, clear guidance should be given on how to proceed with the transition of already authorised CASP, based on "MiCA 1" definitions, which could include reclassification through equivalence of services. This amendment to the list of services should aim to ensure convergence with MiFID II.

First, regarding transfer services, ESMA, in its Q&A [reference to be added once published], acknowledged the fact that crypto-asset transfer services are intrinsic to the definition of several other crypto-assets services and therefore their provision doesn't require an additional MiCA license for entities already authorized under other sectoral regulations. In practice, the transfer service is very often provided in conjunction with other MiCA services, notably as part of the service of providing custody and administration of crypto-assets on behalf of clients. In many files, the transfer service remains difficult to qualify, even with the ESMA Q&As. As a consequence, the French authorities suggest to incorporate its definition in an already existing service (such as custody and administration), which would also result in further aligning MiCA and MiFID II.

Second, the French authorities would support the introduction of a new service regarding the dealing of crypto-assets on own account, in line with the dealing of financial instruments on own account service which exists in MiFID II (as defined in Article 4 (1) (6)). Persons dealing on own account when executing client orders should also be covered by MiCA. CASP executing orders from different clients by matching them, for instance, on a matched principal basis (back-to-back trading), should be regarded as acting as principal and should be subject to the provisions of MiCA covering both the execution of crypto-assets orders on behalf of clients and dealing on own account. This additional service would allow to better capture market-making activities from certain actors, conducted under market maker agreements on trading platforms.

The definition of dealing on own account service would encompass any type of execution of clients' order by using proprietary capital of the CASP. Therefore, the current "exchange" services would no longer be necessary (as it would amount to the combination of dealing on own account and execution services) and could be deleted, further aligning MiCA and MiFID II.

Furthermore, the French authorities raise additional questions regarding the scope of the service of advice. Under MiCA, this service is defined more broadly than under MiFID, as it may relate both to crypto-assets and to crypto-asset services, whereas advice under MiFID is limited to financial instruments. In practice, this broader definition has given rise to challenges in the assessment of certain cases, for example where entities merely recommend the use of a particular CASP. While the French authorities have not reached a definitive position at this stage and take note of ESMA Q&A 2882, they are considering whether it would be appropriate to align this definition with that under MiFID.

Finally, the French authorities would support the alignment of the crypto-assets placing service with the equivalent MiFID II service. MiCA's definition, which is much broader, raises practical issues both for CASP and for NCA, and could have several unintended consequences. It may significantly restrict the ability of crypto-asset issuers to conduct general marketing of their crypto-assets, given the absence of any reference to solicitation or to specified purchasers (as opposed to MiFID 2). It could also potentially bring social media platforms and online marketplaces within the scope of CASP authorisation requirements. Finally, it may require CASPs already authorised to operate a trading platform to obtain an additional authorisation for the placement service.

In particular, activities involving the generation of returns on crypto-assets, such as staking, lending, borrowing, yield or farming arrangements, may not always fit clearly within the current list of crypto-asset services. These activities should therefore be more clearly addressed in the regulatory framework in order to enhance legal certainty, ensure consistent supervisory treatment and provide appropriate safeguards to market participants. (See response to Question 45).

By contrast, a dedicated regulatory regime for NFTs does not appear necessary at this stage.

47

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

☐ Yes

☒ No

Please explain your answer to question 47:

On the one hand, the performance by CASP of an appropriateness test could be required to strengthen investors' protection when clients or potential clients are being provided with execution of orders for crypto-assets, placing and reception and transmission of crypto-assets. This test would allow CASPs to assess the appropriateness of these crypto-assets' services by obtaining information from their clients on their knowledge and experience in crypto-assets and to warn them in case they consider, on the basis of the information received that the crypto-asset is not appropriate to the client. This warning would need to be very clear on the features and risks associated with crypto-assets.

In the context of the Savings and Investment Union, the fact that CASPs are not required to perform an appropriateness assessment, as opposed to investment firms under MiFID II, could also lead to a form of indirect incentivization for EU investors to invest in cryptos rather than in financial instruments, such as shares, which is contrary to the SIU's objective.

On the other hand, the French authorities consider the current MiFID 2 appropriateness test as a rather ineffective measure in terms of investor protection. This is especially true within the context of digital customer journeys where investors seek a high degree of autonomy and also given the profile of some crypto investors who may be more risk-seeking, and may easily ignore a notification stating that the product does not appear to be suitable given their experience and knowledge.

The French authorities would therefore rather tend to support a review of the appropriateness requirements in MiFID II rather than a mere transposition of these requirements into MiCA, which could also be seen as too burdensome, especially given the fact that it wouldn't be possible to introduce an "execution only regime" similar to the one existing for non-complex financial instruments, as crypto-assets cannot be considered as non-complex. It would also require distinguishing between retail clients who would be subject to such a test and professional clients who would be exempted, as in MiFID 2, whereas this distinction doesn't exist in MiCA.

That being said, the French authorities recognise that the protection of retail clients remains a genuine concern in crypto-asset markets. They are therefore open to discussing the best way to ensure that retail clients have adequate prior knowledge of, and information on, the risks associated with crypto-assets, through a format adapted to the functioning of crypto-asset markets, whether through an appropriateness test or by other means.

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?**

☒ Yes

☐ No

48.1

**How do they promote their services in the EU? What tools would supervisors or enforcement authorities have, or should they have, to stop non-authorised service providers from offering their services in the EU or to EU customers?**

Yes. The AMF receives frequent complaints from French investors concerning offers from non-EU authorised CASPs. In addition, it appears that a number of French influencers are promoting these offers to the French public. As an example, some of them published videos explaining how to open an account on a non-EU authorised CASP and/or inviting their followers to click on a link under their publication in order to receive a bonus or some reduced fees. A lot of non-EU authorised CASPs have developed an affiliated program. In this program, the influencer who participates is paid each time a follower opens an account with his link.

In these cases, the AMF can register the non-EU authorised CASPs on its crypto-asset blacklist and signal the influencer to the French Consumer protection administration (DGCCRF), which can then decide to open an investigation. The urls of non-EU CASPs added on the AMF blacklist are subject to a delisting request to Google. The AMF then seeks a court order to block the website but, in practice obtaining such court orders takes time, and websites are sometimes not blocked until several months later.

In this context, MiCA should grant a new power to competent national authorities and to ESMA: the power to use web-scraping techniques and tools to collect data online for the purposes of monitoring, supervision, detection and investigation.

It should also explicitly regulate influencers by providing a definition based on article 4 (68a) of MiFID 2, as agreed during the negotiations on the EU Retail Investment Strategy. CASP using influencers to promote their services/products should at least be required to enter into a written agreement with the latter, determining the nature and scope of the activity to be carried out on behalf of the CASP.

Finally, the French authorities would favour further restrictions on reverse solicitation. First, based on ESMA guidelines on situations in which a third-country firm is deemed to solicit clients established or situated in the EU and the supervision practices to detect and prevent circumvention of the reverse solicitation exemption under MiCA, the French authorities support the introduction in MiCA (through a RTS for example) of clear criteria where it cannot be considered that the client is the one initiating the service (e.g., advertising banners used by the third-country firm, sponsorship agreements signed by the latter, or client solicitation by any person linked to the third-country firm, such as influencers and other celebrities). As stated in ESMA's guidelines, MiCA should also clearly provide that requesting information from investors via a contact form should also be considered a form of solicitation. Furthermore, if an entity based in a third country implements a system to block access to its website for EU clients, MiCA should indicate that this is an indicator that the entity is not soliciting European clients. Finally and beyond the current guidelines, MiCA should also clarify the period after which a crypto player based in a non-EU country who has previously carried out promotional activities in Europe, could once again legitimately serve clients on a reverse solicitation basis.

More broadly, the fight against unauthorised third-country providers should be organised at European level: ESMA should coordinate detection, blacklisting and blocking requests across Member States, so that a provider blocked in one Member State cannot continue to solicit clients from another.

## 3.2 Prudential requirements for CASPs

49

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

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

Please explain your answer to question 49:

Overall, significant CASPs should be subject to a prudential regime equivalent to that of MiFID investment firms. Consideration could also be given to subjecting directly to IFR/IFD the CASPs that carry out activities akin to investment services.

First, prudential safeguards in MiCA should only take the form of own funds. An insurance policy should not be permitted as a prudential safeguard as it is currently allowed under Article 67 (4) (b). Only own funds can adequately cover prudential risks.

Capital requirements should also be aligned with banking and financial regulation (IFD/CRR). The current requirements are largely insufficient to cover the risks of large platforms. In the French authorities' view, the current MiCA prudential regime applies a simplistic regime to entities that hold client assets and/or bear market and counterparty risks, mirroring other sectoral regulations reserve for entities that do not bear any of these risks (e.g., asset management companies or Class 3 investment firms). The French authorities believe it would be logical to impose the prudential IFR regime applicable for Class 2 investment firms to significant CASPs, or similar provisions. A low level of capital requirements can also lead CASPs to mistakenly assume that they have a low level of responsibility towards clients.

The French authorities, along with other NCAs, highlight a loophole in the wording of Annex IV. As Annex IV of MiCA is currently drafted, CASPs providing services solely under class 2 or class 3 (or a combination of Class 2 and Class 3), without providing Class 1 services, do not fall under the minimum capital requirements according to Annex IV. Since Article 67 (1a) of MiCA would then be not applicable, such CASP would only be subject to Article 67 (1b) and hence be required to only have in place one quarter of the fixed overheads of the preceding year, reviewed annually, as prudential safeguards. In this context, Annex IV should be amended.

The minimal capital requirements should be enhanced for the most significant CASP to better protect the EU investors. An exception could be envisaged for CASP providing only advice on crypto-assets.

Furthermore, when providing custody services, the amount of capital requirements should also depend on the amount of assets under custody.

The French authorities believe that MiCA should include rule for the most significant CASP regarding the use of own funds. CASP should be required to invest their capital in liquid and non-volatile assets. In French law, pursuant to Articles L. 54-10-5 of the French Monetary and Financial Code, 721-6 of the AMF General Regulation and the provisions of the AMF Instruction DOC-2019-23, the own funds corresponding to regulatory requirements must be invested “in a sound and prudent manner in liquid financial assets or assets that can be easily converted into cash at short notice, without any speculative dimension”. This forbids CASPs to have their own funds invested in digital assets or other risky assets. Other Member States and regulators also have similar approaches, in light with the IAS requirements.

Finally, the application of capital requirements under both MiCA and MiFID may lead to unnecessary burdens for certain dual-licensed firms. A coordinated approach is needed to ensure that capital requirements are proportionate, non-cumulative, and aligned with the effective risks posed by the activities.

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 | 2 | 3 | 4 | 5 |
|---------------------------------------------------|---|---|---|---|---|
| Minimum initial capital for Class 1 (EUR 50.000)  | 1 | 2 | 3 | 4 | 5 |
| Minimum initial capital for Class 2 (EUR 125.000) | 1 | 2 | 3 | 4 | 5 |
| Minimum initial capital for Class 3 (EUR 150.000) | 1 | 2 | 3 | 4 | 5 |

Scale: 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)

Scale: 1 = significantly decreased; 2 = somewhat decreased; 3 = kept roughly as is; 4 = somewhat increased; 5 = significantly increased

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

MiCA capital requirements should be aligned with corresponding banking and financial regulation (IFD/CRR). The current requirements in MiCA are largely insufficient to cover the risks of large platforms. More in details, in the French authorities' view, the current MiCA prudential regime applies a simplistic regime to entities that hold client assets and/or bear market and counterparty risks, mirroring other sectoral regulations reserve for entities that do not bear any of these risks (e.g., asset management companies or Class 3 investment firms). The French authorities believe it would be logical to apply the prudential IFR regime for Class 2 investment firms to significant CASPs, or similar provisions.

At the same time, the quarter of fixed overheads is in practice the more binding constraint and holds back young structures; the review should avoid requirements adding up across classes and across authorisations. Proportionality is essential to support small structures on a very concentrated market: the minimum capital of Classes 1 and 2 would be moderately increased and be made proportionate, that of Class 3 (trading platforms) significantly.

A low level of capital requirements can also lead CASPs to assume they have a low level of responsibility towards clients.

### 3.3 Multi-function groups

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?**

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

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**
- ☒ **Operation of new supervisory colleges**
- ☒ **Consolidated supervision**
- ☒ **Other**

Please specify to what other mechanism(s) you refer in your answer to question 51.1:

- supervision by ESMA of the crypto-asset activities of crypto-conglomerates, as supported by the French authorities in the negotiations on the MISP proposal, in line with the cross-border nature of these groups and the need for consistent supervision across the Union;
- a body bringing together the national competent authorities concerned, which should have a consolidated view of the group's activities.

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:

The French authorities consider that enhanced oversight and coordination are needed for large cross-border crypto-asset groups and crypto-conglomerates.

Some internationally active groups combine a broad range of crypto-asset services, such as trading platforms, custody, exchange services and stablecoin issuance, and may also provide other regulated or unregulated services, including payment-related services, across multiple jurisdictions and legal entities. Past market failures have illustrated how intragroup arrangements and the concentration of multiple activities within the same group may amplify losses, conflicts of interest and contagion risks. Such structures may create significant risks, including supervisory fragmentation, lack of transparency over group-wide exposures, conflicts of interest, operational vulnerabilities, intra-group contagion, interconnectedness with traditional finance and regulatory arbitrage.

The current framework may not be sufficient to address these risks. While prudential consolidation applies to groups carrying out traditional banking, insurance or investment activities, no equivalent consolidated framework applies to non-bank crypto-conglomerates. As a result, supervisors of the various entities part of the group may lack the information needed to assess the scale of crypto-asset activities, intra-group exposures, concentration risks and contagion channels at both entity and group level.

Against this background, the French authorities support the development of a dedicated regulatory and supervisory framework for crypto-conglomerates, based on the following elements:

- criteria and thresholds to identify crypto-conglomerates, taking into account the number, scale and nature of the activities carried out; - group-level reporting requirements, including consolidated financial information, intra-group exposures, appropriate risk-mitigation measures, internal control rules and mechanisms to prevent conflicts of interest;
- prudential, governance and internal control requirements inspired by those applicable to traditional financial groups, adapted to the specific risks of crypto-asset activities;
- specific requirements for CASPs belonging to crypto-conglomerates, including powers for competent authorities to require the limitation or separation of activities where necessary to mitigate conflicts of interest or contagion risks;
- enhanced supervisory cooperation between ESAs, NCAs and third-country authorities, including the possible establishment of supervisory colleges;
- supervision by ESMA of the crypto-asset activities of crypto-conglomerates, as supported by the French authorities in the negotiations on the MISP proposal, in line with the cross-border nature of these groups and the need for consistent supervision across the Union;
- a body bringing together the national competent authorities concerned, which should have a consolidated view of the group's activities.

Separate clarifications may also be needed regarding the articulation of prudential requirements for entities holding multiple authorisations, such as entities that are also electronic money institutions, payment institutions or investment firms. This issue is distinct from the supervision of crypto-conglomerates and is more directly related to the proportionality and application of prudential requirements for CASPs. It is therefore addressed in response to Question 57.

### 3.4 Reporting

52

#### Should CASPs report regularly their activities?

|                                                                                                       | Yes | No |
|-------------------------------------------------------------------------------------------------------|-----|----|
| Direct holdings of crypto-assets by CASPs                                                             | Yes | No |
| Large exposures to derivatives with crypto-assets as the underlying asset                             | Yes | No |
| Volumes of leveraged contracts and the extent to which leverage is actually used on trading platforms | Yes | No |
| Information on counterparty risk                                                                      | Yes | No |

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

Should transaction reporting be envisaged, three conditions should apply:

On-chain traceability (e.g., wallet reporting) should be prioritized for crypto-specific activities, as traditional reporting frameworks (e.g., MiFIR) are not fully adapted to this asset class;

A two-tier system could be considered, with mandatory reporting at least for significant CASPs (e.g., those offering trading, custody, or leveraged products) and lighter obligations for others, to balance burden reduction with supervisory needs;

In terms of governance, ESMA should be the central recipient of this reporting, in line with its role under the MISP proposal published by the European Commission in December 2025 and to ensure consistency with existing EU frameworks. Moreover, ESMA has already had the opportunity to work on these issues, in particular in the context of its work on the development of a common European market abuse detection tool MIDAS.

Prudential reporting should also be mandatory for all CASPs, aligned with their risk profiles.

Please explain your answer to question 52:

Crypto-asset service providers (CASPs) should be required to report regularly on their activities. Establishing a structured and periodic reporting framework is both necessary and proportionate to ensure effective supervision, financial stability, and market integrity under MiCA.

At the current stage, comparable financial entities such as EMIs, investment firms, and credit institutions are all subject to regular regulatory reporting obligations. These requirements are a cornerstone of prudential supervision across the financial sector and extending similar obligations to CASPs ensures regulatory consistency and a level playing field. Given that CASPs increasingly perform activities analogous to traditional financial services, they should be held to equivalent transparency and reporting standards.

The primary rationale for regular reporting is to enable competent authorities to monitor and verify compliance with prudential requirements, including : capital adequacy, liquidity levels, safeguarding of client assets and risk management frameworks. Without regular and reliable reporting, supervisors lack the necessary tools to assess in the first place the compliance with prudential requirements (e.g. capital, liquidity) as well as the financial soundness of CASPs and volume, nature of activities and exposures.

### 3.5 Environmental and sustainability reporting

53

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

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

Please explain your answer to question 53:

Based on our experience, the current sustainability disclosure regime under MiCA is partially appropriate, but improvements could be considered.

The practical implementation of sustainability metrics for CASPs remains unclear, as it is challenging to define what should be reported and how such data should be used.

Placing the burden of sustainability reporting on CASPs may not be the most effective approach, as they often lack direct control over the underlying environmental impact of crypto-assets.

Further clarifications, beyond the RTS requirements, might be needed on what metrics should be disclosed and how they align with broader EU sustainability frameworks (e.g., SFDR, CSRD).

Overall, the concrete usefulness of these indicators should be assessed, particularly in terms of their impact on investors and on transparency. The French authorities also raise attention on the fact that contrary to MiFID 2, CASP are not required to take into account clients' ESG preferences in the suitability assessment for the crypto-assets advice and portfolio management services.

However, there remains scope for improvement, notably by encouraging the inclusion of more qualitative disclosures aligned with established supervisory frameworks (e.g., ECB Guide on climate-related and environmental risks, November 2020), particularly regarding how entities measure and manage climate-related risks, including governance arrangements (such as board oversight and management responsibilities), strategic considerations (risks, opportunities, and integration into business planning), risk management processes (identification, assessment, and mitigation of environmental risks), and internal metrics and targets related to climate and environmental performance.

### 3.6 Other issues

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?**

The French authorities support making independent cyber-security audits systematic for CASPs, before authorisation and at regular intervals thereafter, including for CASPs already authorised. No distinction should be made according to size, since smaller CASPs may also pose significant cyber risks; a differentiation according to the type of service provided (e.g. custody or operation of a trading platform) could nevertheless be considered.

MiCA should provide for a cyber security audit performed by an independent third-party cybersecurity auditor before the authorisation of any CASP. This audit made by independent IT experts would help the CASP candidate to build a secure and reliable IT system by identifying the vulnerabilities of its current IT system. This will allow NCAs to assess the CASP candidate's compliance with state-of-the-art cyber security requirements, as well as their ability to prevent and react effectively to cyber-attacks. This audit, which would be a fundamental measure to guarantee the effectiveness and operational control of cyber risk, should also be renewed at regular intervals to take into account potential changes in practices and new risks that may emerge. This requirement should be extended to entities already authorised as CASPs, once the new rules have been introduced. The cyber framework should focus in particular on measures to ensure the safekeeping of crypto-assets and to counter the risks inherent to the sector (notably any compromise of wallets holding crypto-assets, data leaks, denial-of-service attacks, identity theft, and the inability to investigate in the event of an incident or fraudulent activity).

The independence and competence of the service providers in charge of carrying out such an audit should be defined in a harmonized Europe-wide certification scheme for cyber security auditors, resulting from the application of European Regulation 2019/881 on cybersecurity certification for information and communication technologies.

Beyond MiCA, the French authorities support amending DORA, especially its ITS on the Register of Information templates, to explicitly require financial institutions to cover AI services providers' contracts as part of their reporting obligations within the Register of Information by including a specific field for AI service providers.

DORA already provides a robust, horizontal and technology-neutral framework for the digital operational resilience of crypto-asset service providers, as regulated financial entities. Its requirements cover ICT risk management, ICT-related incident management and reporting, digital operational resilience testing, and ICT third-party risk management.

However, CASPs may rely, for their operational activity, on public blockchains, validator networks, oracles, bridges, smart contracts or other decentralised or partly decentralised technical services. These dependencies may be critical for the continuity and security of crypto-asset services, while not always corresponding to the traditional model of an identifiable ICT third-party service provider under DORA. In such cases, contractual audit rights, exit strategies or due diligence mechanisms may be difficult to implement in practice.

In this respect, the reflections initiated in Section 4.1 of the consultation on decentralised finance (DeFi) may provide useful analytical input, even though they primarily address decentralised financial services. Indeed, CASPs may both facilitate access to decentralised financial services and rely on decentralised technical infrastructures for their own operational activity. Issues such as the degree of decentralisation, the absence of identifiable entry points, protocol governance, smart contract certification and the role of regulated access points may therefore be relevant to both aspects.

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

☒ No

Please explain your answer to question 55:

The French authorities do not believe that these changes have brought sufficient clarity on these topics. The dual licensing solution has proven burdensome, both for CASP applicants and for NCAs, without necessarily bringing substantial gains in terms of client protection. Indeed, a number of CASPs do not seek to engage in purely “payments-oriented” activities, but still have to ask for two licenses only because they provide certain services on EMTs.

1) like for investment firms which are not subject to PSD2 in application of Article 3(i)(h), remove the obligation to have both a MiCA licence and a PSD licence to offer certain EMT services, and define in MiCA the additional requirements that CASP applicants should implement, to avoid any gaps between MiCA and PSD2, if any. A single licence would be the French authorities' preferred option, as the MiCA and PSD authorisations processes may be, in certain Member States such as France, handled by different competent authorities, hence creating burdensome processes.

Regarding CASP providing EMT services, the fact that MiCA and PSD 2 cumulatively apply to all EMT transfer and custody services raises a large number of operational unintended questions, both for authorities and for market players. The French authorities therefore support exempting CASP providing EMT services from being subject to PSD 3/PSR. MiCA should include such exemption.

The French authorities do not think that the specification of the authorisation process under PSD3 will bring sufficient clarity and provide simplicity, and accordingly would recommend not only further clarifying but also simplifying the authorisation and prudential treatment rules for CASPs, including when they provide crypto-assets services that includes transfer and custody services for EMTs.

A single CASP status should be enshrined, including when CASPs provide crypto assets services which includes transfer and custody services for EMT, without requiring additional payment institution authorisation as is currently the case. This should be done in line with the recommendations for changes to MiCAR proposed by the EBA in its No Action Letter of June 2025. The own funds requirements applicable to CASPs should cover all risks to which they are exposed without requiring additional own funds requirements imposed by another status and/or framework.

CASP equivalence rules for entities already authorised should also be simplified, for example by streamlining the procedure under Article 60 of the MiCAR and reviewing the scope of equivalences under Article 60 of MiCAR (including allowing transfers by investment firms).

Regulation, including the proposals made in PSD3, is too complex for both regulators and supervisors as it entails (i) duplication, including for the same activity, of authorisation procedures, sometimes involving several national competent authorities, (ii) additional reporting requirements, (iii) compliance costs for these stakeholders, which may constitute a barrier to entry for new institutions, thus affecting the attractiveness of the European Union. Moreover, this requirement of dual status does not go in the direction of the simplification advocated at European level. If the Commission as law drafters or the co-legislators consider that specific rules applicable to payment institutions should also be applied to CASPs (as strong authentication for example), said rules should be expressly mentioned in MiCA 2 without having to apply the full status of payment institution to CASPs.

Consideration should also be given to whether an EMT transfer that is ancillary to a crypto-asset service or technically necessary should require any PSD3 authorisation at all. Four cases are relevant: the settlement of crypto-asset transactions, custody, transfers internal to a platform, and the cash leg of tokenised financial instruments.

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?**

- ☐ Yes  
☐ No

56.1

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

The French authorities wish to preserve the access of European investors to global liquidity, provided that it goes through authorised CASPs and targets platforms offering safeguards equivalent to MiCA.

MiCA should make it mandatory for any European intermediary executing orders on crypto-assets on behalf of investors to execute these orders on the order book of a platform subject to MiCA, or to equivalent regulation. The compliance of a platform with equivalent regulation should be assessed by the European Commission, taking into account international standards. The French authorities acknowledge that establishing such an equivalence regime will take time, but consider it to be the most appropriate solution in the medium to long term.

More broadly, MiCA should continue to allow EU consumers and investors to benefit from access to global crypto-asset liquidity pools, provided that adequate investor protection and market integrity safeguards are in place. Access to global liquidity supports deeper markets, more efficient price discovery and better execution conditions, whereas an excessive concentration of liquidity within the EU could lead to market fragmentation and reduced competitiveness. At the same time, developing EU-based liquidity and euro-denominated settlement solutions can strengthen the resilience and strategic autonomy of EU financial markets. The objective should therefore be to preserve access to global liquidity while promoting regulated euro-denominated settlement assets and EU-regulated market infrastructures.

This openness must not come at the expense of EU actors: equivalence must be assessed strictly and on a reciprocal basis. Nor must it dollarise settlement: MiCA and the MISP proposal should encourage settlement in regulated euro-denominated stablecoins.

MiCA could be amended to support the use of regulated euro-denominated stablecoins where stablecoins are used as settlement assets in crypto-asset trading, in order to reduce excessive reliance on USD-denominated stablecoins.

This is particularly relevant because crypto-assets are not inherently denominated in a specific currency, and the settlement asset used in crypto-trading is largely driven by network effects and liquidity.

Although issuers of stablecoins denominated in EU currencies have developed since June 2024, including both EMI and banks, this development has not yet been sufficient to offset the strong network and liquidity effects supporting USD-denominated settlement in crypto-asset markets.

Therefore, where stablecoins are used as settlement assets in crypto-asset trading and settlement activities involving EU markets or EU participants, MiCA, in line with the PFMI, should encourage the use of regulated euro-denominated stablecoins, while preserving the broader hierarchy of settlement assets, including the primary role of central bank money for systemic and wholesale market infrastructures. This settlement preference should be reflected, where appropriate, both in recitals and operative provisions of MiCAR and MISP.

This could build on the logic reflected in the current MISP proposal, notably Recital 80, which states that: "(...) To support the development of euro denominated stablecoins, DLT market infrastructures should be encouraged to offer settlement in e-money tokens denominated in euro, even if the financial instrument that is settled is denominated in a non-EU currency." A similar preference could be considered for crypto-asset trading, where stablecoins are used as settlement assets.

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 | 2 | 3 | 4 | 5 |
|----------------------------------------------------------|---|---|---|---|---|
| Authorisation of crypto-asset service providers          | 1 | 2 | 3 | 4 | 5 |
| Prudential requirements                                  | 1 | 2 | 3 | 4 | 5 |
| Governance arrangements                                  | 1 | 2 | 3 | 4 | 5 |
| Obligations in respect of specific crypto-asset services | 1 | 2 | 3 | 4 | 5 |
| Other Title V rules                                      | 1 | 2 | 3 | 4 | 5 |

Scale: 1 = strongly disagree; 2 = rather disagree; 3 = neutral; 4 = rather agree; 5 = strongly agree

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 French authorities believe that the MiCA framework is rather proportionate.

Still, adjustments could be considered for CASP candidates seeking to provide only the service of advice on crypto-assets, without providing any other service. For these actors, similar to what already exists for MiFID II, the French authorities believe that authorisation requirements and certain obligations such as prudential requirements could be streamlined to be more proportionate.

With regard to prudential requirements applicable to CASPs, and as indicated in greater detail in response to Question 11, further clarification remains necessary regarding the prudential treatment of entities holding multiple authorizations. This issue arises both within the MiCA framework itself (for example, entities simultaneously conducting issuance activities and crypto-asset services) and in its interaction with other existing sectoral frameworks, including PSD2, EMD2, CRD/CRR and IFD/IFR (see question 11).

Moreover, if the position within the EBA's No Action Letter is maintained:

- where a CASP authorised under Article 62 of MiCA is required, in order to provide custody, administration and transfer services in relation to crypto-assets, to also obtain authorisation as a payment institution pursuant to the EBA's No Action Letter, MiCA should explicitly specify which prudential requirements apply to that entity, including how the requirements stemming from its status as a CASP interact with those arising from its authorisation as a payment institution;

- where an entity is authorised to provide custody, administration and transfer services in relation to crypto-assets pursuant to Article 60 of MiCA, no specific prudential requirements apply by virtue of such authorisation. However, additional prudential requirements may arise from the payment institution authorisation that such entities are required to obtain pursuant to the EBA's No Action Letter. In this context, MiCA should expressly clarify whether, and to what extent, the prudential requirements applicable to payment institutions should apply in such situations.

In all cases, MiCA should also clarify the allocation of responsibilities between the authorities responsible for the prudential supervision of the payment institution framework and those competent for the supervision of crypto-asset service activities.

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 | 2 | 3 | 4 | 5 |
|-----------------------------------------------------------------------------------------------------------------------------|---|---|---|---|---|
| RTS on complaint handling for CASPs (Article 71(5))                                                                         | 1 | 2 | 3 | 4 | 5 |
| RTS on offering pre-trading and post-trading data to the public (Article 76(16)(a))                                         | 1 | 2 | 3 | 4 | 5 |
| RTS on content and format of order book and records to be maintained (Article 76(16)(b))                                    | 1 | 2 | 3 | 4 | 5 |
| RTS on records to be kept of all crypto-asset services, activities, orders and transactions undertaken (Article 68 (10)(b)) | 1 | 2 | 3 | 4 | 5 |
| RTS on the continuity and regularity in performance of crypto services (Article 68 (10)(a))                                 | 1 | 2 | 3 | 4 | 5 |

Scale: 1 = strongly disagree; 2 = rather disagree; 3 = neutral; 4 = rather agree; 5 = strongly agree

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

The French authorities believe that the MiCA Level 2 requirements are rather proportionate.

## PART 4

## Policy areas beyond the current scope of MiCA

## 4.1 Decentralised finance

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

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

## b) Payments and transactions services

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

## c) Trading and investment services

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

## d) Lending and borrowing services

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

## e) Custody services

- ☒ **DeFi applications present limited interest and are moderately used for this service**
- ☐ DeFi applications present important potential benefits for this service but their use remains limited due to some non-mitigated weaknesses

- ☐ DeFi applications present important benefits for this service and are already significantly used, despite important non-mitigated weaknesses
- ☐ DeFi applications present important benefits for this service, they are already significantly used and present limited risks

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:

The EU should actively support the development of DeFi as a source of innovation and competitiveness for its financial sector, with a regulatory framework that enables European projects to grow and reach scale. This framework should provide legal certainty, attract investment and facilitate integration into the wider financial system, while preserving the benefits of open access, programmability and interoperability. Requirements should be proportionate to the risks and establish clear responsibilities, including for regulated intermediaries providing access to DeFi. With regards to legal certainty, it should also be mindful of not creating situations of regulatory arbitrage with existing frameworks.

The AMF highlighted some of the benefits and risks of DeFi activities in the AMF's discussion paper published in 2023. Among its benefits, DeFi may offer open access, 24/7 availability, faster settlement, greater transparency through public blockchains, and fewer intermediaries compared with traditional finance (TradFi). Users can often retain direct control of assets and access global crypto-assets services.

The French authorities also highlighted risks in relation to the unregulated nature of DeFi protocols, lack of liability, AML-CTF risks, liquidity and fair and orderly market risks, pricing model risks, price manipulation / front-running and slippage risks, as well as risks of leverage (particularly in the context of lending or derivative activities), risks of governance, etc.

Addressing these risks would suggest to provide adequate oversight over the activity of these DeFi protocols, bringing them into regulatory scope (to address their unregulated nature), whether through smart contract certification or imposing direct rules at the application layer or smart contract level (e.g.: market operating rules for trading protocols, fair and orderly requirements, etc.).

Two key aspects should be considered in relation to the regulatory scope of DeFi:

Responsibility should be established via identifiable intermediaries (e.g. such as CASPs - see responses to questions 62, 62.1, and 63).

60

## What do you consider to be the main risks associated with DeFi?

|                                                                                      | 1 | 2 | 3 | 4 | 5 |
|--------------------------------------------------------------------------------------|---|---|---|---|---|
| Operational risk                                                                     | 1 | 2 | 3 | 4 | 5 |
| Money laundering and terrorist financing risk                                        | 1 | 2 | 3 | 4 | 5 |
| Market abuse                                                                         | 1 | 2 | 3 | 4 | 5 |
| Investor protection risk (information asymmetry, no redress, opacity of functioning) | 1 | 2 | 3 | 4 | 5 |
| Financial stability                                                                  | 1 | 2 | 3 | 4 | 5 |

Scale: 1 = strongly disagree; 2 = rather disagree; 3 = neutral; 4 = rather agree; 5 = strongly agree

Please explain your answers to question 60:

The assessment of risks associated with DeFi should distinguish between risks that are already material and well documented, such as operational, AML/CFT and investor protection risks, and risks that remain more emerging or contingent on further developments, such as broader financial stability risks.

The French authorities consider that DeFi raises significant risks, although their degree of materiality may vary depending on the level of decentralisation, the scale of the protocol, its interconnections with regulated entities and the nature of the underlying activity.

Operational risk: 4 - DeFi protocols can cease operations in a disorderly manner as Terra / Luna has shown. Risks at the permissionless layer 1 level are better mitigated due to size of network (lack of single point of failure), and the history of low or lack of interruptions that certain blockchains boast.

Against this background, the regulatory response should distinguish genuinely decentralised protocols from activities that are only nominally decentralised. It should also strengthen expectations for regulated entities that provide access to or interact with DeFi protocols, and support mechanisms such as smart contract or protocol certification to improve resilience and user protection.

Further, where DeFi is used to issue, distribute, exchange, settle, etc. financial instruments, these activities should fall under the appropriate regulatory frameworks (i.e. MiFID, CSDR etc.).

61

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

|                                                                                                                                                                             | 1 | 2 | 3 | 4 | 5 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|---|---|
| Existence of an identifiable intermediary (person or group of persons) providing a crypto-asset service                                                                     | 1 | 2 | 3 | 4 | 5 |
| Presence of control by an identifiable person e or group of persons (e.g. via admin keys) over the key functionalities of a DeFi protocol (e.g. upgradeability of protocol) | 1 | 2 | 3 | 4 | 5 |
| Significant concentration of governance power over the key functionalities of a DeFi protocol                                                                               | 1 | 2 | 3 | 4 | 5 |
| Custody of user assets by the DeFi protocol                                                                                                                                 | 1 | 2 | 3 | 4 | 5 |
| DeFi protocol code is not open source                                                                                                                                       | 1 | 2 | 3 | 4 | 5 |
| Marketing of a DeFi protocol by an identifiable entity or person                                                                                                            | 1 | 2 | 3 | 4 | 5 |
| Other                                                                                                                                                                       | 1 | 2 | 3 | 4 | 5 |

Scale: 1 = strongly disagree; 2 = rather disagree; 3 = neutral; 4 = rather agree; 5 = strongly agree

Please specify to what other criteria(s) you refer in your answer to question 61:

Additional criteria should include the degree of control over the user interface or front-end, the ability to restrict or prioritise access to the protocol, the role of developers or foundations in maintaining the protocol, control over oracle selection or other critical dependencies, the distribution of governance rights, and whether identifiable persons retain significant economic control or derive substantial economic benefits from the protocol, for instance through control over treasury assets, fee allocation or privileged access to revenues. Overall, the assessment should be based on effective control, accountability and the ability to influence key functions, rather than on the mere technical label of decentralisation.

Please explain your answers to question 61:

The French authorities support the development of harmonised criteria to assess the degree of decentralisation of DeFi applications, based on their effective functioning rather than on their formal or technical designation. These criteria should help identify activities that are only nominally decentralised and determine whether an identifiable person or group exercises effective control over the service.

However, such criteria should be regarded as non-exhaustive indicators guiding a case-by-case and substance-based assessment. No single criterion should automatically determine whether a protocol is fully decentralised or whether MiCA applies. The assessment should also take into account the nature and materiality of the risks generated by the relevant activity, as well as the need to ensure a proportionate regulatory treatment.

The assessment should focus primarily on whether an identifiable person or group of persons exercises effective control or influence over the protocol or the service provided. In this respect, the existence of an identifiable intermediary providing a crypto-asset service should be an important criterion, but the analysis should not be limited to formal legal arrangements. It should consider the actual operation of the protocol and the allocation of control rights.

The presence of admin keys or equivalent mechanisms allowing an identifiable person or group to upgrade, pause, modify or otherwise control key functionalities of a protocol should be considered a relevant indicator. Similarly, a significant concentration of governance power may indicate effective control, depending on the actual ability of the relevant persons to influence key functionalities or the provision of the service. In this assessment, the mere existence of a large number of governance token holders should not be sufficient to exclude centralisation, as voting rights may be delegated or exercised through several seemingly unrelated wallets.

The custody or control of user assets by the protocol may also be relevant, although it should be assessed carefully. In some cases, users may retain control over their assets through non-custodial wallets or smart contracts. In other cases, the protocol, its developers, governance participants or another identifiable party may exercise a degree of control that is functionally comparable to custody or intermediation.

Other criteria, such as whether the code is open source or whether the protocol is marketed by an identifiable person or entity, may provide useful indicators but should not be determinative on their own. A protocol may be open source while still being effectively controlled by a small group, and marketing activity does not necessarily imply control over the protocol. However, these factors may contribute to a broader assessment of whether there is an identifiable promoter, operator or responsible party.

The following criteria, in particular, could be considered: governance, effective control, the distribution of necessary to ensure the convergence of national classifications of DeFi protocols at the EU level governance decisions, and financial control over the protocol, including the presence of a person / party perceiving revenue from a DeFi protocol operating, such as in the form of interest or dividends.

It would be necessary to ensure the convergence of national classifications of DeFi protocols at the EU level.

Finally, the French authorities would also welcome the Commission's clarification on recital 22 of MiCA regarding the treatment of activities that are partly performed in a decentralised manner (including those which are currently performed in such a way). For instance, what are the implications of a CASP that provides services based on a DeFi protocol? Should it be regulated under MiCA? And conversely, what is the role of the DeFi protocol / smart contract with regards to the custody of the crypto-assets deposited therein?

62

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

☒ Yes

☐ No

62.1

**Please specify how should MiCA account for risks from fully decentralised DeFi applications. For the purpose of this question, certification of a DeFi application should be understood as verifying that it robustly mitigates against smart contract vulnerabilities, operational risk in general and functions in accordance with its publicised performance:**

|                                                                                                                                                                             | 1 | 2 | 3 | 4 | 5 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|---|---|
| CASPs should be able to connect their clients to any decentralised DeFi application, subject to giving appropriate warnings and disclosures on risks                        | 1 | 2 | 3 | 4 | 5 |
| CASPs should be liable for certain types of incidents when they have provided access to the relevant DeFi application and clients have been affected                        | 1 | 2 | 3 | 4 | 5 |
| CASPs should only facilitate connection of their clients to decentralised DeFi applications that are certified and service global (permissionless) liquidity                | 1 | 2 | 3 | 4 | 5 |
| CASPs should only facilitate connection of their clients to decentralised DeFi applications that are certified and service only verified liquidity (verified pools)         | 1 | 2 | 3 | 4 | 5 |
| CASPs should only facilitate connection of their clients to decentralised DeFi applications that service global liquidity                                                   | 1 | 2 | 3 | 4 | 5 |
| CASPs should be required to discontinue or discourage connecting clients to DeFi protocols that are strongly associated with illicit activity based on blockchain analytics | 1 | 2 | 3 | 4 | 5 |
| CASPs should not facilitate connection to decentralised DeFi applications                                                                                                   | 1 | 2 | 3 | 4 | 5 |
| Public bodies should be required, or private organisations incentivised to publish whitelists or blacklists of DeFi protocols based on their risk profile                   | 1 | 2 | 3 | 4 | 5 |
| Other                                                                                                                                                                       | 1 | 2 | 3 | 4 | 5 |

Scale: 1 = strongly disagree; 2 = rather disagree; 3 = neutral; 4 = rather agree; 5 = strongly agree

Please explain your answers to question 62.1, including your reasoning and any suggestions for improvement, recalibration, or alternative approaches:

The CASP must exercise due diligence when selecting the DeFi entities that provide it with services: see a more detailed answer in section 62.1.

Overall, the French authorities consider that CASPs may facilitate access to genuinely decentralised applications, provided that client protection goes beyond warnings. A proportionate, risk-based framework should rest on three pillars: CASP due diligence and ongoing monitoring; prior certification of protocols and smart contracts; and CASP liability. These requirements should apply fully to significant CASPs.

Before granting access, CASPs should assess whether the protocol is genuinely decentralised and not designed to circumvent regulation. Due diligence should cover, at a minimum, smart contract vulnerabilities, audits and past incidents, governance, operational resilience, liquidity and oracle risks, bridges and other interoperability mechanisms, and exposure to illicit activity based on blockchain analytics. CASPs should also assess whether clients understand the service and its risks, manage conflicts of interest, and comply with ESMA's statement on unregulated services. Clients should receive clear information on the protocol's unregulated nature, functioning, fees and risks, including through a pop-up acknowledgment before access. CASPs should restrict or discontinue access where risks are unacceptable, notably in cases of material weaknesses or strong links to illicit activity.

MiCA should address risks from fully decentralised DeFi mainly through regulated access points rather than imposing a full CASP licence on protocols over which no identifiable person or group exercises effective control. CASPs that actively facilitate access should nevertheless retain responsibility towards their clients.

MiCA should also support an independent certification framework for DeFi protocols and smart contracts. Certification should verify that vulnerabilities and operational risks are adequately mitigated and that the protocol performs as publicly described. It should complement, not replace, the CASP's own due diligence and monitoring. CASPs should in principle facilitate access only to appropriately certified protocols.

Access should also rely on verified liquidity pools, or equivalent mechanisms, enabling participating counterparties to be adequately identified. Otherwise, each institution would have to verify counterparties individually, potentially making DeFi access impracticable for institutional clients under EU KYC requirements. This approach should remain proportionate and risk-based and should not prevent access to global liquidity where adequate identification, CASP due diligence and ongoing monitoring are ensured.

CASPs should be liable for certain incidents affecting clients where they actively facilitated access, particularly if they failed to perform adequate due diligence, ignored known vulnerabilities, or maintained access despite clear indicators of illicit activity or material operational weaknesses. Responsibility for crypto-assets deposited in a protocol or smart contract requires further clarification from the Commission and the European Supervisory Authorities.

A harmonised EU framework based on due diligence, certification, verified liquidity and ongoing monitoring is preferable to a blanket prohibition. Whitelists and blacklists may support this framework but should not replace CASP responsibilities.

63

### Do you support introducing certification schemes for DeFi protocols and smart contracts?

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

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

Yes, for the DeFi protocols and smart contracts providing some of the crypto-asset services defined under MiCA, in a proportionate manner: certification must not become a barrier to entry, nor duplicate the due diligence performed by regulated institutions.

Where access to a DeFi protocol is intermediated (e.g.: via a CASP), the intermediary should be authorised / licensed accordingly under existing regulation (e.g.: MiCA in the case of a CASP).

For DeFi which is disintermediated (i.e.: where users directly access the protocol themselves), having a broad scope of certification would allow to capture all crypto-asset services. However, consideration should be given around proportionality, including around which protocols certification should apply to (e.g.: only critical / material protocols), and who should bear the burden of undertaking the certification. For a fuller analysis of aspects to consider, the ACPR-AMF working group on smart contract certification has published a report detailing principles and criteria that should be considered:

Certification should not be understood as a substitute for authorisation where an identifiable person or group exercises effective control over a protocol or provides a crypto-asset service. In such cases, the activity should be assessed under the relevant regulatory framework, consistently with the criteria used to assess the degree of decentralisation addressed in response to Question 61.

However, for genuinely decentralised protocols where no accountable operator can be clearly identified, certification may provide a practical tool to improve resilience, transparency and user protection. The certification process should aim to verify, at a minimum, that the protocol or smart contract robustly mitigates smart contract vulnerabilities and operational risks, and functions in accordance with its publicised performance. Certification should primarily be assessed at the level of the protocol providing the service, while ensuring that the underlying smart contracts meet appropriate security requirements.

The ACPR, together with the AMF and a working group, composed of representatives from the crypto-assets sector, technical experts, and relevant authorities, have looked into this issue of smart contract certification and their conclusions can be found on their website (The ACPR and the AMF publish the findings from the Working Group on Smart Contract Certification, and launch a Public Consultation | Autorité de contrôle prudentiel et de résolution and The ACPR and AMF publish the summary of responses to the consultation conducted by the Working Group on Smart Contract Certification | Autorité de contrôle prudentiel et de résolution)

Consultation report: <https://www.amf-france.org/en/news-publications/news/acpr-and-amf-publish-findings-working-group-smart-contract-certification-and-launch-public>

Summary of responses: <https://www.amf-france.org/en/news-publications/publications/reports-research-and-analysis/summary-responses-public-consultation-acpr-amf-working-group-smart-contract-certification-proposal>

64

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

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

Scale: 1 = strongly disagree; 2 = rather disagree; 3 = neutral; 4 = rather agree; 5 = strongly agree

Please explain your answers to question 64:

Instead of a full CASP licence, DeFi protocols that are not fully decentralised should be required to obtain a certification before or soon after making the protocol available to the public: 1 - Allowing an exemption from the CASP status on the grounds that certain governance elements are decentralized would effectively hollow out the CASP framework. Inevitably, CASPs would alter their governance structures to qualify for this status. DeFi status must remain the exception, not the rule. The boundary between a CASP and a DeFi entity must remain strictly and restrictively defined.

To obtain their certificate, DeFi protocols that are not fully decentralised should be required to integrate specific compliance tools in the design of their protocols: 1 - This option should not be up for consideration - Where a protocol / activity is not fully decentralised, then it should fall in the scope of MiCA.

With respect to non-custodial wallets, a mandatory certification requirement for all developers offering the possibility to create and use such wallets would not be proportionate at this stage. Non-custodial wallets are technical tools that may be used for a wide range of purposes, and a broad mandatory certification regime could be difficult to enforce effectively. Attention should focus not only on the certification of wallets as such, but also on the conditions under which regulated actors may interact with them, especially where wallets provide direct access to DeFi services or regulated crypto-asset activities.

However, developers of non-custodial wallets should be incentivised to obtain certification, especially where wallets provide advanced functionalities, facilitate interaction with DeFi protocols, embed access to crypto-asset services, or are distributed to retail users. Certification could help improve transparency, security and operational resilience, while supporting users and regulated intermediaries in identifying tools that meet minimum standards.

Proportionality should guide the design of any incentive: certification of wallets must remain a lightweight, code-based process (see Question 65).

65

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

|                                                                                                                                                                                                                | 1 | 2 | 3 | 4 | 5 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|---|---|
| Certificates should be issued by qualified private sector entities                                                                                                                                             | 1 | 2 | 3 | 4 | 5 |
| Certificates should be issued by qualified public sector entities                                                                                                                                              | 1 | 2 | 3 | 4 | 5 |
| Any interested party (e.g. persons providing connectivity to or participating in governance of DeFi protocols) should have the possibility to ask for the certification of a fully decentralised DeFi protocol | 1 | 2 | 3 | 4 | 5 |
| Only fully decentralised DeFi protocols that reach a certain significance (e.g. based on total value locked) should be required to obtain a certificate                                                        | 1 | 2 | 3 | 4 | 5 |
| CASPs should not be allowed to connect clients with DeFi protocols that are not certified                                                                                                                      | 1 | 2 | 3 | 4 | 5 |

Scale: 1 = strongly disagree; 2 = rather disagree; 3 = neutral; 4 = rather agree; 5 = strongly agree

Please explain your answers to question 65:

Proportionality is the key. Certification should start with the private sector and with self-certification against public standards, public authorities setting the standards and supervising the certifiers rather than issuing certificates themselves. Certification should be granted at the level of the code base (a certified address would be valid for all addresses sharing the same code), be valid for three years, like the security visas issued by ANSSI, and be recorded on-chain. Only fully decentralised protocols that reach a certain significance (for instance in terms of total value locked) should be required to obtain a certificate. CASPs should not be prevented from connecting clients to non-certified protocols, subject to their own due diligence and to enhanced disclosure.

Conversely, it seems unwise to entrust public authorities alone with the direct technical certification of protocols, as this would impose an excessive burden on them.

Any interested party, such as persons providing connectivity to a protocol, CASPs interacting with the protocol, governance participants or other relevant stakeholders, should be able to request the certification of a fully decentralised DeFi protocol. This is particularly important because, by definition, a genuinely decentralised protocol may not have an identifiable operator able or willing to initiate the certification process.

Any interested party (e.g. persons providing connectivity to or participating in governance of DeFi protocols) should have the possibility to ask for the certification of a fully decentralised DeFi protocol: 5 - Agree in principle on the basis of proportionality, however, as indicated through the work of the ACPR-AMF working group on smart contract certification, different criteria (not just size / TVL) should be taken into account, such as factors that indicate the level of activity on the protocol. Thus, different factors may also be suited to different types of activities.

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

66

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

☐ Yes

☒ No

What specific requirements should be applied to staking service providers?

No. The current approach, whereby staking services are not separately regulated, does not appear fully adequate in light of the risks associated with staking arrangements offered or facilitated by regulated intermediaries.

Staking services may take different forms, ranging from technical participation in proof-of-stake consensus mechanisms to commercial arrangements offered to clients as yield-generating services. Where staking is offered or facilitated by a CASP or another regulated intermediary, users may be exposed to risks that are not sufficiently addressed by the current framework, including risks of loss, slashing events, validator underperformance or failure, lock-up periods, lack of transparency on the source and conditions of remuneration, uncertainty regarding the treatment and control of client assets, and potential conflicts of interest. Particular attention should also be paid to the risk that staking returns may be perceived by clients as similar to saving or interest-bearing products, despite the absence of equivalent guarantees, deposit protection or prudential safeguards.

Therefore, requirements should apply, in particular regarding transparency towards clients, the nature and source of remuneration, risks of loss, and appropriate safeguards for market participants.

67

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

☒ Yes

☐ No

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

Yes. Without creating a separate authorisation, MiCA should impose specific requirements on CASPs that offer or facilitate lending and borrowing of crypto-assets, proportionate to the volumes involved (for instance by reference to the total value locked).

Crypto-asset lending and borrowing arrangements may expose users to significant risks, in particular risks of loss, lack of transparency on the source and conditions of remuneration, uncertainty regarding the treatment and control of client assets, conflicts of interest, and broader consumer protection, financial integrity and financial stability concerns. Past failures of centralised crypto-lending platforms have illustrated the materiality of these risks, in particular where users were exposed to losses without sufficient transparency or safeguards. These risks may be particularly material where lending and borrowing services are marketed to retail clients as yield-generating products.

Therefore, targeted requirements should apply, in particular regarding transparency towards clients, the nature and source of remuneration, risks of loss, collateral management, rehypothecation practices and appropriate safeguards for market participants.

Regarding staking, ESMA has already stated in a Q&A (ESMA\_QA\_2067) that "In its narrow meaning, staking is the process of immobilising crypto-assets to support the operations of proof-of-stake and proof-of-stake-like blockchain consensus mechanisms in exchange for the granting of validator privileges that can generate block rewards." This narrow definition is useful. For this type of staking, the CASP continues to provide a custody service when crypto-assets are staked, as it retains access to the private keys. ESMA's approach is relevant and could be confirmed in MiCA 2.

These unregulated activities are typically included in the service offerings of CASPs. They benefit from a halo effect due to the regulated activities of CASPs. It may be appropriate to regulate them when they are provided by CASP.

When facilitating access to these services, CASPs should, at a minimum, be subject to transparency obligations towards their clients, in particular with regard to the risks associated with these mechanisms. The responsibilities of CASPs in the event of losses (see the response to Question 62.1) should also be examined.

#### 4.3 Non-fungible tokens

**68**

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

☐ Yes

☒ No

Please explain your answer to question 68:

The NFT market appears to have experienced a significant decline in recent months. Although the trend towards asset tokenization could provide for renewed momentum, establishing a dedicated regulatory framework for NFTs does not appear to be a priority at this stage.

A dedicated regulatory regime for NFT service providers does not appear necessary or proportionate at this stage. The NFT market remains heterogeneous, and genuinely unique and non-fungible NFTs currently appear mainly linked to limited use cases such as art, gaming, digital collectibles or authenticity certificates, out of the scope of financial services. In addition, the current market appears to have limited materiality, and the materialisation of financial risks appears limited at this stage.

The priority should rather be to ensure the correct qualification of tokens presented as NFTs. Where tokens are issued in large series, fractionalised, marketed as investment products, or embed rights comparable to crypto-assets, financial instruments or other regulated products, they should be assessed under the relevant existing framework, including MiCA, MiFID II or other applicable sectoral legislation, as appropriate.

If an extension of the regulatory perimeter were nevertheless considered necessary in the future, it would be preferable to rely on the existing MiCA framework rather than to create a standalone NFT regime. This could be done by reconsidering the exclusion of NFTs from MiCA, so that relevant issuers and intermediaries would be subject, where appropriate, to the existing requirements applicable to issuers of crypto-assets other than EMTs and ARTs and to crypto-asset service providers.

#### 4.4 Prediction markets and perpetual futures

**69**

**Do prediction markets present opportunities or risks for EU consumer and investors?**

☐ Yes

☐ No

**70**

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

☒ By MiFID

☐ By MiCA

71

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

As a general remark, our answers to questions on prediction markets (i) only concern event contracts that qualify as financial instruments under MiFID II and (ii) are without prejudice to national gambling regulations.

Some of the prediction markets, offering event contracts in the scope of MiFID using DLT technology, should be regulated under MiFID, but not under MiCA since the regime should be technology neutral.

72

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

☒ By MiFID

☐ By MiCA

Please explain your answer to question 72:

Yes, by MiFID: perpetual futures are financial instruments (see Question 73).

73

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

Unlike traditional futures contracts, perpetual futures are designed to provide continuous exposure to the underlying asset (crypto) without requiring periodic rollovers. By the way it works, perpetual futures are functionally and economically close to CFDs (e.g., by maintaining margins and allowing large leverage). As reminded by ESMA's Public statement on perpetual futures, perpetual futures are financial instruments within the scope of MiFID II and are likely to fall within the CFD product intervention measures. As such, the existing framework is already covering such products. However, given the development of crypto markets in recent years, the French authorities believe that the current restriction could be adapted.

## 4.5 Tokenised deposits

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 | 2 | 3 | 4 | 5 |
|--------------------------------------------------------------------------------------|---|---|---|---|---|
| Person to person payments                                                            | 1 | 2 | 3 | 4 | 5 |
| Retail POI payments (domestic, day-to-day point of interaction transactions)         | 1 | 2 | 3 | 4 | 5 |
| Intra-EU cross-border payments (non-POI)                                             | 1 | 2 | 3 | 4 | 5 |
| International payments and remittances (third countries)                             | 1 | 2 | 3 | 4 | 5 |
| Settlement of tokenised securities and other financial instruments                   | 1 | 2 | 3 | 4 | 5 |
| Delivery-versus-payment (DvP) and atomic settlement                                  | 1 | 2 | 3 | 4 | 5 |
| Intraday liquidity management (real-time funding and liquidity optimisation)         | 1 | 2 | 3 | 4 | 5 |
| Treasury and liquidity management services for corporates and financial institutions | 1 | 2 | 3 | 4 | 5 |
| Programmable payments and smart-contract-based use cases                             | 1 | 2 | 3 | 4 | 5 |
| On-chain collateral or margining in regulated markets                                | 1 | 2 | 3 | 4 | 5 |
| Improved settlement speed and operational efficiency                                 | 1 | 2 | 3 | 4 | 5 |
| Reduction of counterparty and settlement risk                                        | 1 | 2 | 3 | 4 | 5 |

Scale: 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

Please explain your answers to question 74:

The French authorities fully support the principle of neutrality among private settlement assets and thinks it is crucial to let the market develop use cases. That being said, tokenised deposits could play a particularly important role in the following use cases:

Person-to-person payments and intra-EU cross-border payments (non-POI) (score: 4 - high relevance): similarly to conventional bank transfers, tokenised deposits can support the transfer of commercial bank money on DLT by triggering corresponding debit and credit operations between the sending and receiving banks, while relying on the existing banking infrastructure. They could improve the efficiency, transparency and automation of payment flows, including intra-EU cross-border transfers, while preserving the role of banks within the existing two-tier monetary system.

International payments and remittances (score: 4 - high relevance): initiatives such as the BIS Project Agora illustrate how tokenised deposits could modernise correspondent banking arrangements by streamlining payment chains, reducing frictions and improving cross-border payment efficiency while building on existing banking relationships rather than replacing them.

Settlement of tokenised securities and other financial instruments and delivery-versus-Payment (DvP) and atomic settlement (score: 4 - high relevance): This is expected to be one of the most important use cases for tokenised deposits. Whenever settlement in central bank money is not available or not operationally feasible, tokenised deposits can provide the commercial bank money leg of Delivery-versus-Payment (DvP) transactions on DLT-based market infrastructures. By synchronising the transfer of the tokenised financial instrument and the corresponding cash payment within a single atomic transaction, they enable the settlement of tokenised financial instruments without requiring pre-funding or liquidity immobilisation, while significantly reducing principal and settlement risk and preserving settlement efficiency. More fundamentally, tokenised deposits help preserve the two-tier monetary system by ensuring that commercial bank money continues to fulfil its role alongside central bank money. While settlement in central bank money remains the preferred solution where available, tokenised deposits provide a robust alternative where its use is not possible.

Intraday liquidity management (real-time funding and liquidity optimisation) (score: 5 - Very high relevance): Tokenised deposits enable faster and more flexible liquidity transfers between institutions or entities within the same banking group, improving intraday liquidity management. While the benefits are significant, they remain dependent on the underlying payment infrastructure.

Treasury and liquidity management for corporates and financial institutions (score: 4 - high relevance): tokenised deposits could facilitate the rapid mobilisation and transfer of liquidity between entities of the same banking group or across correspondent banking networks, including cross-border treasury operations.

Programmable payments and smart-contract-based use cases (score: 5 - Very high relevance): Tokenised deposits can be seamlessly integrated into smart contracts to automate conditional payments (e.g. payment-versus-delivery, escrow arrangements, subscription payments). This represents a significant benefit, although the degree of programmability also depends on the DLT infrastructure used.

On-chain collateral or margining in regulated markets (score: 4 - high relevance): Tokenised deposits can serve as the cash settlement asset for margin calls and collateral transfers on tokenised market infrastructures, accelerating these processes and improving liquidity efficiency. However, their adoption will depend on the regulatory framework and market infrastructure acceptance. Improved settlement speed and operational efficiency (score: 4 - high relevance): Tokenised deposits can streamline settlement processes, reduce reconciliation requirements and enhance operational efficiency, particularly where both the payment and asset legs are processed on the same DLT infrastructure.

75

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

- ☐ 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 why the case(s) you selected in your answer to question 75 are the most promising in the EU:**

The settlement of tokenised securities and other financial instruments is likely to represent the most promising use case in the EU. As capital markets increasingly adopt tokenisation, market participants will require an efficient commercial bank money settlement asset where settlement in central bank money is not available, practical or operationally feasible. Tokenised deposits can fulfil this role while allowing banks to continue providing settlement services without requiring systematic pre-funding of liquidity. More broadly, they ensure that commercial bank money remains available in tokenised markets, thereby preserving the two-tier monetary system, which remains a cornerstone of the European monetary framework.

International and cross-border payments also represent a highly promising use case. By leveraging existing correspondent banking relationships in a tokenised environment, tokenised deposits could improve payment speed, transparency and operational efficiency without fundamentally changing the existing allocation of roles within the banking system. This approach is currently being explored through initiatives such as Project Agora, which demonstrates the potential of tokenised deposits to modernise cross-border payments while relying on regulated credit institutions.

Finally, unlocking these use cases requires a clear and harmonised regulatory framework across the EU. Providing legal certainty regarding the prudential treatment of tokenised deposits would facilitate their large-scale deployment by European banks and support the emergence of integrated cross-border solutions.

76

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

The main obstacle is legal and regulatory uncertainty regarding the qualification and prudential treatment of tokenised deposits.

Although MiCA excludes deposits from its scope, the absence of a harmonised definition of deposits across relevant EU legislation creates uncertainty regarding the exact perimeter of this exclusion and may lead to divergent interpretations across Member States. This legal uncertainty could slow down the development of tokenised deposits by European credit institutions and, ultimately, favour the emergence of alternative non-bank or non-European solutions.

In accordance with the principle of technological neutrality, a tokenised deposit that presents the same legal and economic characteristics as a traditional bank deposit should receive the same prudential treatment under the CRR/CRD framework, irrespective of the technology used to represent it. Conversely, such instruments should not be classified as EMTs or crypto-assets solely because they are issued on DLT.

To achieve this objective, a pragmatic approach would consist in developing Level 2 or Level 3 guidance, to facilitate consistency in the regulatory classification of tokenised deposits, and the associated regime across the EU, clarifying:

the criteria for identifying tokenised deposits, including cases where they take the form of "digital twins" of conventional deposits or native DLT deposits with equivalent legal and economic characteristics, and the delineation between tokenised deposits and EMTs issued by credit institutions as both involve a claim of the holder against the credit institution. In line with response to Question 2, the joint ESA standardised classification test could be enriched with practical examples drawn from the experience accumulated by the EBA, ESMA, and national competent authorities, including criteria to identify tokenised deposits;

their prudential treatment under the banking framework;

and, conversely, the regulatory treatment applicable to more complex deposit-related token structures that may legitimately fall under another regulatory category, including EMTs.

Such guidance, inspired by the ESMA guidelines distinguishing financial instruments from crypto-assets, would provide legal certainty for credit institutions, facilitate cross-border deployment across the EU and enable banks to develop tokenised deposit solutions at scale without regulatory uncertainty. Finally, regarding the circulation of deposit tokens between banks, current operational constraints should progressively diminish with the deployment of wholesale tokenised central bank money infrastructures, notably through Pontes, expected to become available by the end of 2026. The availability of tokenised central bank money will significantly facilitate interbank settlement in tokenised environments and remove an important operational barrier to the broader use of tokenised deposits.

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:**

This point has been addressed in responses to questions 74 to 76.

78

**Do tokenised deposits raise any specific issues under the CRD /CRR framework?**

☒ Yes

☐ No

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

The absence of a harmonised definition of deposits at European level creates legal uncertainty and the risk of diverging national interpretation and practices, potentially creating an uneven playing field and hampering the development of tokenized deposits by credit institutions, including cross-border initiatives across the Union. It is therefore necessary to establish a harmonised definition of deposits for the purpose of the CRD in the relevant regulation while complementing it with clear criteria directly in MiCAR for determining whether a token should be classified as an EMT issued by a credit institution or a tokenised deposit. The applicable regulatory framework depends on the qualification of the token, requiring a case-by-case assessment. Regarding the distinction between tokenised deposits and EMTs, the key legal question is whether the funds concerned qualify as repayable funds received from the public. Tokenised deposits are repayable funds from the public and EMTs are not. The main challenge therefore lies in determining whether a tokenisation arrangement meets the conditions for qualification as a deposit. In this respect, this definition effort could be complemented by guidelines setting out criteria and practical examples based on supervisory experience for identifying tokenised deposits, drawing inspiration from ESMA's approach in its guidelines on the conditions and criteria for the qualification of crypto-assets as financial instruments (ESMA75453128700-1323) and in the joint ESA standardised classification test for the regulatory classification of crypto-assets, as discussed in the responses to Questions 2 and 76.

The use of DLT does not alter the fundamental legal characteristics of the deposit and a tokenised deposit should be understood as a traditional bank deposit whose claim against a credit institution is recorded, represented or transferred using distributed ledger technology (DLT). In line with the principle of technological neutrality, tokenisation should not change the regulatory treatment of deposits and, unless its legal and economic features indicate that it is in fact another instrument (eg. an EMT, payment instrument or another crypto-asset), their prudential treatment including liquidity risk should remain aligned with that of conventional deposits.

Although the development of tokenised deposits could offer useful and promising use cases, including for the settlement of tokenised securities and for cross-border payments (see Question 75), the broader use of tokenised deposits for financial market settlement may however increase reliance on more open DLT infrastructures, interoperability arrangements and associated technological dependencies, including smart contracts and third-party technology providers. This may give rise to potential operational, legal and technological risks, including those arising from increasingly open and interconnected arrangements, that should be appropriately monitored and mitigated by credit institutions and subject to supervisory scrutiny under the CRR/CRD and DORA frameworks. Complementary reflections may also be relevant under MiCA with respect to certain DLT-specific features, as discussed in particular in the responses to Questions 86 and 54.

The risks specific to DLT (open networks, smart contracts, reliance on third-party providers) are real. They should be covered by the existing tools: operational risk, the supervisory review and evaluation process under the CRD and the requirements of DORA. A flat-rate and discretionary add-on that would penalise a liability on account of its technology is not the appropriate tool.

79

## Do tokenised deposits raise any questions and challenges from a deposit insurance perspective?

☒ Yes

☐ No

Please indicate which supervisory or regulatory action is appropriate to address the issues identified:

While they remain rare nowadays, tokenized deposit may pose several issues from an insurance deposit perspective:

Issues of definition and level playing field: Since the definition of tokenized deposits has not been harmonized, some frameworks can be considered as deposits in a Member State while they are considered as non-covered assets in other Member States. It may create differences in terms of consumer protection and of level financial means of DGS. Regulatory uncertainty may also slow down the development of tokenised deposits by European credit institutions and ultimately favour the emergence of alternative non-bank or non-European solutions.

Issues of misunderstanding by consumers: As long as tokenized deposits are not clearly defined, it will remain difficult for consumers to distinguish clearly a tokenized deposit on a DLT from other forms of tokens, like EMT or even stablecoins.

Issues of reporting quality: Since tokenized deposits may be inscribed primarily on a DLT, they can be inadequately filled in existing DGS reporting.

Recommendations on the treatment of tokenized deposits (to be established in a level 2 or 3 regulation) could be as follow :

Develop common criteria for the identification and regulatory classification of tokenised deposits, including native DLT deposits and digital representations of deposits recorded on traditional ledgers. Such criteria should clearly distinguish tokenised deposits from EMTs, ARTs and other crypto-assets. A given instrument should not simultaneously qualify as a tokenised deposit excluded from MiCAR but submitted to DGSD and as an EMT or ART subject to MiCAR.

Confirm the application of the principle of technological neutrality to the regulatory and prudential treatment of tokenised deposits. Where a tokenised deposit retains the legal and economic characteristics of a conventional deposit, it should be subject to the same treatment under the CRR/CRD and, where applicable, the DGSD framework, thereby ensuring legal certainty for credit institutions, facilitating the development and cross-border initiatives of tokenised deposits across the Union and, thus ensuring a level playing field. This should be without prejudice to the assessment of additional operational, ICT, cyber, liquidity or third-party risks associated with the underlying technology.

Clarify the circumstances in which a DLT-based arrangement no longer qualifies as a tokenised deposit, including where the token does not represent the depositor's claim against the credit institution, where the funds have been converted into another instrument, or where the contractual and transferability features support a different legal qualification. Particularly in the case of smart contract usage on tokenized deposits.

Adapt prudential and DGS reporting requirements to fully capture tokenised deposits, irrespective of whether the balance is recorded on a conventional ledger, directly on a DLT, or accessed through a digital wallet. Reporting should enable the aggregation of all eligible balances held by the same depositor with the same credit institution and the timely calculation of the covered amount.

## 4.6 Legal treatment of tokens

80

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

☒ Yes

☐ No

80.1

### Which of the following issues are most significant?

|                                                                                                                                          | 1 | 2 | 3 | 4 | 5 |
|------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|---|---|
| Issuing a crypto-asset token in compliance with national law                                                                             | 1 | 2 | 3 | 4 | 5 |
| Issuing a tokenised financial instrument in compliance with national law                                                                 | 1 | 2 | 3 | 4 | 5 |
| Transferring ownership (acquisitions, dispositions, earmarking etc) over a token, including good faith acquisition / bona fide ownership | 1 | 2 | 3 | 4 | 5 |
| Recognising ownership in a token towards third-parties                                                                                   | 1 | 2 | 3 | 4 | 5 |
| Using tokens as collateral                                                                                                               | 1 | 2 | 3 | 4 | 5 |
| Possibility to differentiate between native and non-native tokens in national law                                                        | 1 | 2 | 3 | 4 | 5 |
| Recognising tokens as objects of property                                                                                                | 1 | 2 | 3 | 4 | 5 |
| Rights of token holders in intermediated custody chains                                                                                  | 1 | 2 | 3 | 4 | 5 |
| Enforcement and exercise of rights arising from /over tokens or the underlying assets                                                    | 1 | 2 | 3 | 4 | 5 |
| Custody of tokens                                                                                                                        | 1 | 2 | 3 | 4 | 5 |
| Treatment of tokens in insolvency proceedings including intermediary risk                                                                | 1 | 2 | 3 | 4 | 5 |
| Others                                                                                                                                   | 1 | 2 | 3 | 4 | 5 |

Scale: 1 = none or not significant; 2 = low; 3 = moderate; 4 = high; 5 = very high

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:

Yes, but the uncertainty does not stem from French law, which is complete, but from the disparity between national laws in cross-border situations.

The French authorities agree that MiCA is not intended to regulate the private-law aspects of the issuance, holding and transfer of crypto-assets. Accordingly, France has adopted a comprehensive legal framework addressing these matters, including private law dimension, through Ordinance No. 2024-936 of 15 October 2024 on crypto-asset markets. The Ordinance addresses a number of key issues, including the rules governing the transfer of ownership, the legal effects of holding tokens directly or through an intermediary, the protection afforded to good-faith acquirers, the rights of holders in the event of a custodian's insolvency, and the creation and enforcement of security interests and collateral arrangements over crypto-assets.

Overall, French legislation does not specifically distinguish between native and non-native tokens. However, the Haut Comité Juridique de la Place Financière de Paris (HCJP) addressed this distinction in its Report on the Draft Decrees Relating to the Transfer of Ownership and the Pledging of Crypto-Assets. The decree also supplemented the provisions on the transfer of ownership of crypto-assets set out in article L. 226-2 of the French Monetary and Financial Code (MFC), which had been introduced in 2024 (Ordonnance n° 2024-936 referred to above). These provisions differ from those applicable to financial instruments, including tokenised financial instruments, whose transfer is governed by articles L. 211-17 to L. 211-19 of the MFC. Notably, article L. 211-17 had already been amended in 2017 (by Ordonnance n°2017-1674) to recognize transfers through distributed ledger technology.

80.2

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

|                                                                                                                                          | 1 | 2 | 3 | 4 | 5 |
|------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|---|---|
| Issuing a crypto-asset token in compliance with national law                                                                             | 1 | 2 | 3 | 4 | 5 |
| Issuing a tokenised financial instrument in compliance with national law                                                                 | 1 | 2 | 3 | 4 | 5 |
| Transferring ownership (acquisitions, dispositions, earmarking etc) over a token, including good faith acquisition / bona fide ownership | 1 | 2 | 3 | 4 | 5 |
| Recognising ownership in a token towards third-parties                                                                                   | 1 | 2 | 3 | 4 | 5 |
| Using tokens as collateral                                                                                                               | 1 | 2 | 3 | 4 | 5 |
| Possibility to differentiate between native and non-native tokens in national law                                                        | 1 | 2 | 3 | 4 | 5 |
| Recognising tokens as objects of property                                                                                                | 1 | 2 | 3 | 4 | 5 |
| Rights of token holders in intermediated custody chains                                                                                  | 1 | 2 | 3 | 4 | 5 |
| Enforcement and exercise of rights arising from /over tokens or the underlying assets                                                    | 1 | 2 | 3 | 4 | 5 |
| Custody of tokens                                                                                                                        | 1 | 2 | 3 | 4 | 5 |
| Treatment of tokens in insolvency proceedings including intermediary risk                                                                | 1 | 2 | 3 | 4 | 5 |
| Others                                                                                                                                   | 1 | 2 | 3 | 4 | 5 |

Scale: 1 = none or not urgent; 2 = low urgency; 3 = moderate urgency; 4 = high urgency; 5 = immediate / critical

81

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

☒ Yes

☐ No

81.1

**What are the 3 most important elements that should be addressed in EU law ? Please explain your answer and provide examples:**

Most important element number 1:

(1) a conflict-of-law rule for the proprietary aspects of tokens (see Question 84).

Most important element number 2:

(2) a minimum set of legal effects attached to the recording of a token on a DLT register (entitlement, transfer, enforceability against third parties, security interests, insolvency) without harmonising national concepts of property.

Most important element number 3:

(3) for non-native tokens, the 'representative effect' of tokenisation vis-à-vis the underlying asset, i.e. the extent to which demonstrating ownership of a token amounts to demonstrating ownership of the underlying asset.

These three elements encompass the points identified by the AMF, namely: - the confirmation of the legal characterisation of a crypto-asset as an intangible good; - the definition of what amounts to ownership, possession or control in relation to a crypto-asset; - the "representative effect" of the tokenisation vis à vis an underlying asset (i.e. to which extent demonstration of ownership a crypto-asset can amount to a demonstration of the ownership of an underlying asset).

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 | 2 | 3 | 4 | 5 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|---|---|
| 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) | 1 | 2 | 3 | 4 | 5 |
| Full harmonisation of private law treatment of tokens in Member States                                                                                                                                           | 1 | 2 | 3 | 4 | 5 |
| Partial harmonisation of private law treatment of tokens in Member States                                                                                                                                        | 1 | 2 | 3 | 4 | 5 |
| Introducing a conflict of law regime for tokens under EU law                                                                                                                                                     | 1 | 2 | 3 | 4 | 5 |
| Other model                                                                                                                                                                                                      | 1 | 2 | 3 | 4 | 5 |

Scale: 1 = strongly disagree; 2 = rather disagree; 3 = neutral; 4 = rather agree; 5 = strongly agree

Please specify to what other measure(s) you refer in your answer to question 81.2:

That perimeter comprises a conflict-of-law rule and a minimum set of legal effects attached to the recording on a DLT register (entitlement, transfer, enforceability, security interests, insolvency), without necessarily harmonising national concepts of property.

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:

Yes. The French authorities recommend strengthening the legal certainty of tokens through EU law within a narrow perimeter. That perimeter comprises a conflict-of-law rule and a minimum set of legal effects attached to the recording on a DLT register (entitlement, transfer, enforceability, security interests, insolvency), without necessarily harmonising national concepts of property. The conflict-of-law rule would designate, as a matter of principle, the law of the register (see Question 84.2). Failing such a minimum set of effects, harmonisation should at least cover the moment at which proprietary effects occur, i.e. the point in time at which the transfer of a token becomes effective between the parties and against third parties.

82

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

- ☐ MODEL 1: The token is the asset by law, the law recognises a ledger-based asset and the ownership rights are constituted directly by the ledger entry.
- ☐ MODEL 2: The token is the asset by law, where the law recognises that e.g. securities (dematerialised or physical) can be replaced by an entry into a DLT register and by this “replacing” (immobilisation) of the securities the function of the initial security is substituted by entry into a DLT register and the ownership rights are constituted by the representation on the ledger.
- ☒ 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. (Inspired by Lichtenstein Law. Art 2 TVTG defines token as a piece of information on a TT System which can represent claims or rights of memberships against a person, rights to property, or other absolute or relative rights. Art 5 TVTG states that the TT Key holder has the power of disposal over the Token. It is further assumed that the person possessing the power of disposal over a Token also has the right to dispose of the Token. For every previous holder of the power of disposal, it is presumed that he was the person possessing the right of disposal at the time of this ownership).**
- ☐ **MODEL 5: Any other legal ownership structures, for example based on the approaches taken by different countries, including France, Germany, Luxembourg or adopted in other jurisdictions or internationally, that could be implemented in EU law.**

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 3 - 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?

Functional rules on the effects of recording are preferable to constitutive rules of ownership, because they interoperate with national property laws without replacing them.

MODEL 3 - 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?

- ☐ Constitutive rules of ownership based on the asset being recorded on chain
- ☒ **Functional rules regulating the effects of recording an asset on chain**

MODEL 3 - c) Are the different ownership models better suited for native or non-native tokens?

- ☒ **For native**
- ☐ For non-native tokens

MODEL 3 - d) Can the same ownership model be implemented for all types of tokens (crypto-assets and DLT financial instruments)?

- ☐ Yes
- ☒ **No**

MODEL 3 - d) What would need to be different depending on the type of the token?

The same model cannot be applied to all tokens: DLT financial instruments already benefit from a constitutive framework at national level, whereas crypto-assets require the recognition of the token itself as an object of property.

Please explain your answers for MODEL 3 and provide examples:

Models 2, 3 and 4 are each relevant depending on the nature of the token, which is why three models are indicated: Model 3 (functional approach) for native tokens, Model 4 (token as carrier of rights) for non-native tokens, and Model 2 for tokenised securities replacing dematerialised securities, which corresponds to the French approach (Article L. 211-17 of the Monetary and Financial Code). Functional rules on the effects of recording are preferable to constitutive rules of ownership, because they interoperate with national property laws without replacing them. The same model cannot be applied to all tokens: DLT financial instruments already benefit from a constitutive framework at national level, whereas crypto-assets require the recognition of the token itself as an object of property.

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.

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?

Functional rules on the effects of recording are preferable to constitutive rules of ownership, because they interoperate with national property laws without replacing them.

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?

☐ Constitutive rules of ownership based on the asset being recorded on chain

☒ **Functional rules regulating the effects of recording an asset on chain**

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

☐ For native

☒ **For non-native tokens**

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

☐ Yes

☒ **No**

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

The same model cannot be applied to all tokens: DLT financial instruments already benefit from a constitutive framework at national level, whereas crypto-assets require the recognition of the token itself as an object of property.

Please explain your answers for MODEL 4 and provide examples:

Models 2, 3 and 4 are each relevant depending on the nature of the token, which is why three models are indicated: Model 3 (functional approach) for native tokens, Model 4 (token as carrier of rights) for non-native tokens, and Model 2 for tokenised securities replacing dematerialised securities, which corresponds to the French approach (Article L. 211-17 of the Monetary and Financial Code). Functional rules on the effects of recording are preferable to constitutive rules of ownership, because they interoperate with national property laws without replacing them. The same model cannot be applied to all tokens: DLT financial instruments already benefit from a constitutive framework at national level, whereas crypto-assets require the recognition of the token itself as an object of property.

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 French authorities have not assessed this issue from a comparative perspective.

## 4.7 Questions on conflicts of law

84

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

☒ **Yes**

☐ No

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?**

The current conflict of law rules, are, in our reading, insufficient in relation to the conditions and proprietary effects of crypto-assets.

The current conflict of law framework was primarily developed for traditional assets and intermediated holding systems. In the field of securities, the EU has already adopted specific conflict-of-law rules, notably Article 9 of Directive 2002/47/EC on financial collateral arrangements and the rules contained in Directive 98/26/EC on settlement finality, which rely on identifiable connecting factors linked to accounts, intermediaries or settlement systems. These rules provide legal certainty regarding ownership, transfers and third-party effects of financial instruments.

By contrast, tokens recorded on distributed ledgers may circulate without a central register, securities account, central securities depository or other identifiable intermediary. As a result, the existing framework does not always provide sufficient legal certainty regarding ownership, transfers and enforceability of rights in cross-border situations, as there may be no clear territorial connecting factor comparable to those used for traditional securities.

While conflict-of-law rules traditionally fall within the domain of private international law, the increasing cross-border use of tokenised assets raises new questions that are not fully addressed by existing connecting factors. Consideration could therefore be given to the introduction of a specific conflict-of-law rule for tokenised assets, or to the identification of harmonized connecting factors at EU level, in order to enhance legal certainty and support market integration across the Union.

84.2

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

|                                                                                                                                                                                                                                                                            | 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                                                                                                                                                                 | 1 | 2 | 3 | 4 | 5 |
| The law of the state specified in the rules or in the principles of the system on which the token is recorded                                                                                                                                                              | 1 | 2 | 3 | 4 | 5 |
| The law of the state in which the legal entity operating the DLT-based system on which tokens are recorded                                                                                                                                                                 | 1 | 2 | 3 | 4 | 5 |
| In relation to a token for which there is an issuer, the law of the state where the issuer is established                                                                                                                                                                  | 1 | 2 | 3 | 4 | 5 |
| In relation to tokens for which there is an issuer, the law of the state under whose supervision the issuer operates                                                                                                                                                       | 1 | 2 | 3 | 4 | 5 |
| 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                                                                                              | 1 | 2 | 3 | 4 | 5 |
| Where a token shall be registered, the law of the state under whose supervision the register is maintained                                                                                                                                                                 | 1 | 2 | 3 | 4 | 5 |
| 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                                               | 1 | 2 | 3 | 4 | 5 |
| 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 | 1 | 2 | 3 | 4 | 5 |
| Any other?                                                                                                                                                                                                                                                                 | 1 | 2 | 3 | 4 | 5 |

at most 5 answered row(s)

Please specify to what other factor(s) you refer in your answer to question 84.2:

The law of the State of establishment of the custodian that maintains the holder's position.

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:

Yes. A European conflict-of-law rule specific to the proprietary aspects of tokens is necessary. Its scope must be limited to entitlement, transfer, security interests, enforceability against third parties and the effects of insolvency, without extending to contractual or regulatory aspects. It must cover crypto-assets and DLT financial instruments where the Financial Collateral Directive and the Settlement Finality Directive do not apply, and be articulated with them so as to avoid two competing rules for the same collateral. It does not modify Article 49 of CSDR, which continues to designate the law under which securities are constituted.

Ranking: 1 - the law of the State of establishment of the custodian that maintains the holder's position (any other); 2 - the law of the State under whose supervision the register is maintained; 3 - the law expressly specified in the token; 4 - the law of the State where the issuer is established; 5 - the law specified in the rules of the system on which the token is recorded. The custodian criterion should come first because it is the one that market participants can identify with certainty and it aligns with the connecting factors of the Financial Collateral and Settlement Finality Directives. Where there is no custodian, the supervised register provides the next most reliable anchor. A designation in the token or in the rules of the system should only be a subsidiary criterion, given the risk of forum shopping by issuers. The scope of the rule should be limited to proprietary aspects (see Question 84).

85

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

No.

#### 4.8 Final open 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:**

##### DLT RESILIENCE

There are currently more than 200 blockchains on which stablecoins are circulating. However, not all blockchains offer the same level of security and resilience. A blockchain may be vulnerable, notably due to weaknesses in its consensus mechanism or cryptography, particularly in the emerging context of quantum computing. To foster the development of a trusted tokenised financial ecosystem, it is therefore warranted to introduce the concept of blockchain infrastructure resilience into MiCA.

The French authorities do not consider that each issuer should necessarily be required to conduct a dedicated audit of the underlying blockchain. Where an audit of the DLT infrastructure is deemed necessary, common audits, independent technical reviews or certification mechanisms conducted at the level of the relevant infrastructure could be relied upon by multiple issuers using that infrastructure, provided that they remain relevant to the issuer's specific deployment model and risk profile. Such audits should be proportionate to the criticality of the infrastructure and should not necessarily be repeated for each new issuance of a token on an infrastructure that has already been assessed.

- MiCA should include a specific provision stating that CASPs shall not provide crypto-asset services in relation to crypto-assets that do not comply with MiCA, including unauthorised stablecoins (ARTs and EMTs) and crypto-assets issued by third-country entities. This would codify the broad interpretation of the notion of 'offer to the public' on which the Commission and ESMA currently rely.

- In addition, ESMA's requirements provided in its supervisory briefing on CASP's authorisation (ESMA75-453128700-1263) should be incorporated in a MiCA technical standard, especially regarding substance, organisation and governance requirements.
- MiCA should also be amended to remove the limitations relating to the scope of the assessment of CASP candidates' good repute. Article 62(3)(a) of MiCA should especially be amended to include assessment of absence of penalties in areas other than the ones mentioned in the Article so that supervisors may carry out a comprehensive assessment of applicants, and of their ability to comply with MiCA.
- MiCA imposes a ban on inducements for advice on crypto-assets and crypto-assets portfolio management. For other services, contrary to MiFID 2 however, it doesn't require CASP to demonstrate that any inducement received or paid enhances the quality of the services provided. This requirement should be added in MiCA.
- Provisions linked to settlement cycles and post trades issues in relation to crypto-assets are lacking in MiCA. In particular, no provision governs the settlement of crypto-assets and accepted delivery delays.

The review of MiCA should also be the opportunity to clarify the rules' articulation when a CASP provides services on both crypto-assets and other regulated products, such as financial instruments regulated by other regulatory texts, to avoid misperceptions from clients in terms of protection.

MiCA should be revised in order to amend the time limits for national authorities to assess the completeness of CASP authorisation applications, as these time limits are difficult to meet and put NCA under pressure to review the authorisations' files.

Financial entities that are already regulated are subject to a notification regime in MiCA which amounts to a mere 'completeness' check, which seems only partially appropriate. As an example, it does make sense not to review certain aspects of a notification such as governance, the handling of complaints or prudential requirements for a regulated firm; but it is less logical to allow them to provide crypto custody services without carrying out the same checks as under a CASP authorisation (including but not limited to cyber checks), when objectively these activities have little to do with the safekeeping and administration of financial instruments.

- Finally, irrespective of the outcome of the negotiations on the European Commission's MISP proposal published on December 5th, the French authorities consider that the criteria for determining significant CASPs under MiCA should be revised to capture a broader range of market participants. The French authorities suggest to reintroduce new criteria able to capture a sufficient number of operators, in order to avoid the situation where only one or two CASPs would come under European supervision by ESMA. While the current active users threshold set out in MiCA should be significantly decreased, a limited number of other criteria could be explored, such as: the value of crypto-assets held in custody, the complexity of the group structure, the CASP role in the ecosystem (esp. the role of platform), risky business models, outsourcing of key functions and supervisory history. New reporting measures will be needed in order to determine whether a CASP is significant or not.