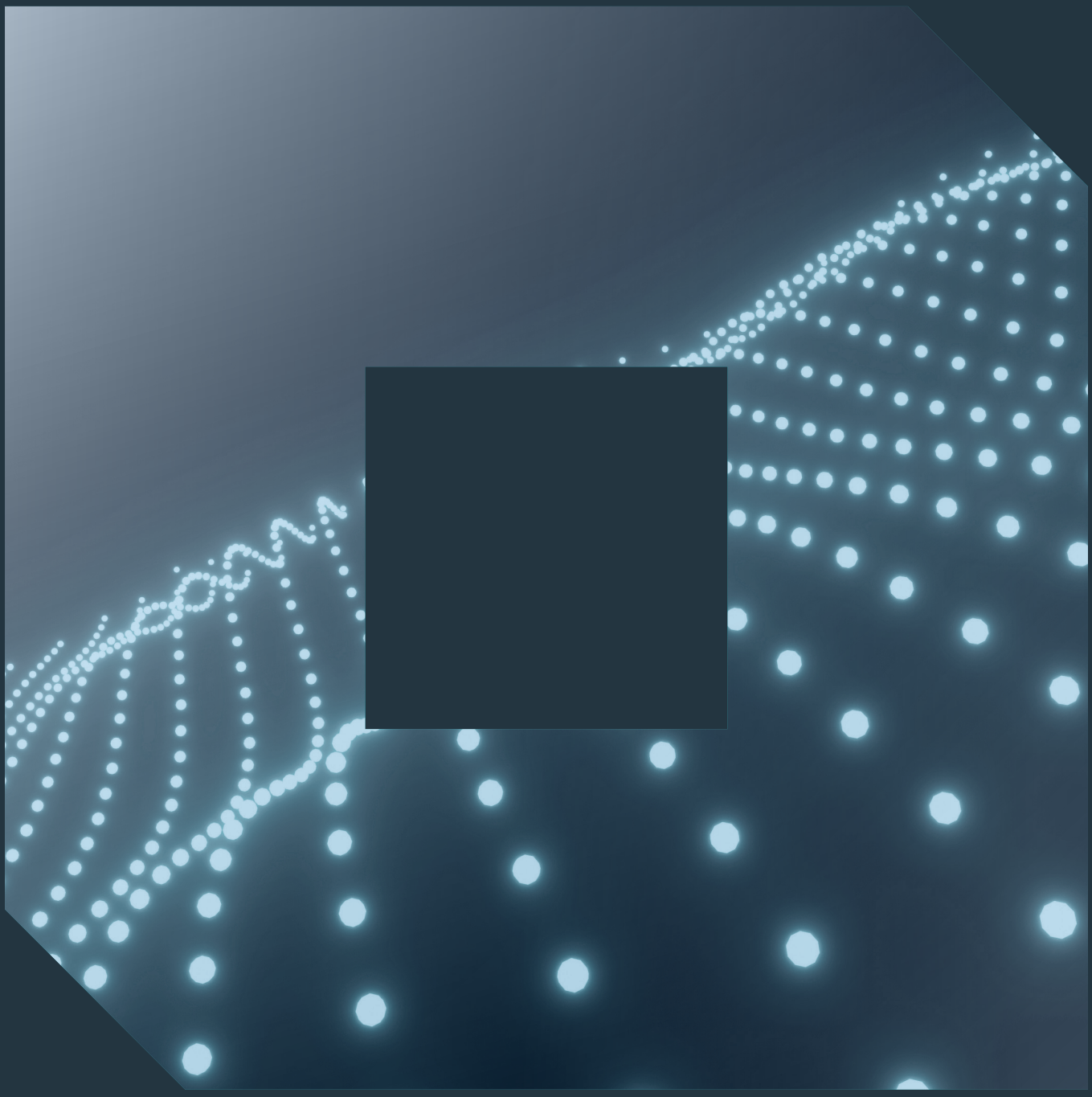
Blockchain for Europe

2025

Markets in Crypto Assets [MiCA] Regulation

A Status Report



Structure of the report

A Executive Summary

The overarching objective of the Markets in Crypto Assets (MiCA) is to create a European market for crypto assets, through the design and implementation of a single regulatory framework directly applicable across all 27 EU Member States. The choice of creating a regulation - rather than a directive - was deliberate: it represented an effort to harmonise the fragmented rules and consequently attract innovative businesses to Europe through a passporting regime that would simultaneously protect the single market's consumers, alongside its stability and integrity.

The context in which MiCA was first conceived (2020) and subsequently adopted (2023) matters. As with other regulatory initiatives, the European Union was the first jurisdiction to recognise the relationship between having a standalone framework for crypto assets-based financial services and the underlying technology's maturity and wide scale adoption. As such, it was ahead of the curve globally and sent a strong signal that Europe understood the market's potential.

However, the conditions facing the industry today are starkly different from those in which MiCA was conceived. To start with, the sector has matured significantly, in terms of its product offering, its investor and client base and the talent it has attracted. Furthermore, jurisdictions around the world have moved to introduce their own frameworks, which have managed to attract inward investment based on their flexibility, clarity and openness.

In retrospect, specific policy decisions informing MiCA's design could be characterised as either premature (e.g. reflecting an incomplete understanding of business models) or narrowly focused (e.g. neglecting the need to codify equivalence or reciprocity clauses). These shortcomings are understandable: the pace of technological change, the market's evolving dynamics and a changing geopolitical landscape have accelerated some of the trends based on which its rules initially drew inspiration. The principles of competitiveness, harmonisation and strategic autonomy continue to drive the European agenda. But at times, these different priorities have come into conflict with one another. This is compounded by the challenges of inconsistent interpretation and differing bandwidth, levels of sophistication and regulatory culture among national competent authorities in each member state.

At the same time, the EU's first-mover advantage is narrowing. The U.S. Congress, Singapore's MAS, Hong Kong's SFC and the UK HMT/FCA have all released or are finalising comprehensive market structure frameworks. These increasingly include reciprocity, equivalence or cross-border licensing pathways absent in MiCA.

Without addressing these gaps, Europe risks regulatory isolation, which undermines the objectives of competitiveness and openness that MiCA was designed to achieve.

There are valuable learnings from MiCA's early implementation that should be considered against this backdrop. This report is intended to be a stock take of the current state of MiCA, as part of an effort to ensure its requirements stay true to its underlying objectives and to support Europe in leading the next wave of decentralised digital infrastructure.

B Introduction

The Markets in Crypto Assets (MiCA) framework has undoubtedly laid the groundwork for the European Union (EU) to lead in the scalable, safe and resilient growth of the crypto assets sector across the single market. It is also a flagship initiative which will continue to inspire regulatory approaches around the world. A year into its implementation, it is important to reflect on its strengths as well as potential areas for improvement. Blockchain for Europe's (BC4EU) membership is well equipped to provide an informed perspective in this regard. Members have direct experience navigating MiCA for licensing purposes and operating internationally across the entirety of services, products and underlying technological infrastructure underpinning the digital assets and distributed ledger technology (DLT) ecosystem.

The report begins by providing some high level and detailed reflections on the observed market dynamics following the regime's early implementation, such as on the alignment between the objectives behind MiCA's Level 1 text and additional L2 and L3 requirements, pointing to areas where the latter may go beyond the former's stated ambitions. Subsequently, it sets out the opportunities and practical limitations associated with core requirements for stablecoin issuers, Crypto Asset Service Providers (CASPs) and the development of white papers. In particular, the report covers in detail how the changing political landscape around the world has prompted proposals to reinterpret how MiCA's rules apply to global stablecoins and the impact this reinterpretation could have on the growth of the European stablecoin market.

Specifically, the report urges the Commission to issue guidance confirming that activities carried out without centralised control or custody fall outside the MiCA perimeter, as part of an effort to provide greater certainty and support a more granular understanding of the DeFi market's specificities.

A clear Commission statement should emphasise that software development and open-source protocol deployment do not trigger MiCA licensing, consistent with IOSCO and FATF's risk-based approach. This clarification would be in line with MiCA's objectives of supporting innovation by promoting regulatory clarity and aligning its approach to that of other competitive jurisdictions.

As the market for digital assets and its underpinning technology evolves from niche to mainstream, the global regulatory landscape will inevitably begin to look like a patchwork of requirements, with each jurisdiction seizing on the political and economic opportunity and potentially neglecting the market's cross-border nature. The era of collaboration towards standard interoperability at times looks fraught with challenges in the current environment. Efforts to promote market liquidity, prevent fragmentation and support financial stability through cooperative frameworks will look increasingly like a thing of the past. Against this backdrop, the EU should maintain its leadership as both a standard setter and an open trading bloc, with its rules underpinned by avenues for closer alignment with leading jurisdictions. For this reason, this report suggests several avenues through which the EU can lead through reciprocity provisions, when this is both in the interest of the market's growth and its stability.

Section I

Reflecting on MiCA's Stated Objectives, Scope and Impact

As mentioned at the outset of this document, MiCA contains a number of laudable provisions that provide a strong foundation for the EU's approach to crypto asset markets. MiCA demonstrates a balanced and technologically neutral framework that offers a coherent and comprehensive ruleset. Its harmonised approach, passporting provisions and potential as a global regulatory blueprint help establish the EU's leadership in the sector. The regulation also strengthens market integrity by introducing a robust reverse solicitation framework, ensuring fair competition through clear requirements for EU presence and authorisation when serving EU clients. Additionally, it raises professionalism and operational standards, delivers greater regulatory clarity and certainty, enhances consumer protection through prudential and operational requirements and fosters a level playing field across market participants.

While there have been calls, most notably from members of the European Parliament and other institutions, such as the ECB for a "MiCA 2.0" based on monetary sovereignty concerns, BC4EU's membership believes it would be premature to consider an anticipated revision of the text. This is not least because the divergent implementation timelines across the EU (which have resulted in a low number of licenses granted in each member state) compound our collective ability to assess the regime's strengths and weaknesses. Further, the current framework has not had adequate time to be tested in practice. Any re-opening in the short term should be limited to introducing more flexibility or cohesion. Priority should be given to addressing outstanding issues through explanatory and convergence guidance, allowing MiCA the necessary time to take effect and for industry participants to adapt. Recommended steps to improve both MiCA's efficiency and address gaps include:

- Convening meetings and workshops between the Commission, the private sector, ESMA and EBA on outstanding issues;
- Publishing Q&As developed in consultation with the private sector; Smart Contract Weakness Classification (SWC) / EIP-1470 for Ethereum smart contracts
- Considering grace periods or non-action measures where immediate compliance poses significant sectoral risk; and,
- Adopting a more flexible, principles-based approach to guidelines, ensuring compliance pathways recognise operational limitations.

BC4EU's membership looks forward to working with the Commission and the authorities to ensure MiCA's ongoing success across the European digital asset ecosystem.

1.1 Requirements for E-Money Tokens (EMTs) & Asset Reference Tokens (ARTs)

1.1.1 Regulating Global Stablecoins

MiCA's approach to EMTs and ARTs reflects the complex political choices involved in designing a framework that simultaneously supports the growth of a global, liquid and frictionless market, while safeguarding European sovereignty objectives. The EU's rules were largely shaped by concerns over Facebook's Libra project and its potential impact on the euro's primacy. Even in the wake of MiCA's codification, this debate has persisted. However, the EU should not see these two-fold objectives as mutually exclusive. Instead, BC4EU's membership believes supporting innovation in Europe is a precondition to the region's continued ability to chart its own path internationally and maintain its competitive edge in digital finance.

In fact, the Commission intended from the outset for MiCA to capture EMTs, often non-euro denominated stablecoins that operate across different jurisdictions and are not limited to a single country or region, otherwise known as "global stablecoins." The Commission's 2020 proposal directly addressed the emergence of global stablecoins and its stated goal has been to bring them within the regulatory perimeter, rather than banning them or leaving them unregulated. MiCA recital 54 underscores that issuers of these global stablecoins - EMTs marketed in both the EU and third countries - must ensure that their reserves are appropriately managed and distributed. Individual delegated acts and technical standards further clarify that EMTs can be issued both in the EU and outside of the EU, even highlighting CASP data reporting obligations supporting this specific operating model[1].

However, the ECB and some members of the European Parliament are now challenging this already established position. At the time of writing, the Commission's public response to a Q&A on the legality of the global stablecoin model is pending and is being further delayed.

1

See for example the EU Commission Implementing Regulation (EU) 2024/2902 that applies to both ARTs and EMTs: "This information shall be shared with the issuer, for the issuer to accurately calculate its aggregated value of their token issued in the EU and related reserve of assets, especially in case the respective token is issued on an international scale outside of the EU as well." (p.39, point 21) [emphasis added].

In our view, the Commission's delayed publication of its response is jeopardising MiCA's overall success in bringing the industry under its perimeter and ensuring strong reserve, redemption and disclosure rights for the most widely used tokens in the world. BC4EU urges the Commission to publish the pending Q&A and reconfirm its intention of bringing global stablecoins within the regulatory perimeter rather than prohibiting them.

While we recognise that there might be concerns regarding potential risks to monetary sovereignty, BC4EU believes, in line with the position reiterated by the Commission, that MiCA's guardrails already address these risks by ensuring strong reserve, redemption and disclosure obligations.

1.1.2 Reciprocity Regime for Global Stablecoins

MiCA currently does not provide a pathway for recognising substantially similar regulatory regimes in non-EU jurisdictions, posing barriers for global issuers and service providers and limiting MiCA's compatibility with other jurisdictions.

The absence of provisions around comparability may lead to duplicative compliance efforts for foreign issuers regulated in jurisdictions with comparable standards. This might discourage non-EU issuers from offering their services within the EU, thereby limiting market competition and consumer choice. The EMT market is inherently cross-border and any risks to cutting the EU off from the non-EU global market should be addressed.

As mandated to consider in its upcoming interim review, the Commission should advocate for introducing a framework within MiCA that allows for the recognition of substantially similar regulatory regimes in place or under development in other major financial jurisdictions, particularly Hong Kong, Singapore, the United Kingdom and the United States. Issuers regulated in these jurisdictions would have a clear pathway to distribute their EMTs and services in the EU and vice-versa. This would foster a more competitive and globally integrated crypto market. It would allow EU consumers to benefit from innovation and competition as well as EU entities to scale globally. Notably, the United States has established a similar reciprocity model. Over the longer term, such a regime could replace the global stablecoin model as the default path for regulatory compliance for issuers operating in multiple jurisdictions.

Any comparability framework should be carefully designed to uphold the highest international standards, including FATF's AML/CFT rules and FSB/IOSCO guidance on cross-border spillovers. This will ensure that comparability cannot be used as a back door for regulatory arbitrage, while still enabling the EU to champion global convergence and fair competition. BC4EU recommends introducing an explicit "comparability and equivalence" clause into MiCA, modelled on GDPR adequacy and EMIR equivalence, empowering the Commission to recognise non-EU frameworks as comparable and aligned. This would reduce duplicative compliance, preserve EU oversight and reinforce the EU's leadership role by incentivising global convergence toward MiCA standards.

1.1.3 Reserve Requirements

MiCA mandates that EMT issuers hold a significant portion of their reserve funds - 30% or 60% - as deposits with EU credit institutions. As has been widely acknowledged, including by the European Banking Authority[2] (EBA), this introduces significant credit and counterparty risk, as well as concerns from a liquidity and contagion effect/interconnectedness perspective. The yet-to-be-finalised MiCA Regulatory Technical Standards (RTS) on high quality liquid asset (HQLA) investments should be adjusted to prioritise the liquidity and risk profile of the reserve, instead of concentration limits (per issuer, per asset manager).

Requiring such a high percentage of reserves to be held in bank deposits introduces additional risk that makes EU EMTs appear as less safe and less liquid in the eyes of global holders and consumers. As a consequence and coupled with the decreased revenue potential (the limitations currently force issuers into lower yielding deposits instead of, for instance, short term government bonds) for EU EMT issuers due to this requirement, it could affect the growth and adoption of EU EMTs. Additionally, the concentration limits per issuer (35% in the case of government bonds) and asset manager could force EMT issuers to diversify into less liquid assets.

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See the EBA Regulatory Technical Standards to further specify the liquidity requirements of the reserve of assets under Article 36(4) of Regulation (EU) 2023/1114 (paragraph 22): "The EBA considers that an amount of bank deposits in the reserve of assets higher than those percentages of the amount of assets referenced in tokens might trigger concerns from the perspective of the liquidity of the reserve assets overall and their exposure to credit risk. The EBA considers that it is key to keep a relevant amount of the reserve of assets as susceptible to be liquidated in the market and not just with specific counterparties. Furthermore, the interconnectedness between the banking system and crypto asset sector should be well controlled to avoid reciprocal contagion effects in case of distress of one of them. Therefore, the EBA considers that the minimum amount of bank deposits in the reserve assets should not be set at a higher default level than those percentages of the amount referenced in each official currency."

BC4EU members recommend removing the minimum requirement for bank deposit holdings in order to reduce counterparty and credit risk, align EMT reserve standards with traditional EMI reserve rules and focus on liquidity and safety requirements. The EBA's consultation paper for its Draft RTS on the calculation and aggregation of crypto exposure values under Article 501(d) of the CRR, sought comment on these very issues, including the reasonable composition of reserve assets. We note that respondents raised concerns that overly narrow liquidity criteria could make reserves less resilient by concentrating them into fewer counterparties or asset types. Simultaneously, HQLA RTS could be amended to prioritise the liquidity and safety of the reserve and asset managers could be treated in a look-through fashion.

Other leading jurisdictions, notably the UK, have already acknowledged that mandating unremunerated bank deposits is commercially unviable. The Bank of England in July 2025 signalled a shift toward diversified high-quality liquid asset (HQLA) reserve models, balancing safety and sustainability. The EU should take account of these international developments to avoid competitive disadvantage and maintain its leadership in stablecoin policy design.

In parallel, we recommend that EMT issuers be granted access to central bank settlement accounts under harmonised conditions. This would reduce counterparty risk, ensure resilience of reserves and align with recent BoE and BIS work on stablecoin reserve models. Such access would also prevent competitive imbalances vis-à-vis banks, which are currently exempt from MiCA's reserve rules.

1.1.4 Significance Regime

BC4EU members' experience navigating MiCA's significance regime for EMTs and ARTs have found it leads to disproportionate requirements relative to the risks posed by these models. Its binary classification could have the unintended effect of creating a cliff-edge effect for issuers and the thresholds to assess significance currently do not reflect systemic risk for financial stability. When compared to other global financial regimes for "systemic risk" in banking or payments (e.g. Basel Committee's G-SIB framework or the ECB's PISA framework), it is evident that it lacks in discretion and fails to capture truly systemic players[3]. Furthermore, these requirements put the EU at odds with other major jurisdictions' approach to significant stablecoins.

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For an in-depth analysis and comparison of MiCA's significance regime for EMTs, see the paper "MICA's significance regime for stable-coins - a sledgehammer to crack a nut?" available on SSRN.

Due to the aforementioned cliff-edge effect through its increased prudential, reserve and governance requirements, MiCA's significance regime inadvertently puts the scalability and viability of its largest EMT issuers at risk. As a result of current requirements, larger issuers could be deterred from seeking MiCA-compliance or relocating once established as the cost of regulation builds up. As such, it could reduce EU oversight over these large EMT issuers instead of increasing it, thereby failing to promote a competitive EU crypto market.

Our members suggest the Commission reconsiders the significance regime for stablecoins, in light of the above observations and the evolving political landscape, which is seeing the growth of stablecoins issued out of other internationally competitive jurisdictions. This could include disentangling its dual purpose from MiCA Article 43 of transferring the supervisory responsibility to the EBA and increasing prudential measures. Any increase in requirements should be risk-based and through a tiered-approach (similar to the GSIB framework), commensurate with the actual risk posed. The thresholds should be entirely recalibrated and increased to align them with actual systemic risks for financial stability and more discretion and flexibility needs to be introduced into the assessment process.

1.1.5 Application of PSD2 on EMT Transfers

As various regulatory and industry debates have consistently demonstrated, the dual classification of EMTs as a crypto asset under MiCA and e-money/funds under the PSD has led to regulatory uncertainty, overlap and fragmentation. For example, it is not clear whether EMT exchanges will be taxed as crypto asset or fiat funds transactions, whether EMT<>Bitcoin exchanges will be treated as crypto<>crypto or crypto<>fiat exchanges and which kinds of EMT transfers would be treated as payments under the PSD.

This dual classification can lead to conflicting and duplicative compliance requirements (e.g. custody, licensing), increased administrative burdens and uncertainty in areas such as taxation and accounting. Additionally, it is uncertain whether Member States will treat these EMT<>PSD related questions in a harmonised manner. The uncertainty, double-licensing and compliance risks could hamper the adoption and growth of EMTs vs. other crypto assets, although EMTs are widely seen as less risky. It could also push more economic activity towards self-custody wallets vs. crypto asset service providers (CASPs).

The EU should clarify, for example through the PSD3/PSR, that MiCA serves as the primary regulatory framework for EMTs and that most EMT-related activities (e.g. trading, brokerage, custody, first-party transfers) should be entirely covered by MiCA, without the need for an additional PSD-license and a duplication of compliance requirements. However, the ongoing regulatory discussions seem directed towards confirming that some EMT transfers will be inevitably captured as 'payment services' and that the entities providing them would thus need the necessary license to do so. In this light, we would urge the EU co-legislators to at least delineate a clear scope of application of PSD rules over EMT transfers, which does not force virtually all of the CASPs that touch EMTs to obtain a second license on top of their MiCA authorisation.

Many smaller entities are already struggling to have enough resources and personnel to go through the tedious process to obtain their CASP license under MiCA's often strict licensing requirements. Forcing them to also obtain a separate PSP authorisation for providing essentially the same MiCA regulated service, would mean effectively pushing them out of the regulated EU market and towards other jurisdictions where they would be able to operate.

1.1.6 Interest Prohibition on EMTs, ARTs and E-Money

MiCA prohibits issuers from granting interest on EMTs and ARTs (Articles 39(2) and 49(4)), extending a similar restriction from traditional e-money regulation. This not only disadvantages token-based solutions compared to conventional financial products but also deprives consumers of yield, which is increasingly expected even in basic digital payment instruments. We encourage authorities to consider allowing limited yield pass-through while preserving token stability. Under this model, EMTs and ARTs would maintain their money-like characteristics by always remaining redeemable at par. Any remuneration to holders would occur outside the token price through separate cash credits, fee rebates or optional stablecoin payouts, ensuring that redemption mechanics, accounting treatment and prudential requirements remain fully intact.

Specifically, issuers should be permitted to pass through income derived exclusively from reserve assets already permitted under EU liquidity and prudential standards, such as cash, central bank deposits or short-dated euro-denominated government bills. To ensure remuneration remains modest and predictable, it should be capped at either the short-term euro risk-free rate (such as overnight or 1-month bills) or the ECB deposit facility rate, net of disclosed reserve-management fees. This structure would exclude yield from lending or maturity transformation activities.

The framework would require opt-in participation with zero remuneration as the default, allowing users to opt out at any time through a simple mechanism. Standardized disclosures would be mandatory, including the remuneration calculation method, effective annual rates with examples, applicable caps and fees and clear confirmation that tokens always redeem at par with yield provided separately.

Further, we also encourage authorities to avoid future expansion of the yield prohibition to capture EMT/ART issuers sharing yield among enterprise partners. This approach would undermine existing business models around issuance and prevent legitimate business-to-business partnerships that encourage the growth and maturation of the EMT/ART industry. Yield sharing between issuers and commercial partners supports payments system development and better positions the EU to remain competitive in digital payments innovation.

Evidence from other markets shows growing demand for safe, yield-bearing digital instruments. The tokenized treasuries sector alone has surpassed US$7 billion in market value, with products like BlackRock's BUIDL reaching ~US$2.6 billion. Unless the EU provides a proportionate pathway for limited yield pass-through, EMTs and ARTs risk falling behind more attractive instruments abroad, undermining MiCA's competitiveness objective.

1.1.7

Other Areas of Potential Improvement

MiCA includes several rules that could inadvertently distort competition by creating structural advantages for traditional financial institutions (especially banks) and constraining newer entrants. These provisions undermine the principle of technology neutrality, limit consumer choice and introduce unnecessary frictions within the digital finance ecosystem. These include:

- Bank-centric reserve management requirements: Non-bank issuers must hold reserve assets through banks due to MiCA's investment and safeguarding rules. This dependence could introduce systemic inter-connectedness, increase contagion risk and provide banks with access to valuable strategic data about issuers. One solution would be to enable direct access to central banks as a competitive and stability-enhancing alternative.
- Exclusion of e-money from redemption mechanisms: MiCA disallows redemption of ARTs and EMTs into e-money, even though e-money is regulated and widely used in digital payments. This artificial barrier reduces consumer choice and interferes with interoperability across digital finance systems.
- Reserve requirement exemption for banks: Credit institutions are exempted from MiCA's reserve assets requirements, even though funds they hold are not necessarily covered by deposit guarantee schemes. This exemption undermines consumer protection principles and creates an uneven playing field, placing non-bank issuers at a regulatory disadvantage.

1.2 White Paper Requirements

Despite the generally light touch requirements set out by MiCA in relation to the creation of white papers, there exist some structural, procedural and substantive challenges that could collectively undermine the rules' intended goals of fostering greater transparency, comparability and consumer protection. A key concern is the lack of harmonisation across different white paper types, which makes them difficult to compare and complicates both regulatory review and RegTech automation. Indicators are often placed in different sections depending on the white paper type, with inconsistent naming and numbering. Substantive requirements also vary without clear justification; for example, protocols for supply-demand adjustments are required for some asset types but not others and basic issuer contact information is inconsistently mandated. Below, we explain some challenges related to the existing submission process, machine readability requirements and replicating and updating content across white papers.

Firstly, our members have found that while voluntary submissions before regulatory deadlines can facilitate early compliance, they have also led to the proliferation of duplicative or conflicting versions - sometimes submitted for publicity purposes without issuer consultation - creating the risk of confusion. ESMA's white paper register compounds this problem through poor accessibility, slow update cycles and a lack of clarity on how duplicate submissions will be handled. Although the register's digitisation is underway, the completion date remains uncertain.

Machine readability requirements further illustrate the tension between compliance formalities and practical utility. The obligation to tag MiCA white papers in XBRL may be outdated in the age of AI, where modern language models can process unstructured text effectively. Mandating rigid machine-readable formats risks limiting issuers' ability to describe complex innovations while still failing to produce truly comparable content. Instead, regulatory focus could shift toward clearer guidance on substantive disclosures to improve comparability. Content requirements themselves are often difficult to replicate across different contexts. Obligations such as providing three years of financial data, disclosing potential conflicts of interest and quantifying environmental impact can be impractical or irrelevant for new or rapidly evolving projects.

A more proportionate approach would differentiate requirements for token issuers versus third-party submitters, particularly in cases where the issuer is anonymous. The overall length and complexity of white papers - often exceeding 30 pages - also undermines their consumer protection function. Concise, accessible summaries or disclaimers may prove more effective for retail audiences.

Updating procedures is another area which could be improved. Although MiCA requires updates for "material changes," the term is undefined and the formal process is unclear - particularly regarding whether the original white paper will be replaced or remain alongside the updated version. Similar ambiguities exist around liability: it is not clear whether issuers have an opportunity to amend non-compliant white papers before penalties are imposed or the extent of trading platforms' liability for documents later found to be incomplete or misleading. Article 15 of MiCA appears to place disproportionate responsibility on trading platforms, which could be reconsidered.

Overall, reforms to white paper structure, content guidance, verification, liability allocation and international access - combined with better register usability - could significantly improve the efficacy of MiCA's white paper regime.

To ensure practical usability, BC4EU proposes requiring a short, standardised retail summary accompanying all white papers, comparable to the PRIIPs KID format. This would enhance comparability, mitigate information overload and help retail users make informed decisions without needing to review extensive disclosures.

1.3 Sustainability Requirements

MiCA's sustainability provisions aim to enhance transparency in digital finance and provide a balanced alternative to outright bans on consensus mechanisms such as Proof of Work. While these objectives are welcome, their practical application can sometimes result in disproportionately high reporting costs for trading platforms and token issuers, particularly where assets have minimal environmental impact. Many of the current requirements are based on metrics that are either insufficiently defined or challenging to apply in practice and certain obligations - such as the need to update data when "materially changed" - would benefit from clear, quantitative thresholds. For example, a 500,000 kWh annual usage threshold could help standardise reporting and reduce unnecessary updates. Additional improvements could include the introduction of industry-wide templates, greater use of API-based data retrieval for newly listed assets and refinements to specific indicators, such as defining the "water recycling ratio" in terms of direct operational activities only.

Some elements could be streamlined to focus resources where they add the most value. Examples include providing flexibility on file format requirements, simplifying or removing indicators that invite subjective or unverifiable statements, reconsidering reduction targets in decentralised networks and deferring Scope 3 emissions reporting until an applicable methodology for decentralised systems is developed. For pre-launch tokens, clearer guidance could help avoid speculative or low-value estimates. Options might include "zero until launch" disclosures or scenario-based reporting with documented assumptions. Finally, a voluntary, tiered disclosure framework could allow issuers to indicate when they follow established methodologies, when they have adapted them and when methods remain proprietary, striking a balance between transparency, methodological flexibility and intellectual property considerations.

1.4 Prudential and Governance Requirements by Firm Size

MiCA sets detailed prudential and governance requirements for issuers of ARTs and crypto-asset service providers (CASPs). These include capital requirements organisational and conflict-of-interest policies, business continuity plans, internal controls, robust IT systems, risk management and operational resilience measures. While such obligations are designed to enhance market integrity and consumer protection, their complexity and cost of compliance may disproportionately burden smaller firms and start-ups.

Therefore, to preserve proportionality, we suggest introducing a tiered regulatory regime, applying lighter prudential and reporting rules for start-ups and SMEs while reserving enhanced obligations for large or systemic CASPs. This would support innovation and market entry.

1.5 RTS/ITS and Guidelines Levels 2 and 3: Areas for Improvement

There are currently 47 Level 2 and 3 legislative acts under MiCA, which add considerably to the complexity of an already comprehensive Level 1 framework. While BC4EU's membership fully recognises the importance of these secondary measures in ensuring effective implementation, the number and scope of provisions may not always be proportionate and, in some instances, extend beyond the legal basis provided by MiCA. Taken together, these requirements risk creating additional operational burdens, compliance costs and legal uncertainty for firms seeking to operate across the single market. This is particularly concerning given that the crypto industry is facing emerging barriers to entry, which may impact competition and innovation in the long run. Against this background, we believe it is important to carefully assess where technical standards and guidelines may inadvertently exceed MiCA's intent. Our members have highlighted several specific areas of concern that emerged during the consultation process. Some examples include:

- The proposed RTS on Conflicts of Interest and Personal Transactions is not grounded in MiCA Level 1 and the scope of Level 2 in this area remains unclear.
- Similarly, the RTS on Remuneration Policy, explicitly provided only in relation to ARTs (Article 45 MiCA), appears to extend further than envisaged by the Level 1 text.
- The Guidelines on Competence and Knowledge also risk conflating advice with the mere provision of information, thereby conferring a quasi-legislative role on ESMA.
- Further challenges arise from the Guidelines on Reporting, where the EBA proposal requires extensive personal and transactional data (including national identification numbers, habitual residence, DLT addresses and daily reporting), despite such obligations going beyond MiCA's express provisions and lacking harmonised transmission standards.
- Finally, the Guidelines on Transfer Services impose requirements such as fixed blockchain confirmation times and strict irreversibility rules that do not reflect the technical realities of distributed ledger technology and therefore merit greater flexibility.

Looking ahead, we very much welcome the Commission's ongoing scrutiny of European Supervisory Authorities' (ESA) Level 2 and 3 acts and encourage more structured engagement with industry to ensure proportionate, workable and effective measures.

To support MiCA's objectives while avoiding unnecessary burdens, we would support stronger monitoring of ESA use of "own-initiative" powers, to ensure these remain proportionate and within the mandate of the Level 1 text.

We would also recommend allowing greater flexibility and discretion to CASPs, who are best positioned to determine how to meet Level 1 requirements in practice. A reassessment of the current proposals, with a view to simplification and proportionality, would in our view strengthen both the effectiveness of MiCA and the single market's attractiveness for digital finance activities.

More broadly, there is an ongoing debate on the balance between Level 1 legislation and delegated authority, reinforcing the case for closer Commission monitoring of the European Supervisory Authorities' use of Level 2 and 3 mandates to prevent scope creep. The Commission should ensure proportionality in line with its Better Regulation principles, so that technical standards and guidelines remain firmly within the legal basis of the Level 1 text and do not impose quasi-legislative obligations beyond MiCA's intent.

⟶ *Please see Annex 1 for additional commentary on specific MiCA provisions*

⟶ *Please see Annex 2 for commentary on specific Level 2 and 3 legislative acts*

Section II Reflecting on MiCA's Stated Objectives, Scope and Impact

2.1 Safeguarding MiCA's Scope Across the EU

Promoting a common approach to MiCA's perimeter across the EU is paramount to the market's safe scalability. Although MiCA stops short of allowing exemptions to the operative provisions, it is clear from its recitals[4], mandates for reports on latest developments in crypto assets[5] and the Commission's request for input to the EBA and ESMA[6] that DeFi (including non-custodial software) is not intended to be within scope of MiCA.

Moreover, MiCA was not designed to regulate DeFi or non-custodial tools. Its focus, like the vast majority of all EU financial services legislation, is on intermediated services, applying a MiFID-like regime to identifiable entities that hold or move customer assets and crypto assets. By contrast, permissionless protocols are autonomoussoftware running on public blockchains and non-custodial tools including wallets and interfaces allow users to interact directly with these systems without relinquishing control of their assets to a financial intermediary.

For this reason, applying MiCA to such arrangements would be technically unworkable and legally uncertain – MiCA remains as unfit to regulate DeFi as MiFID or other existing financial services rules. More importantly, attempting to capture DeFi within MiCA would stifle open-source innovation and create compliance obligations where no meaningful "provider" exists. BC4EU urges the Commission to issue guidance confirming that activities carried out without centralised control or custody fall outside the MiCA perimeter and to encourage consistent interpretation across Member States. Divergent approaches run the risk of fragmenting the single market, hinder the cross-border use of safe, transparent DeFi tools and create competitive disadvantages for the EU.

4 MiCA, Recitals 22 and 83
5 MiCA, Article 142
6 ESMA75-453128700-1391 EBA/Rep/2025/01 - Annex 1

It is clear that supervisors are beginning to scrutinise wallet providers and DeFi front-ends as potential access points for oversight. The Joint EBA-ESMA report under Article 142 has identified access methods such as front-ends, self-custodial and hosted wallets and raised concerns about whether these access points could create regulatory blind spots. Other National Competent Authorities (NCAs), are considering requiring authorisation for crypto custody services (i.e. holding keys for others) or are investigating whether certain wallet-interface arrangements cross regulatory lines.

BC4EU recognises these supervisory concerns but stresses that they should be addressed through interpretive guidance, not legislative expansion, in order to preserve technological neutrality and provide market certainty.

It is also essential to consider the link with the EU's AML package. The revised Transfer of Funds Regulation and forthcoming AML Regulation bring CASPs, including custodial wallet providers, firmly under Travel Rule and CDD obligations. The new Anti-Money Laundering Authority (AMLA) will directly supervise large cross-border CASPs in this regard. To avoid confusion and duplication, BC4EU recommends clear guidance that confirms how non-custodial software and neutral front-ends do not constitute regulated activity under MiCA or the AML package.

2.2 International Alignment and EU Leadership on DeFi

The EU is well positioned to lead the global conversation on how to approach financial services delivered without traditional intermediaries. MiCA demonstrates that the EU can set ambitious, coherent standards that influence international policy discussions. That same ambition should be applied to defining the role of user-directed, non-custodial software and autonomous protocols in the financial system.

This requires looking beyond the normal remit of financial legislation, which has historically focused on intermediaries with custody or discretion over client assets. In DeFi, non-custodial tools and permissionless protocols can operate alongside custodied services, jointly delivering a financial outcome without any single party controlling the process. As in the broader digital ecosystem, certain layers of this new market infrastructure may remain outside formal regulation yet still play an essential role in the provision of financial services.

The Commission should champion a functional, risk-based understanding of these different services, their actual risk and how to reach the same regulatory outcomes as in the traditional financial sector. Currently, a clear gap in the international approach is clear guidance from standard setting bodies such as IOSCO and FATF on what constitutes 'control'.

Although often referenced, this concept - whether an entity can exercise discretion, take custody or materially influence user outcomes - remains undefined at the global level, leaving national regulators to make their own determinations.

Recognising that developing proportionate, bespoke rules for DeFi and autonomous software is an ambitious task requiring continued monitoring, analysis and engagement with industry, the notion of "control" is an area where the EU could already take the lead. Establishing clear parameters for "control" would provide greater certainty to developers, support responsible innovation and lay the groundwork for international convergence. Allowing time for the market to mature before moving to prescriptive rules while prioritising consultation, technical engagement and coordinated action would help reduce fragmentation, regulatory arbitrage and competitive disadvantage against competitive jurisdictions like the U.S. and markets across Asia.

2.2.1 Non-Discriminatory Use of Permissionless Blockchains and DeFi for Financial Institutions

An increasing number of authorised financial institutions in the EU are already using permissionless protocols for on-chain liquidity provision, lending, borrowing and tokenised asset issuance. These activities are fully permissible under EU rules - and we need to ensure that regulatory guidance remains technology neutral, avoiding indirectly steering institutions toward permissioned or off-chain markets. The EU must ensure equal access to on-chain markets and autonomous software, provided that any identified risks are appropriately mitigated.

This can lead to benefits such as better price discovery and healthy competition. There have already been plenty of examples of supervisors in the EU taking pragmatic approaches, leading for example to asset issuances of regulated financial instruments on public and permissionless blockchains. Similarly, EU regulated CASPs are already integrating their services with on-chain markets and should be allowed to keep innovating for the benefit of European innovation and customers.

This principle will become increasingly relevant for the broader financial sector as tokenisation of real world and traditional financial assets gains traction and market infrastructures adopt distributed ledger technology for settlement. The EU's revamped DLT pilot regime already anticipates integrating regulated infrastructures with on-chain settlement layers. Ensuring that authorised institutions can connect to these markets - whether for MiCA-covered assets or traditional financial instruments - will help promote the EU's competitiveness in digital finance and avoid discriminatory barriers against permissionless and automated systems.

2.2.2 Voluntary Frameworks/Industry Best Practices

In the absence of a formal perimeter for non-custodial services, voluntary, incentive-aligned frameworks can foster responsible development without compromising decentralisation. Potential elements include codes of conduct for developers, certification schemes for audited open-source protocols and disclosures on governance, security and usage metrics. Such voluntary regimes should remain transparent, avoid de facto mandatory registration and serve to inform users rather than restrict choices. Over time, these could evolve into co-regulatory models that uphold EU objectives while maintaining technological openness.

2.2.3 Recommendations:

DeFi spans a spectrum of decentralisation and cannot be meaningfully addressed using frameworks designed for centralised intermediaries. Any future EU policy intervention through legislative or non-legislative measures (e.g. guidelines, Q&As or opinions) should be preceded by a dedicated, structured consultation, bringing together policymakers, technical experts and industry stakeholders.

This process should identify actual risk points - whether in governance oracles, smart contract upgradeability or user interfaces - rather than importing assumptions from traditional finance. Traditional finance is also not regulated under a heading of 'centralisation', but rather in many different ways according to the activities provided and the commensurate risks. This should also be the case for DeFi. Without such proportionality, Europe risks discouraging an open, developer-led ecosystem that already delivers public-good infrastructure: transparent, auditable and globally accessible.

The EU does not need to rush toward a bespoke DeFi regime: it should instead focus on building a clear picture of the risks and opportunities and identifying the touchpoints between non-custodial tools, regulated services and broader market integrity. Moreover, it must make sure that DeFi, permissionless systems and non-custodial software are allowed to develop and are not unduly discriminated against directly or indirectly simply because there is no regulatory bucket in existence yet.

Given the political climate and the pace of market change, the most valuable contribution the EU can make now is to establish stable interpretive guidance, promote internal and international alignment on core concepts such as 'control' and monitor the intersection between autonomous protocols and regulated market activity. If, as expected, institutional adoption accelerates - driven for example by solutions to privacy concerns and facilitated by initiatives like the DLT pilot - the need to address DeFi in regulation will become clearer and more urgent. By laying the groundwork now, the EU will be ready to respond with proportionate, well-targeted measures when the time is right.

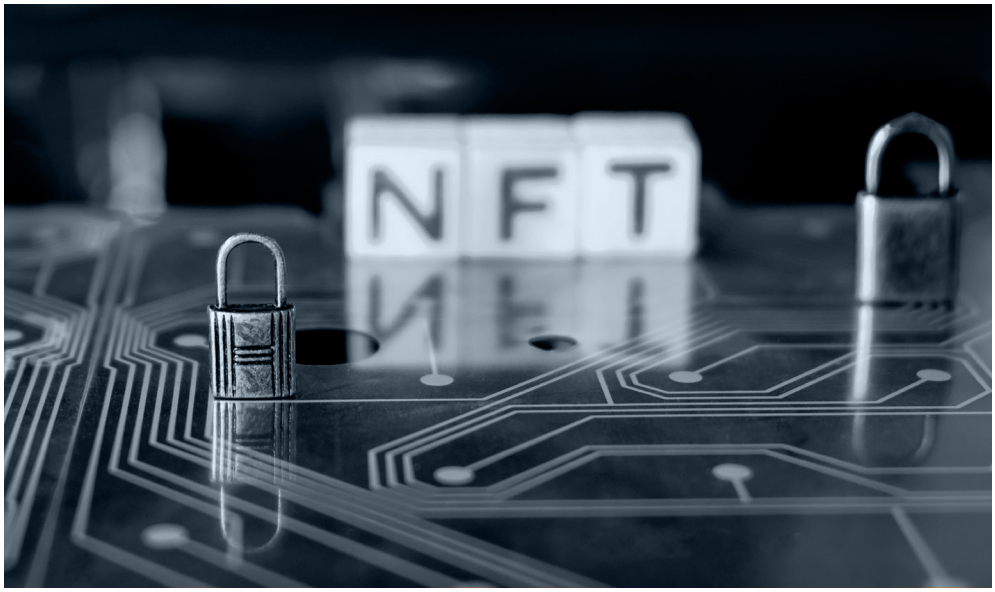
2.3 Non Fungible Tokens (NFTs)

MiCA Article 2(3) states that the regulation does not apply to crypto assets that are unique and not fungible with other crypto assets. Recital 10 explains that NFTs may be excluded when their value derives from unique characteristics and utility to the holder (e.g. digital art, collectibles, product guarantees or real estate). Recital 11 warns that merely assigning a unique identifier is not sufficient, NFTs issued in large series or collections may indicate fungibility and fractionalised NFTs generally should not be considered unique and non-fungible.

ESMA Guideline 8 (2025) supports excluding NFTs from if they are truly non-substitutable and do not confer financial rights. Additionally, the "interdependent value test" is introduced, examining whether the NFT's value comes from its intrinsic uniqueness or its value depends on being part of a wider collection (suggesting fungibility).

Nonetheless, a clear legal definition of what qualifies as "unique" and "not fungible" is lacking, leaving uncertainty about which assets truly fall outside the regulation's scope. Additionally, an area of uncertainty is whether and under what conditions, an NFT should be considered a security or other financial instrument. While ESMA's Guidelines on the conditions and criteria for the qualification of crypto-assets as financial instruments provide helpful interpretive criteria, applying these to NFTs remains complex. For instance, an NFT that simply represents a digital collectible with verifiable authenticity on the blockchain would arguably not be deemed a security, whereas an NFT promising a return on investment based on the efforts of an issuer or third party could be treated as a financial instrument. The guidelines draw on the MiFID II framework and highlight factors such as transferability, standardisation and the expectation of profit, which are relatively clear when applied to fungible tokens or fractionalised NFTs. Yet, in the case of genuinely unique NFTs tied to artistic, cultural or other utility purposes, the classification is less straightforward, creating the risk of divergent interpretations among national competent authorities.

Also, there is a question of whether purchasers have a reasonable expectation of profit derived from the efforts of others. If they do, for example, by anticipating revenue distributions or resale gains, then the NFT in question is effectively functioning like an investment product. If an NFT were to be categorised as a financial instrument, it remains unclear whether platforms facilitating its sale and secondary trading would be required to register and comply as regulated trading venues or exchanges under existing financial market rules. The relevant standard for assessing this is MiFID II, as clarified by ESMA's Guidelines on the conditions and criteria for the qualification of crypto-assets as financial instruments. It has factors, such as transferability, standardisation and the presence of rights analogous to securities. Therefore, consistent supervisory interpretation across Member States is required when NFTs exhibit characteristics between unique collectibles and financial assets.



Further clarity is also needed on fractionalized NFTs: dividing a token into shares can blur its unique character and regulators have yet to provide guidance on how such fractional ownership should be treated.

Clearer examples would help delineate the perimeter. For instance, a one-off NFT representing a digital artwork with verifiable authenticity should fall outside MiCA, whereas a fractionalised NFT collection marketed with an expectation of resale profit would likely fall under financial instruments. Similarly, NFTs used purely as product guarantees or event tickets should be excluded, while those offering ongoing economic rights linked to an issuer's performance may need to be captured under MiFID II or MiCA Titles III–IV.

To address these uncertainties, we suggest adopting a clearer "financial characteristics" test aligned with ESMA Guideline 8 and MiCA's Recital 10, in order to better delineate when an ostensibly unique token exhibits the features of a financial instrument. In particular, a "reasonable expectation of profit" criterion could serve as a key trigger for classifying an NFT as a financial instrument. This could be done especially when its value is driven by promotional efforts, expanded utility or the ongoing work of the issuer or a third party. It would also be prudent to carve out a clear exemption for fractional tokens used purely to confer shared ownership of digital collectibles with no expectation of financial return, distinguishing these from investment products. At the same time, regulators should clarify that marketplaces facilitating the secondary trading of NFTs deemed to be financial instruments must seek appropriate authorisation (under MiFID II or as crypto-asset service providers) depending on the NFT's classification.

Finally, if an NFT is determined to be a financial instrument, it should be explicitly subject to the relevant prospectus, licensing and platform obligations under MiFID II; whereas if it qualifies instead as an asset-referenced token (ART) or an e-money token (EMT), then the regulatory requirements under Titles III and IV of MiCA would apply.

Section III Looking Beyond MiCA

3.1 Staking

Staking is a novel and unique activity without a clear analogy in traditional financial services and should be regulated as such within MiCA. This does not mean a light touch approach - on-chain staking intermediaries should be held to a high standard around consumer protection and transparency, asset safekeeping and resilience.

Existing EU rules for collective investments (UCITS, AIFMD) are broad in scope and may capture on-chain staking services provided by an intermediary. To avoid uncertainty, BC4EU recommends an explicit exemption from UCITS and AIFMD for on-chain staking activities. Without such clarification, NCAs may default to classifying staking pools as collective investment schemes, creating regulatory over-reach and undermining innovation. Staking should be regulated under MiCA's bespoke framework to provide legal certainty on scope and obligations and prevent NCAs treating staking pools as investment funds.

On-chain staking may or may not involve asset safekeeping on behalf of customers. Custody is a regulatory trigger, not a defining characteristic of staking. Where an intermediary takes possession of customer keys, this constitutes custody under MiCA and should invoke the corresponding obligations. Broadly, we make a distinction between custodial and non-custodial staking. With custodial staking, a third party custodian (such as an exchange) takes physical possession of and then stakes tokens on the customer's behalf. Importantly, in this type of arrangement a customer transfers the keys to their crypto assets to the custodian (while continuing to maintain title to their crypto assets).

This contrasts with non-custodial staking which allows consumers to stake through intermediaries without giving their private keys and funds to the validator who performs the staking activity on their behalf (i.e., the customer retains their keys).

In detail, the on-chain staking comprises several operational models with different regulatory touchpoints.

- **Direct (Self) Staking** is a technical protocol participation; users validate directly and with no intermediaries, we argue that no regulation is required.
- Where **Non-Custodial Staking-as-a-Service (StaaS)** occurs, a user retains custody and the provider supplies technical infrastructure. In such a case, light-touch staking obligations under MiCA (e.g. disclosures, validator risk) should apply.
- This stands in contrast to **Custodial StaaS**, where providers hold client assets and stakes on their behalf, introducing higher risks (mismanagement, slashing, insolvency). In such a case, staking obligations and MiCA custody obligations should apply.
- Some of the more innovative approaches comprise the so-called **Liquid Staking**, where users receive transferable tokens representing staked assets, usable elsewhere and adding liquidity. In such a case, staking and custody obligations under MiCA should apply - and - where these tokens qualify as crypto-assets, the relevant MiCA issuance and disclosure rules for that asset class should also apply.

There is no investment of money in staking and staked assets do not leave the protocol. Nor are consumers subject to any counterparty risk from staking, since they always retain ownership of their staked assets at all times. While network penalties (i.e., slashing) are possible (if the validator behaves maliciously or otherwise violates protocol rules), they are extremely rare. Less than .001% of all staked ETH has been lost to slashing since its inception. In many cases, firms' user agreements typically indemnify the consumer with respect to the loss of assets due to slashing that arise because of the service provider's error.

So-called "off-chain staking" is different as it does not involve protocol participation such as validation. It is often a form of crypto asset lending and should not be conflated with on-chain staking. These services should fall under lending regulations, not staking frameworks.

3.2 Equivalence

MiCA establishes a harmonized EU licensing regime for Virtual Asset Service Providers (VASPs), with the aim of ensuring consumer protection, financial stability and market integrity. Yet crypto assets are inherently global and digital, with trading platforms operating in multiple jurisdictions and liquidity fragmented across borders, which potentially inadvertently expose consumers and the broader market to spillover effects.

On the other hand, stringent localisation requirements or lack of cooperation agreements with competitive jurisdictions, can also have the unintended consequence of leading to fragmentation, limiting competition and raising costs for consumers. Therefore, striking the balance between the objectives of maintaining an open market while ensuring supervisory dialogue across key jurisdictions is key to the long term market's success. For example, Articles 59(1), 59(2) and 61(1) of MiCA require crypto asset service providers from third countries to maintain a registered office in the EU to obtain authorisation, with only limited exceptions. While this requirement aims to ensure effective local supervision, it also creates a significant barrier to entry for established, compliant non-EU firms. An equivalence or comparability regime offers a balanced solution by allowing VASPs licensed in third countries with comparable regulatory standards to serve EU clients without needing a new MiCA license, provided they meet strict conditions that maintain consumer protection and market integrity.

Equivalence must be based on reciprocity. The EU should grant access only to firms from jurisdictions that offer equivalent treatment to EU-licensed CASPs. This principle prevents regulatory arbitrage that would undermine consumer protection, creates incentives for other jurisdictions to raise their regulatory standards and ensures a level playing field for EU-based firms competing internationally.

A key consideration in designing an equivalence regime is ensuring that foreign-licensed VASPs adhere to comparable standards in risk management, governance, anti-money laundering and counter-terrorist financing controls, market conduct, market abuse and consumer protection. It is important that equivalence does not become a loophole through which the very risks MiCA seeks to address are reintroduced into the EU market.

This is especially relevant in the context of shared order books, which can enhance customer experience by improving price discovery and deepening liquidity. Rather than prohibiting shared order books with non MiCA licensed CASPs, MiCA should ensure that they are subject to robust safeguards. Equivalence decisions should confirm that foreign frameworks impose comparable controls on market integrity, governance and risk management, cybersecurity, AML/CFT compliance and the supervision of cross-border trading infrastructure.

This approach would preserve the benefits of shared liquidity while maintaining high standards of consumer protection and market integrity. Policymakers can draw lessons from established models of equivalence such as the GDPR's adequacy decisions, which have secured the EU a leadership role in global data protection. That regime is built on clear and strict criteria for assessing adequacy, ongoing monitoring with the power to revoke adequacy decisions and incentives for regulatory convergence worldwide.

The UK's financial services equivalence framework offers another example, granting market access in cases in which regimes are sufficiently aligned, encouraging cross-border trade without compromising standards and supporting tailored assessments based on risk profiles.

A carefully designed equivalence regime for MiCA would promote EU competitiveness by making the EU market accessible to reputable international VASPs under clear and predictable conditions. It would encourage higher global standards by incentivising third countries to align with MiCA's regulatory leadership. At the same time, it would reduce compliance costs by avoiding duplicative licensing requirements for well-regulated firms and preserve market integrity by ensuring cross-border activities do not introduce unregulated risk or facilitate regulatory shopping.

To be effective, an equivalence framework under MiCA should include:

- **Transparent Criteria:** Define clear standards covering prudential rules, AML/CFT, risk and governance, market conduct and market abuse and consumer protection.
- **Reciprocity:** Ensure market access is granted only where EU VASPs benefit from similar rights.
- **Ongoing Monitoring:** Include mechanisms to review and withdraw equivalence if standards slip.
- **Flexible, Activity-Based Approach:** Allow for partial or activity-specific equivalence where appropriate.

An equivalence regime would let the EU maintain high standards without isolating the EU market in an inherently global industry. By insisting on reciprocity and rigorous oversight the EU can protect consumers, support innovation and strengthen its position as a global regulatory leader.

Equivalence should also extend to shared order books and cross-border custody chains, which underpin liquidity in global markets. Rather than restricting such models, MiCA should conditionally permit them where third-country firms operate under regimes assessed as equivalent. This would safeguard market integrity while preserving Europe's participation in global liquidity pools.

C Conclusion

This report represents an effort by BC4EU's members to reflect on MiCA's strengths and weaknesses based on their direct experience navigating the regime as licensed entities and industry experts operating internationally. It is meant to help inform future policy priorities and areas of focus, underpinned by recommendations where we collectively think the EU can continue supporting the industry's growth without compromising its objectives of consumer protection, market integrity and financial stability.

Crucially, this report suggests the EU should not focus on reopening MiCA, but instead rely on other mechanisms to provide clarity and consistency such as:

- Convening meetings and workshops between the Commission, the private sector, ESMA and EBA on outstanding issues;
- Publishing Q&As developed in consultation with the private sector;
- Considering grace periods or non-action measures where immediate compliance poses significant sectoral risk; and,
- Adopting a more flexible, principles-based approach to guidelines, ensuring compliance pathways recognise operational limitations.

This report argues that the approach to regulating stablecoins requires further consideration and alignment with the principles of proportionality in the context of a globally competitive landscape. Other areas which may not require wholesale changes include introducing prudential requirements by firm size and streamlining white paper requirements. Furthermore, if Europe is to maintain a competitive edge in the realm of DeFi, further clarity should be provided in relation to the regulatory perimeter of MiCA to avoid divergent approaches across member states.

Finally, given the pace with which the global regulatory framework is evolving, the EU should consider introducing equivalence arrangements with jurisdictions of comparable regulatory standing. We believe that this avenue is crucial for the EU to ensure its leadership as a standard setter, open trading bloc and maintain its oversight of an inherently global market through cross-border cooperation agreements.

ANNEX 1
Challenges with Specific MiCA Provisions

Scope and Definitions
There is a lack of clarity between crypto assets regulated under MiCA and those under MiFID II. The current text creates uncertainty around what qualifies as a financial instrument or crypto asset, especially for hybrid instruments like tokenized gold or securities. Therefore, clearer guidance or a delegated act clarifying classification criteria for hybrid tokens should be included (e.g. tokenized securities vs. utility tokens). Reference: MiFID II Annex I (financial instruments definition) https://eur-lex.europa.eu/eli/dir/2014/65/oj/eng
MiCA Article 3: Definition of an "Issuer"
There is a problem when determining who qualifies as the issuer of a crypto asset when it is created via a smart contract. While the deployer is often presumed to be the issuer, actual control lies with whoever can access key contract functions (e.g. minting, burning, role management). If control is shared or unclear, identifying the issuer becomes complex, posing challenges for regulatory clarity and compliance.
MiCA Articles 15, 26 and 52: Personal Liability
MiCA holds issuers, offerors, persons seeking admission to trading or operators of a trading platform, the members of administrative, management or supervisory body shall be liable to a holder of the crypto asset for any loss incurred due to that infringement. This requirement is well-intentioned for consumer protection but risks deterring qualified professionals as it could be perceived as broad and disproportionate. The absence of clear thresholds for liability or intent (e.g. negligence vs. fraud) creates legal uncertainty and may discourage firms, particularly startups and SMEs, from entering or expanding in the EU crypto market. The risk of personal liability for management board members may also disincentivise experienced professionals from taking roles in crypto firms. We suggest making liability primarily entity-based, with issuers or platform operators bearing responsibility, while limiting personal liability of management board members to cases of gross negligence or fraud.
MiCA Article 76: Definition of Inbuilt Anonymisation Function
Article 76 of MiCA prohibits CASPs operating trading platforms from admitting to trading crypto assets with in-built anonymisation functions. Such a term remains undefined and its scope is narrower than the broader approach to privacy technologies under the TFR and the forthcoming AMLR. This fragmented approach creates regulatory uncertainty and discourages privacy-by-design innovation as CASPs must reconcile obligations under MiCA and AML frameworks. To resolve this, it should be clarified that "in-built anonymisation function" under MICA should refer only to crypto assets whose design renders transactions permanently untraceable without any possibility of ex-post verification, while privacy-enhancing technologies supporting selective transparency, such as optional shielded transactions, view-keys or zero-knowledge attestations should not be considered restricted.

ANNEX 2
RTS/ITS and Guidelines Levels 2 and 3: Areas for Improvement

RTS on Conflicts of Interest (COI) and Personal Transaction
Not mentioned under MiCA Level 1 and current Level 2 is not clear.
RTS on Remuneration Policy
Only explicitly mentioned for ART (Art. 45 MiCA) and therefore extends MiCA scope and is disproportionate.
RTS on Record Keeping
CASPs should be free to determine the manner in which they keep records of data relating to orders and transactions. The scope seems to be disproportionate (e.g. all marketing communications, tax number or LEI). MiCA does not specify any particular approach or requirements and we should let the CASP to determine what record should be kept for proper supervision.
Guidelines on Competence and Knowledge
The provision of advice vs. information is problematic. It blurs the difference between the two. MiCA only foresees such guidelines for the advice - therefore ESMA risks exceeding its mandate and acting as a legislator.
Guidelines on Reporting by CASPs to ARTs and EMTs
The EBA proposal goes beyond what is required, especially in view of the excessive amount of data, such as the PII (Ex, names, country, retail/non-retail users and national identification number or passport or other type of identification number, habitual residence originator and beneficiary or geo-locating transaction (specific country of origin and recipient), collect and share DLT addresses, identify which transactions registered on the distributed ledger take place between non-custodial wallets) as well as “daily reporting” that does not provide any use case here (nor is explained why). Another expansion is that the requirements - 22 (3) and Art 58 (3) are only applicable (expressis verbis) to ARTs and NON-EU-EMTs rather than EU denominated. In addition, things are complicated by the lack of harmonised data tranismission.
Guidelines on Transfer Service
Certain elements should have more flexibility in how they are reported. For example, blockchain confirmation time is not fixed and can vary. Then the case of durable medium or irreversibility are excessive.

ANNEX 3
Crypto Asset Financial Literacy

MiCA introduces strict disclosure and conduct requirements to protect retail investors, but these rules can only be effective if consumers understand the information they receive. Financial and digital literacy should therefore be seen as a direct extension of MiCA's consumer protection objectives, ensuring that disclosure obligations translate into meaningful protection in practice. However, while investor education and consumer protection are widely recognised as important, they are not yet meaningfully embedded at the forefront of EU policy practice. Currently, there is no financial culture in the EU other than risk aversion.

A good example is the Commission's own data, which states that in 2023, EU citizens held €11,63 trillion or 31,01% of their savings in currency and deposits. These two mediums of holding monetary value are the least effective one due to continuous monetary debasement about which, de facto, society is not aware of. Strengthening financial and digital literacy also supports regulatory proportionality by reducing reliance on overly prescriptive rules. A well-informed user base allows MiCA to achieve its consumer protection goals without unduly constraining innovation.

Regulators and policymakers aim to protect consumers by laying down a multitude of rules which are not always effective in pursuing that goal. Risks are everywhere and we should not engage in disproportionately discouraging one investment vehicle over another - instead nature and risks should be understood and risk management applied (e.g. simple question of, "Can I lose x amount to EUR? Do I understand opportunities and risk? Do I see a use case in an investment?"). A good example is continuously stressing perceived risks in crypto, while risks around gambling activities are absent in the discussion.

MiCA seeks to protect consumers by introducing robust disclosure, prudential and conduct rules. However, regulation alone cannot fully safeguard users if they lack the knowledge to interpret information or assess risks. However, the crypto markets expose consumers to risks, such as, phishing attacks, fraudulent offerings and misinformation and the user education is necessary to close the gap between regulatory protection and consumer practice.

Therefore, in order to better protect customers and open up retail investment, we need to create a financial literacy culture first rather than overregulating and adopting the mindset of "protection-against-themselves". Regulatory security is needed but it cannot turn into "stifling" regulation because financial involvement in general is associated with "risk". Therefore, the emphasis should be on empowering consumers to understand risks and disclosures, rather than discouraging participation in specific asset classes.

We recommend the following to elevate financial culture in the EU:

- Compulsory curriculum and self-study: through different levels of school we should implement programs regarding money, investment, risk, threats and how to manage, minimise and prevent unwanted consequences. We should emphasis the importance of being financially literate
- Use of the new technology: engaging in controlled "hypothetical" scenarios of investing so that everyone can learn with "tangible" experience about different financial decisions and strategies
- Promote educational initiatives: more coordinated actions on the EU level to encourage preparation and participation in courses, event, competitions for knowledge of money
- Incentive self-study and due diligence: decision itself is not a problem, but the decision-making process is. We need more emphasis on self-study that will help to protect future savings and wealth, especially where we have a tremendous number of resources.
- Discuss money and investment in real-terms: make the topic a strong subject of public awareness. If we campaign strongly against smoking or gambling or anything else, we need to make the population aware how money works and why it is important to protect your savings, reconsider spending habits and lifestyle that will have an impact for future living.

Key educational priorities include:

1. Cybersecurity and scam awareness: comprehensive education initiatives are essential to raise awareness among users and organizations about prevalent cyber threats such as phishing attacks.
2. Digital literacy for diverse demographics: tailored digital literacy programs help users recognize fraud, practice safe online behavior and differentiate legitimate from deceptive investment opportunities. Special attention should be given to vulnerable groups, including older adults and those with limited digital fluency.
3. Public education on emerging threats: by educating the public about cybersecurity best practices and emerging threats, individuals and entities can better safeguard themselves against cybercriminal tactics.
4. Coordinated educational outreach: educational efforts must be part of a broader strategy involving cooperation among law enforcement, financial institutions, tech companies and consumer advocates to enhance response capabilities and share threat intelligence.

Policy Recommendations:

1. Mandatory risk disclosure and education modules as part of licensing for crypto exchanges and service providers.
2. User education prompts during onboarding on regulated platforms covering wallet safety, scam typologies and secure trading.
3. EU-backed public education campaigns, especially in regions with high crypto uptake and low digital literacy.
4. Multilingual, multimedia learning tools for widespread public access covering investment risks, fraud detection and asset recovery myths.

Blockchain For Europe
Rue Montoyer 47
B-1000 Brussels
Belgium

secretariat@blockchain4europe.eu
www.blockchain4europe.eu

Transparency register number: 910251734425-24