

Public consultation an EU framework for markets in crypto-assets

Fields marked with * are mandatory.

Introduction

This consultation is also available in [German](#) and [French](#).

Background for this public consultation

As stated by President von der Leyen in her political guidelines for the new Commission, it is crucial that Europe grasps all the potential of the digital age and strengthens its industry and innovation capacity, within safe and ethical boundaries. Digitalisation and new technologies are significantly transforming the European financial system and the way it provides financial services to Europe's businesses and citizens. Almost two years after the Commission adopted the [Fintech action plan in March 2018](#)¹, the actions set out in it have largely been implemented.

In order to promote digital finance in Europe, while adequately regulating its risks, in light of the mission letter of Executive Vice-President Dombrovskis the Commission services are working towards a new Digital Finance Strategy for the EU. Key areas of reflection include deepening the Single Market for digital financial services, promoting a data-driven financial sector in the EU while addressing its risks and ensuring a true level playing field, making the EU financial services regulatory framework more innovation-friendly, and enhancing the digital operational resilience of the financial system.

This public consultation, and the parallel public consultation on digital operational resilience, are first steps to prepare potential initiatives which the Commission is considering in that context. The Commission may consult further on other issues in this area in the coming months.

As regards blockchain, the European Commission has a stated and confirmed policy interest in developing and promoting the uptake of this technology across the EU. Blockchain is a transformative technology along with, for example, artificial intelligence. As such, the European Commission has long promoted the exploration of its use across sectors, including the financial sector.

Crypto-assets are one of the major applications of blockchain for finance. Crypto-assets are commonly defined as a type of private assets that depend primarily on cryptography and distributed ledger technology as part of their inherent value². For the purpose of this consultation, they will be defined as "a digital asset that may depend on cryptography and exists on a distributed ledger". Thousands of crypto-assets, with different features and serving different functions, have been issued since Bitcoin was launched in 2009³. There are many ways to classify the different types of crypto

assets⁴. A basic taxonomy of crypto-assets comprises three main categories: 'payment tokens' that may serve as a means of exchange or payment, 'investment tokens' that may have profit-rights attached to it and 'utility tokens' that may enable access to a specific product or service. The crypto-asset market is also a new field where different actors – such as the wallet providers that offer the secure storage of crypto-assets, exchanges and trading platforms that facilitate the transactions between participants – play a particular role

Crypto-assets have the potential to bring significant benefits to both market participants and consumers. For instance, initial coin offerings (ICOs) and security token offerings (STOs) allow for a cheaper, less burdensome and more inclusive way of financing for small and medium-sized companies (SMEs), by streamlining capital-raising processes and enhancing competition. The 'tokenisation' of traditional financial instruments is also expected to open up opportunities for efficiency improvements across the entire trade and post-trade value chain, contributing to more efficient risk management and pricing⁵. A number of promising pilots or use cases are being developed and tested by new or incumbent market participants across the EU. Provided that platforms based on Digital Ledger Technology (DLT) prove that they have the ability to handle large volumes of transactions, it could lead to a reduction in costs in the trading area and for post-trade processes. If the adequate investor protection measures are in place, crypto-assets could also represent a new asset class for EU citizens. Payment tokens could also present opportunities in terms of cheaper, faster and more efficient payments, by limiting the number of intermediaries.

Since the publication of the FinTech Action Plan in March 2018, the Commission has been closely looking at the opportunities and challenges raised by crypto-assets. In the FinTech Action Plan, the Commission mandated the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) to assess the applicability and suitability of the existing financial services regulatory framework to crypto-assets. The advice⁶ received in January 2019 clearly pointed out that while some crypto-assets fall within the scope of EU legislation, effectively applying it to these assets is not always straightforward. Moreover, there are provisions in existing EU legislation that may inhibit the use of certain technologies, including DLT. At the same time, EBA and ESMA have pointed out that most crypto-assets are outside the scope of EU legislation and hence are not subject to provisions on consumer and investor protection and market integrity, among others. Finally, a number of Member States have recently legislated on issues related to crypto-assets which are currently not harmonised.

A relatively new subset of crypto-assets – the so-called "stablecoins" – has emerged and attracted the attention of both the public and regulators around the world. While the crypto-asset market remains modest in size and does not currently pose a threat to financial stability⁷, this may change with the advent of "stablecoins", as they seek a wide adoption by consumers by incorporating features aimed at stabilising their 'price' (the value at which consumers can exchange their coins). As underlined by a recent G7 report⁸, if those global "stablecoins" were to become accepted by large networks of customers and merchants, and hence reach global scale, they would raise additional challenges in terms of financial stability, monetary policy transmission and monetary sovereignty.

Building on the advice from the EBA and ESMA, this consultation should inform the Commission services' ongoing work on crypto-assets⁹: (i) For crypto-assets that are covered by EU rules by virtue of qualifying as financial instruments under the [Markets in financial instruments Directive – MiFID II](#) – or as electronic money/e-money under the [Electronic Money Directive – EMD2](#) – the Commission services have screened EU legislation to assess whether it can be effectively applied. For crypto-assets that are currently not covered by the EU legislation, the Commission services are considering a possible proportionate common regulatory approach at EU level to address, inter alia, potential consumer/investor protection and market integrity concerns.

Given the recent developments in the crypto-asset market, the President of the Commission, Ursula von der Leyen, has stressed the need for "a common approach with Member States on crypto-currencies to ensure we understand how to make the most of the opportunities they create and address the new risks they may pose"¹⁰. Executive Vice-president Valdis Dombrovskis has also indicated his intention to propose a new legislation for a common EU approach on crypto-assets, including "stablecoins". While acknowledging the risks they may present, the Commission and the Council have also jointly declared that they "are committed to put in place the framework that will harness the potential opportunities that some crypto-assets may offer"¹¹.

Responding to this consultation and follow up to the consultation

In this context and in line with [Better regulation principles](#), the Commission is inviting stakeholders to express their views on the best way to enable the development of a sustainable ecosystem for crypto-assets while addressing the major risks they raise. This consultation document contains four separate sections.

First, the Commission seeks the views of all EU citizens and the consultation accordingly contains a number of more general questions aimed at gaining feedback on the use or potential use of crypto-assets.

The three other parts are mostly addressed to public authorities, financial market participants as well as market participants in the crypto-asset sector:

- **The second section seeks feedback from stakeholders on whether and how to classify crypto-assets.** This section concerns both crypto-assets that fall under existing EU legislation (those that qualify as ‘financial instruments’ under MiFID II and those qualifying as ‘e-money’ under EMD2) and those that do not.
- **The third section invites views on the latter, i.e. crypto-assets that currently fall outside the scope of the EU financial services legislation. In that first section, the term ‘crypto-assets’ is used to designate all the crypto-assets that are not regulated at EU level¹². At certain point in that part, the public consultation makes further distinction among those crypto-assets and uses the terms ‘payment tokens’, “stablecoins” ‘utility tokens’, ‘investment tokens’.. The aim of these questions is to determine whether an EU regulatory framework for those crypto-assets is needed. The replies will also help identify the main risks raised by unregulated crypto-assets and specific services relating to those assets, as well as the priorities for policy actions.**
- **The fourth section seeks views of stakeholders on crypto-assets that currently fall within the scope of EU legislation, i.e. those that qualify as ‘financial instruments’ under MiFID II and those qualifying as ‘e-money’ under EMD2. In that section and for the purpose of the consultation, those regulated crypto-assets are respectively called ‘security tokens’ and ‘e-money tokens’.** Responses will allow the Commission to assess the impact of possible changes to EU legislation (such as the Prospectus Regulation , MiFID II, the Central Security Depositories Regulation, ...) on the basis of a preliminary screening and assessment carried out by the Commission services. This section is therefore narrowly framed around a number of well-defined issues related to specific pieces of EU legislation. Stakeholders are also invited to highlight any further regulatory impediments to the use of DLT in the financial services.

To facilitate the reading of this document, a glossary and definitions of the terms used is available at the end.

The outcome of this public consultation should provide a basis for concrete and coherent action, by way of a legislative action if required.

This consultation is open until 19 March 2020.

¹ [Commission's Communication: "FinTech Action Plan: For a more competitive and innovative European financial sector"](#) (March 2018)

² [EBA report with advice for the European Commission on 'crypto-assets'](#), January 2019

³ [ESMA, "Advice on initial coin offerings and Crypto-Assets"](#), January 2019;

⁴ See: ESMA Securities and Markets Stakeholder Group, Advice to ESMA, October 2018

⁵ Increased efficiencies could include, for instance, faster and cheaper cross-border transactions, an ability to trade beyond current market hours, more efficient allocation of capital (improved treasury, liquidity and collateral management), faster settlement times and reduce reconciliations required. See: Association for Financial Markets in Europe, 'Recommendations for delivering supervisory convergence on the regulation of crypto-assets in Europe', November 2019.

⁶ [ESMA, "Advice on initial coin offerings and Crypto-Assets"](#), January 2019; [EBA report with advice for the European Commission on 'crypto-assets'](#), January 2019

⁷ [FSB Chair's letter to G20 Finance Ministers and Central Bank Governors, Financial Stability Board](#), 2018

⁸ G7 Working group on "stablecoins", [Report on 'Investigating the impact of global stablecoins'](#), October 2019

⁹ [Speech by Vice-President Dombrovskis at the Bucharest Eurofi High-level Seminar](#), 4 April 2019

¹⁰ [Mission letter of President-elect Von der Leyen to Vice-President Dombrovskis](#), 10 September 2019

¹¹ Joint Statement of the European Commission and Council on "stablecoins", 5 December 2019

¹² Those crypto-assets are currently unregulated at EU level, except those which qualify as 'virtual currencies' under the AML/CFT framework (see section I.C. of this document).

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-crypto-assets@ec.europa.eu.

More information:

- [on this consultation](#)
- [on the consultation document](#)
- [on the protection of personal data regime for this consultation](#)

About you

* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- Gaelic
- German
- Greek
- Hungarian
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese

- Romanian
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- Slovenian
- Spanish
- Swedish

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| <input type="radio"/> Consumer organisation | <input type="radio"/> Non-governmental organisation (NGO) | |

* First name

Julian

* Surname

Gretzinger

* Email (this won't be published)

j_gretzinger@hotmail.com

* Country of origin

Please add your country of origin, or that of your organisation.

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- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
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- Montserrat
- Morocco
- Mozambique
- Myanmar /Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
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* Field of activity or sector (if applicable):

at least 1 choice(s)

- Asset management
- Banking
- Crypto-asset exchange
- Crypto-asset trading platforms

- Crypto-asset users
- Electronic money issuer
- FinTech
- Investment firm
- Issuer of crypto-assets
- Market infrastructure (e.g. CCPs, CSDs, Stock exchanges)
- Other crypto-asset service providers
- Payment service provider
- Technology expert (e.g. blockchain developers)
- Wallet provider
- Other
- Not applicable

* At the benchmark level, I am giving my contribution as a:

- Benchmark administrator
- Benchmark contributor
- Benchmark user
- Other

* Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- Anonymous**
Only your type of respondent, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.
- Public**
Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

I agree with the [personal data protection provisions](#)

I. Questions for the general public

As explained above, these general questions aim at understanding the EU citizens' views on their use or potential use of crypto-assets.

Question 1. Have you ever held crypto-assets?

- Yes
- No
- Don't know / no opinion / not relevant

Question 3. Do you plan or expect to hold crypto-assets in the future?

- Yes
- No
- Don't know / no opinion / not relevant

II. Classification of crypto-assets

There is not a single widely agreed definition of 'crypto-asset'¹³. In this public consultation, a crypto-asset is considered as “*a digital asset that may depend on cryptography and exists on a distributed ledger*”. This notion is therefore narrower than the notion of ‘*digital asset*’¹⁴ that could cover the digital representation of other assets (such as scriptural money).

While there is a wide variety of crypto-assets in the market, there is no commonly accepted way of classifying them at EU level. This absence of a common view on the exact circumstances under which crypto-assets may fall under an existing regulation (and notably those that qualify as ‘financial instruments’ under MiFID II or as ‘e-money’ under EMD2 as transposed and applied by the Member States) can make it difficult for market participants to understand the obligations they are subject to. Therefore, a categorisation of crypto-assets is a key element to determine whether crypto-assets fall within the current perimeter of EU financial services legislation.

Beyond the distinction ‘regulated’ (i.e. ‘security token’, ‘e-money token’) and unregulated crypto-assets, there may be a need for differentiating the various types of crypto-assets that currently fall outside the scope of EU legislation, as they may pose different risks. In several Member States, public authorities have published guidance on how crypto-assets should be classified. Those classifications are usually based on the crypto-asset’s economic function and usually makes a distinction between ‘payment tokens’ that may serve as a means of exchange or payments, ‘investment tokens’ that may have profit-rights attached to it and ‘utility tokens’ that enable access to a specific product or service. At the same time, it should be kept in mind that some ‘hybrid’ crypto-assets can have features that enable their use for more than one purpose and some of them have characteristics that change during the course of their lifecycle.

¹³ This section concerns both crypto-assets that fall under existing EU legislation (those that qualify as ‘financial instruments’ under MiFID II and those qualifying as ‘e-money’ under EMD2) and those falling outside.

¹⁴ Strictly speaking, a digital asset is any text or media that is formatted into a binary source and includes the right to use it.

Question 5. Do you agree that the scope of this initiative should be limited to crypto-assets (and not be extended to digital assets in general)?

- Yes
- No
- Don't know / no opinion / not relevant

5.1 Please explain your reasoning for your answers to question 5:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Token which represent ownership / partial ownership in physical property should be included as well.
Reason: If Europe intends to have a clear taxonomy on the various tokens it should be as broad as possible to provide a clear framework towards a deeper integration and further development of the Capital Markets Union.

Question 6. In your view, would it be useful to create a classification of crypto-assets at EU level?

- Yes
- No
- Don't know / no opinion / not relevant

6.1 If you think it would be useful to create a classification of crypto-assets at EU level, please indicate the best way to achieve this classification (non-legislative guidance, regulatory classification, a combination of both, ...).

Please explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Definitely regulatory classification. This might get tricky in the first place but capital market participants dislike uncertainty. If this already begins with an unclear language / definitions the potential of DLT cannot fully be exploited on EU level. Furthermore, providing a sound taxonomy by way of regulatory classification might serve as an example globally.

Question 7. What would be the features of such a classification?

When providing your answer, please indicate the classification of crypto-assets and the definitions of each type of crypto-assets in use in your jurisdiction (if applicable).

Please explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Most comprehensive classification I came across so far is shown on p 10: https://www.mme.ch/fileadmin/files/documents/180501_BCP_Framework_for_Assessment_of_Crypto_Tokens_-_Block_2.pdf

This also includes "ownership" token.

Question 8. Do you agree that any EU classification of crypto-assets should make a distinction between ‘payment tokens’, ‘investment tokens’, ‘utility tokens’ and ‘hybrid tokens’?

- Yes
- No
- Don't know / no opinion / not relevant

8.2 Please explain your reasoning for your answers to question 8:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Payment / investment / utility and hybrid token do not provide a framework for clear differentiation. A large set of token would likely qualify as "hybrid". Usage is not the appropriate method to differentiate. Therefore I deem the taxonomy as per Question 7 significantly more appropriate.

The [Deposit Guarantee Scheme Directive \(DGSD\)](#) aims to harmonise depositor protection within the European Union and includes a definition of what constitutes a bank ‘deposit’. Beyond the qualification of some crypto-assets as ‘e-money tokens’ and ‘security tokens’, the Commission seeks feedback from stakeholders on whether other crypto-assets could be considered as a bank ‘deposit’ under EU law.

Question 9. Would you see any crypto-asset which is marketed and/or could be considered as ‘deposit’ within the meaning of Article 2(3) DGSD?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Crypto-assets which qualify as financial instrument or transferable security can be excluded to qualify as "deposit". All other token - in principal - could qualify as "deposit", provided they are accepted as such by banks (booked on-balance sheet with an obligation to be "returned" upon notice of the client) and thus covered by DGSD.

In my opinion this will only hold for a small subset of token given banks will not easily accept token as "deposit" due to capital adequacy rules.

III. Crypto-assets that are not currently covered by EU legislation

This section aims to seek views from stakeholders on the opportunities and challenges raised by crypto-assets that currently fall outside the scope of EU financial services legislation¹⁵ (A.) and on the risks presented by some service

providers related to crypto-assets and the best way to mitigate them (B.). This section also raises horizontal questions concerning market integrity, Anti-Money laundering (AML) and Combatting the Financing of Terrorism (CFT), consumer /investor protection and the supervision and oversight of the crypto-assets sector (C.).

¹⁵ Those crypto-assets are currently unregulated at EU level, except those which qualify as ‘virtual currencies’ under the AML /CFT framework (see section I.C. of this document).

A. General questions: Opportunities and challenges raised by crypto-assets

Crypto-assets can bring about significant economic benefits in terms of efficiency improvements and enhanced system resilience alike. Some of those crypto-assets are ‘payment tokens’ and include the so-called “stablecoins” (see below) which hold the potential to bridge certain gaps in the traditional payment systems and can allow for more efficient and cheaper transactions, as a result of fewer intermediaries being involved, especially for cross-border payments. ICOs could be used as an alternative funding tool for new and innovative business models, products and services, while the use of DLT could make the capital raising process more streamlined, faster and cheaper. DLT can also enable users to ‘tokenise’ tangible assets (cars, real estate) and intangible assets (e.g. data, software, intellectual property rights, ...), thus improving the liquidity and tradability of such assets. Crypto-assets also have the potential to widen access to new and different investment opportunities for EU investors. The Commission is seeking feedback on the benefits that crypto-assets could deliver.

Question 10. In your opinion, what is the importance of each of the potential benefits related to crypto-assets listed below?

Please rate from 1 (not important at all) to 5 (very important)

	1 (not important at all)	2	3	4	5 (very important)	Don't know / no opinion / not relevant
Issuance of utility tokens as a cheaper, more efficient capital raising tool than IPOs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Issuance of utility tokens as an alternative funding source for start-ups	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Cheap, fast and swift payment instrument	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Enhanced financial inclusion	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Crypto-assets as a new investment opportunity for investors	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Improved transparency and traceability of transactions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Enhanced innovation and competition	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Improved liquidity and tradability of tokenised 'assets'	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Enhanced operational resilience (including cyber resilience)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Security and management of personal data	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Possibility of using tokenisation to coordinate social innovation or decentralised governance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

10.1 Is there any other potential benefits related to crypto-assets not mentioned above that you would foresee? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Crypto-assets might be used for an immutable record of ownership and hence be an efficient tool for a transparent ex-ante distribution of an estate / assets among heirs.

Likewise IP rights could be transparently "forged" into a token and thus be managed more efficiently.

I do see quite a wide range of usage outside the classical scope of "payment" / "utility" / "investment" and "hybrid".

10.2 Please explain your reasoning for your answers to question 10:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 1 & 2: Utility token are definitely the wrong token to raise capital in whatever form. It should rather mean "investment token".

Question 3: cheap and fast payment can already be done via SEPA, however on a global scale and especially for SWIFT payments there is ample room for improvement.

Question 4: I am afraid I don't understand the meaning of "financial inclusion".

Question 11: I do see a dedicated use for governance and social innovation.

Despite the significant benefits of crypto assets, there are also important risks associated with them. For instance, ESMA underlined the risks that the unregulated crypto-assets pose to investor protection and market integrity. It identified the most significant risks as fraud, cyber-attacks, money-laundering and market manipulation¹⁶. Certain features of crypto-assets (for instance their accessibility online or their pseudo-anonymous nature) can also be attractive for tax evaders. More generally, the application of DLT might also pose challenges with respect to protection of personal data and competition¹⁷. Some operational risks, including cyber risks, can also arise from the underlying

technology applied in crypto-asset transactions. In its advice, EBA also drew attention to the energy consumption entailed in some crypto-asset activities. Finally, while the crypto-asset market is still small and currently pose no material risks to financial stability¹⁸, this might change in the future.

¹⁶ [ESMA, "Advice on initial coin offerings and Crypto-Assets"](#), January 2019.

¹⁷ For example when established market participants operate on private permission-based DLT, this could create entry barriers.

¹⁸ [FSB Chair's letter to G20 Finance Ministers and Central Bank Governors, Financial Stability Board](#), 2018.

Question 11. In your opinion, what are the most important risks related to crypto-assets?

Please rate from 1 (not important at all) to 5 (very important)

	1 (not important at all)	2	3	4	5 (very important)	Don't know / no opinion / not relevant
Fraudulent activities	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Market integrity (e.g. price, volume manipulation, ...)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Investor/consumer protection	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Anti-money laundering and CFT issues	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Data protection issues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Competition issues	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cyber security and operational risks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Taxation issues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Energy consumption entailed in crypto-asset activities	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Financial stability	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Monetary sovereignty/monetary policy transmission	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

11.1 Is there any other important risks related to crypto-assets not mentioned above that you would foresee? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Risks stemming from regulatory & law arbitrage due to a variety of national rules of law & regulations regarding token. A "token" issued in country "A" as a hybrid token might be qualified as an investment token in country "B" or potentially even prohibited to be offered publicly in country "C". Hence, I do see the strong need to align definitions and the basic laws & regulation among members of the EU.

11.2 Please explain your reasoning for your answers to question 11:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 1: Fraud likely occurs where there is a lack of transparency and accountability / possibility to enforce wrongdoing. --> Need to attract token issuances in the EU to ensure local presence and accountability. Will be likely a topic for primarily "investment" token.

Question 2: Market integrity will likely occur when trading venues (regulated exchanges, MTF, OTF) are not properly regulated but still accessible for retail investors in the EU. By providing a sound framework for exchanges, the appropriate (Crypto) CDS or alternative market infrastructures this risk could be mitigated and service providers attracted to domicile in the EU.

Question 3: Integrating tokens smartly into the MIFID II framework might help to mitigate this risk. See Q.2 for the need of a sound framework to enhance acceptance in the EU.

Question 4: AML / CFT issues are a question of the appropriate design of market infrastructures.

Question 5: Data protection (especially GDPR) is an issue. Does a public key qualify as personal information? Does my bank account qualify as personal information if I share it on my twitter account?

Question 5: Operational security / operational risk (or trust in general) is as topic. Who is able to store / custody the token appropriately?

Question 6: Taxation might be an issue for all countries which rely on a reporting by financial institutions on the holdings of their clients. Should token be held privately we're back in the age of "bearer instruments" and countries need to rely on the honesty of their citizens.

"Stablecoins" are a relatively new form of payment tokens whose price is meant to remain stable through time. Those "stablecoins" are typically asset-backed by real assets or funds (such as short-term government bonds, fiat currency, commodities, real estate, securities, ...) or by other crypto-assets. They can also take the form of algorithmic "stablecoins" (with algorithm being used as a way to stabilise volatility in the value of the coin). While some of these "stablecoins" can qualify as 'financial instruments' under MiFID II or as e-money under EMD2, others may fall outside the scope of EU regulation. A [recent G7 report on 'investigating the impact of global stablecoins'](#) analysed "stablecoins" backed by a reserve of real assets or funds, some of which being sponsored by large technology or financial firms with a large customer base. The report underlines that "stablecoins" that have the potential to reach a global scale (the so-called "global stablecoins") are likely to raise additional challenges in terms of financial stability, monetary policy transmission and monetary sovereignty, among others. Users of "stablecoins" could in principle be exposed, among others, to liquidity risk (it may take time to cash in such a "stablecoin"), counterparty credit risk (issuer may default) and market risk (if assets held by issuer to back the "stablecoin" lose value).

**Question 12. In our view, what are the benefits of 'stablecoins' and 'global stablecoins' ?
Please explain your reasoning.**

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Dealing in the digital world needs a completely digitized currency i.e. stablecoin. Settling transactions in tokens within minutes does not exhibit benefits should be payment not occur within the same timeframe. Furthermore, blockchain technology allows for a delivery versus payment method built into the code of the smartcontract, without a properly regulated token currency this technological enhancement is literally useless. Additionally, stablecoins allow for a more easy use of payment as well as currency conversion under increased competition as well as transparency.

Global stablecoins will be "voted" on by consumers / users in terms of convenience, cost of transfer as well as international acceptance. I could well imagine a "global stablecoin" to exhibit properties along the lines of the special drawing right (SDR) issues / used by the IMF and representing a - more or less static - basket of the most common international currencies. If such "artificial currency" will turn out to be accepted by the mainstream a true global stablecoin without a need for conversion for specific payments will establish.

Question 13. In your opinion, what are the most important risks related to “stablecoins”?

Please rate from 1 (factor not relevant at all) to 5 (very relevant factor)

	1 (factor not relevant at all)	2	3	4	5 (very relevant factor)	Don't know / no opinion / not relevant
Fraudulent activities	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Market integrity (e.g. price, volume manipulation...)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Investor/consumer protection	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Anti-money laundering and CFT issues	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Data protection issues	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Competition issues	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cyber security and operational risks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Taxation issues	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Energy consumption	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Financial stability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Monetary sovereignty/monetary policy transmission



13.1 Is there any other important risks related to “stablecoins” not mentioned above that you would foresee? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 1 & 2: If issued by central banks or established financial institutions fraud as well as market integrity (given sufficient liquidity and acceptance) should not be an issue.

Question 4: AML / CFT should also not be a major problem if wallets must be whitelisted before ready to hold & transact in stablecoins.

Question 5: See Q1&2

Question 7: cyber security & operational risk might be an issue if users hold stablecoins on their private wallet without safeguarding such setup or delegating it to a financial institution (can be compared to the risk of holding cash in ones pocket).

Question 8: taxation might be an issue whenever positive value changes are not reported by financial institutions due to stablecoins being held privately. See also "taxation issues" further above.

Question 10 and 11: stablecoins and especially global stablecoins might impact financial stability and / or monetary sovereignty/monetary policy severely. Personally, I'd expect a tendency towards "global stablecoins" which are being constructed like an index basket with a limited efficacy of national monetary policy measures because of a diminishing partial impact due to the diversification effect on a global level.

13.2 Please explain in your answer potential differences in terms of risks between “stablecoins” and ‘global stablecoins’:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

see 13.1. above

Some EU Member States already regulate crypto-assets that fall outside the EU financial services legislation. The following questions seek views from stakeholders to determine whether a bespoke regime on crypto-assets at EU level could be conducive to a thriving crypto-asset market in Europe and on how to frame a proportionate and balanced regulatory framework, in order support legal certainty and thus innovation while reducing the related key risks. To reap the full benefits of crypto-assets, additional modifications of national legislation may be needed to ensure, for instance, the enforceability of token transfers.

Question 14. In your view, would a bespoke regime for crypto-assets (that are not currently covered by EU financial services legislation) enable a sustainable crypto-asset ecosystem in the EU (that could otherwise not emerge)?

- Yes
- No
- Don't know / no opinion / not relevant

14.1 Please explain your reasoning for your answer to question 14:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Uncertainty is not the ground a capital market is build upon. If I look into history the balance between a clear legal (and regulatory) framework in combination with the necessary infrastructure and the ability / access and freedom to use enhancements have been providing welfare to people and nations.

We're on the edge of a possible technological shift with new welfare to be distributed to those jurisdiction embracing the possible technological enhancements.

Question 15. What is your experience (if any) as regards national regimes on **c r y p t o - a s s e t s** ?

Please indicate which measures in these national laws are, in your view, an effective approach to crypto-assets regulation, which ones rather not.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

I'd recommend to take a closer look on the Liechtenstein "blockchain act" which tries to provide for an overarching law for literally all sorts of token.

Trying to regulate or provide a legal basis only partially will - in my opinion - lead to more new questions than it tried to solve in the first place.

Question 16. In your view, how would it be possible to ensure that a bespoke regime for crypto-assets and crypto-asset service providers is proportionate to induce innovation, while protecting users of crypto-assets?

Please indicate if such a bespoke regime should include the above-mentioned categories (payment, investment and utility tokens) or exclude some of them, given their specific features (e.g. utility tokens).

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Again I recommend to take a closer look on the Liechtenstein solution. Working with a registration and a moderate capital requirement for "business starters" might provide for a proportionate solution.

For the taxonomy I'd like to refer to the MME taxonomy mentioned further above.

Question 17. Do you think that the use of crypto-assets in the EU would be facilitated by greater clarity as to the prudential treatment of financial institutions' exposures to crypto-assets (See the discussion paper of the Basel Committee on Banking Supervision (BCBS))?

- Yes
- No
- Don't know / no opinion / not relevant

If you answered yes to question 17, please indicate how this clarity should be provided (guidance, EU legislation, ...):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

I am not sure if there is a discretion to supersede the recommendations of BCBS but personally I think that financial institutions especially banks are needed to pave the way for a successful adoption of crypto-assets in the EU. Again, as stated further above: the capital market dislikes uncertainty therefore wherever possible, a EU legislation should be preferred over guidance.

17.1 Please explain your reasoning for your answer to question 17:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

see 17

Question 18. Should harmonisation of national civil laws be considered to provide clarity on the legal validity of token transfers and the tokenisation of tangible (material) assets?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Unfortunately, I do not see another solution than a harmonization of national civil laws - with all the opposition which can be expected in such a "serious interference".

B. Specific questions on service providers related to crypto-assets

The crypto-asset market encompasses a range of activities and different market actors that provide trading and/or intermediation services. Currently, many of these activities and service providers are not subject to any regulatory framework, either at EU level (except for AML/CFT purposes) or national level. Regulation may be necessary in order to provide clear conditions governing the provisions of these services and address the related risks in an effective and proportionate manner. This would enable the development of a sustainable crypto-asset framework. This could be done by bringing these activities and service providers in the regulated space by creating a new bespoke regulatory approach.

Question 19. Can you indicate the various types and the number of service providers related to crypto-assets (issuances of crypto-assets, exchanges, trading platforms, wallet providers, ...) in your jurisdiction?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

For the case of Liechtenstein the service providers in-scope are:

- Token Issuers;
- Token Generators;
- TT Key Custodians;
- TT Protectors;
- Physical Validators;
- TT Exchange Service Providers;
- TT Verifying Authority;
- TT Price Service Providers; and
- TT Identity Service Providers.

Personally I'd modify/sharpen the definitions of TT Key Custodians and TT Protectors a bit but all in all the framework provides for a comprehensive solution I've not seen anywhere else so far.

1. Issuance of crypto-assets

This section distinguishes between the issuers of crypto-assets in general (1.1.) and the issuer of the so-called “stablecoins” backed by a reserve of real assets (1.2.).

1.1. Issuance of crypto-assets in general

The crypto-asset issuer or sponsor is the organisation that has typically developed the technical specifications of a crypto-asset and set its features. In some cases, their identity is known, while in some cases, those promoters are unidentified. Some remain involved in maintaining and improving the crypto-asset’s code and underlying algorithm while other do not (study from the European Parliament on “Cryptocurrencies and Blockchain”, July 2018). Furthermore, the issuance of crypto-assets is generally accompanied with a document describing crypto-asset and the ecosystem around it, the so-called ‘white papers’. Those ‘white papers’ are, however, not standardised and the quality, the transparency and disclosure of risks vary greatly. It is therefore uncertain whether investors or consumers who buy crypto-assets understand the nature of the crypto-assets, the rights associated with them and the risks they present.

Question 20. Do you consider that the issuer or sponsor of crypto-assets marketed to EU investors/consumers should be established or have a physical presence in the EU?

- Yes
- No
- Don’t know / no opinion / not relevant

20.1 Please explain your reasoning for your answer to question 20:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Put simply: enforcement of liability in case of wrongdoing.

Question 21. Should an issuer or a sponsor of crypto-assets be required to provide information (e.g. through a ‘white paper’) when issuing crypto-assets?

- Yes
- No
- This depends on the nature of the crypto-asset (utility token, payment token, hybrid token, ...)
- Don’t know / no opinion / not relevant

Question 21.1 Please indicate the entity that, in your view, should be responsible for this disclosure (e.g. the issuer/sponsor, the entity placing the crypto-assets in the market) and the content of such information (e.g.

information on the crypto-asset issuer, the project, the rights attached to the crypto-assets, on the secondary trading, the underlying technology, potential conflicts of interest, ...):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

- 1) issuer
- 2) if there is no issuer the sponsor
- 3) if there is no sponsor the market infrastructure making the token available to trade
- 4) if there is there is no entity as per above it's either not a publicly available token or Bitcoin

Question 22. If a requirement to provide the information on the offers of crypto-assets is imposed on their issuer/sponsor, would you see a need to clarify the interaction with existing pieces of legislation that lay down information requirements (to the extent that those rules apply to the offers of certain crypto-assets, such as utility and/or payment tokens)?

Please rate from 1 (completely irrelevant) to 5 (highly relevant)

	1 (completely irrelevant)	2	3	4	5 (highly relevant)	Don't know / no opinion / not relevant
The Consumer Rights Directive	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The E-Commerce Directive	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The EU Distance Marketing of Consumer Financial Services Directive	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

22.1 Is there any other existing piece of legislation laying down information requirements with which the interaction would need to be clarified? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

I'd rather draw a line between public offering and private offering (in analogy of the prospectus directive). A large part of token being marketed likely will be "investment" type. Private property being sold in the form of

token might fall under the directives as per above, however the important issue is, that there is an authority ensuring that property being "forged" in token is readily available to the buyer (see TT Validator in the Liechtenstein blockchain act).

22.2 Please explain your reasoning and indicate the type of clarification (legislative/non legislative) that would be required:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

see answers further above on Liechtenstein blockchain act and MME taxonomy.

Question 23. Beyond any potential obligation as regards the mandatory incorporation and the disclosure of information on the offer, should the crypto-asset issuer or sponsor be subject to other requirements?

Please rate from 1 (completely irrelevant) to 5 (highly relevant)

	1 (completely irrelevant)	2	3	4	5 (highly relevant)	Don't know / no opinion / not relevant
The managers of the issuer or sponsor should be subject to fitness and probity standards	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The issuer or sponsor should be subject to advertising rules to avoid misleading marketing/promotions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Where necessary, the issuer or sponsor should put in place a mechanism to safeguard the funds collected such as an escrow account or trust account	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

23.1 Is there any other requirement not mentioned above to which the crypto-asset issuer should be subject? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

- Risk disclosures in case of a public offering
- Mandatory transparency rules (half-year or at least yearly financials) even of token are unlisted

23.2 Please explain your reasoning for your answers to question 23:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Market integrity is significantly driven by transparency. Therefore disclosing risk as well as updated on an issuer level in highly beneficial.

1.2. Issuance of “stablecoins” backed by real assets

As indicated above, a new subset of crypto-assets – the so-called “stablecoins” – has recently emerged and present some opportunities in terms of cheap, faster and more efficient payments. A recent G7 report makes a distinction between “stablecoins” and “global stablecoins”. While “stablecoins” share many features of crypto-assets, the so-called “global stablecoins” (built on existing large and cross-border customer base) could scale rapidly, which could lead to additional risks in terms of financial stability, monetary policy transmission and monetary sovereignty. As a consequence, this section of the public consultation aims to determine whether additional requirements should be imposed on both “stablecoin” and “global stablecoin” issuers when their coins are backed by real assets or funds. The reserve (i.e. the pool of assets put aside by the issuer to stabilise the value of a “stablecoin”) may be subject to risks. For instance, the funds of the reserve may be invested in assets that may prove to be riskier or less liquid than expected in stressed market circumstances. If the number of “stablecoins” is issued above the funds held in the reserve, this could lead to a run (a large number of users converting their “stablecoins” into fiat currency).

Question 24. In your opinion, what would be the objective criteria allowing for a distinction between “stablecoins” and “global stablecoins” (e.g. number and value of “stablecoins” in circulation, size of the reserve, ...)? Please explain your reasoning.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

If a coin as backed not by fiat only or governmental bonds it should be qualified as a collective investment scheme or a collateralized debt obligation with all the relating regulatory safeguards.

A coin backed by fiat only is likely qualified as e-money with an relating regulatory framework as well.

In my opinion there is no hard criteria to distinguish global from normal stablecoins. As stated above, users will show by acceptance if a stablecoin will be global or not.

Question 25.1 To tackle the specific risks created by “stablecoins” and “global stablecoins”, what are the requirements that could be imposed on their issuers and/or the manager of the reserve?

Please indicate for “stablecoins” if each is proposal is relevant.

	Relevant	Not relevant	Don't know / no opinion
The reserve of assets should only be invested in safe and liquid assets (such as fiat-currency, short term-government bonds, ...)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The issuer should contain the creation of “stablecoins” so that it is always lower or equal to the value of the funds of the reserve	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The assets or funds of the reserve should be segregated from the issuer’s balance sheet	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The assets of the reserve should not be encumbered (i.e. not pledged as collateral)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The issuer of the reserve should be subject to prudential requirements rules (including capital requirements)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The issuer and the reserve should be subject to specific requirements in case of insolvency or when it decides to stop operating	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Obligation for the assets or funds to be held in custody with credit institutions in the EU	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Periodic independent auditing of the assets or funds held in the reserve	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The issuer should disclose information to the users on (i) how it intends to provide stability to the “stablecoins”, (ii) on the claim (or the absence of claim) that users may have on the reserve, (iii) on the underlying assets or funds placed in the reserve	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The value of the funds or assets held in the reserve and the number of stablecoins should be disclosed periodically	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Requirements to ensure interoperability across different distributed ledgers or enable access to the technical standards used by the issuer	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
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Question 25.1 To tackle the specific risks created by “stablecoins” and “global stablecoins”, what are the requirements that could be imposed on their issuers and/or the manager of the reserve?

Please indicate for “stablecoins” if each proposal is relevant.

	Relevant	Not relevant	Don't know / no opinion
The reserve of assets should only be invested in safe and liquid assets (such as fiat-currency, short term-government bonds, ...)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The issuer should contain the creation of “stablecoins” so that it is always lower or equal to the value of the funds of the reserve	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The assets or funds of the reserve should be segregated from the issuer's balance sheet	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The assets of the reserve should not be encumbered (i.e. not pledged as collateral)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The issuer of the reserve should be subject to prudential requirements rules (including capital requirements)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The issuer and the reserve should be subject to specific requirements in case of insolvency or when it decides to stop operating	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Obligation for the assets or funds to be held in custody with credit institutions in the EU	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Obligation for the assets or funds to be held for safekeeping at the central bank	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Periodic independent auditing of the assets or funds held in the reserve	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The issuer should disclose information to the users on (i) how it intends to provide stability to the “stablecoins”, (ii) on the claim (or the absence of claim) that users may have on the reserve, (iii) on the underlying assets or funds placed in the reserve	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The value of the funds or assets held in the reserve and the number of stablecoins should be disclosed periodically	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Obligation for the issuer to use open source standards to promote competition	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
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25.1 a) Is there any other requirements not mentioned above that could be imposed on “stablecoins” issuers and/or the manager of the reserve? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

25.1 b) Please illustrate your responses to question 25.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Remark: Questions to 25.1 are shown partially twice above.

Questions 3/4 and 5: Segregation, pledge and capital requirements depend on the nature of the token. A stablecoin can theoretically be a collective investment scheme, a collateralized debt obligation, a unsecured debt obligation, e-money or partial direct property in a pool of assets. So a distinct answer is unfortunately not possible.

Question 7: EU custody obligation might not work for global stable coins given lack of "liquidity" appetite by EU FIs

Question 11: technical standards will develop according to usability / acceptance by market participants. Providing an ex-ante interoperability might be impossible to provide for.

Question 25.2 To tackle the specific risks created by “stablecoins” and “global stablecoins”, what are the requirements that could be imposed on their issuers and/or the manager of the reserve?

Please indicate for “global stablecoins” if each proposal is relevant.

	Relevant	Not relevant	Don't know / no opinion
The reserve of assets should only be invested in safe and liquid assets (such as fiat-currency, short term-government bonds, ...)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

The issuer should contain the creation of “stablecoins” so that it is always lower or equal to the value of the funds of the reserve	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The assets or funds of the reserve should be segregated from the issuer’s balance sheet	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The assets of the reserve should not be encumbered (i.e. not pledged as collateral)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The issuer of the reserve should be subject to prudential requirements rules (including capital requirements)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The issuer and the reserve should be subject to specific requirements in case of insolvency or when it decides to stop operating	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Obligation for the assets or funds to be held in custody with credit institutions in the EU	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Periodic independent auditing of the assets or funds held in the reserve	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The issuer should disclose information to the users on (i) how it intends to provide stability to the “stablecoins”, (ii) on the claim (or the absence of claim) that users may have on the reserve, (iii) on the underlying assets or funds placed in the reserve	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The value of the funds or assets held in the reserve and the number of stablecoins should be disclosed periodically	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

25.2 a) Is there any other requirements not mentioned above that could be imposed on “stablecoins” issuers and/or the manager of the reserve? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

25.2 b) Please Please illustrate your responses to question 25.2:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No answers on global stablecoins possible unless stablecoins itself are clearly defined.

“Stablecoins” could be used by anyone (retail or general purpose) or only by a limited set of actors, i.e. financial institutions or selected clients of financial institutions (wholesale). The scope of uptake may give rise to different risks. The [G7 report on “investigating the impact of global stablecoins”](#) stresses that “*Retail stablecoins, given their public nature, likely use for high-volume, small-value payments and potentially high adoption rate, may give rise to different risks than wholesale stablecoins available to a restricted group of users*”.

Question 26. Do you consider that wholesale “stablecoins” (those limited to financial institutions or selected clients of financial institutions, as opposed to retail investors or consumers) should receive a different regulatory treatment than retail “stablecoins”?

- Yes
- No
- Don't know / no opinion / not relevant

26.1 Please explain your reasoning for your answer to question 26:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

How is the SWIFT network being regulated today. This is a messaging system between FIs globally.

To answer the question: stablecoins between FIs do not need the consumer protection / transparency features as a "retail" one, however, a common basis of rules should rule both cases.

2. Trading platforms

Trading platforms function as a market place bringing together different crypto-asset users that are either looking to buy or sell crypto-assets. Trading platforms match buyers and sellers directly or through an intermediary. The business model, the range of services offered and the level of sophistication vary across platforms. Some platforms, so-called ‘centralised platforms’, hold crypto-assets on behalf of their clients while others, so-called decentralised platforms, do not. Another important distinction between centralised and decentralised platforms is that trade settlement typically occurs on the books of the platform (off-chain) in the case of centralised platforms, while it occurs on DLT for decentralised platforms (on-chain). Some platforms have already adopted good practice from traditional securities trading venues¹⁹ while others use simple and inexpensive technology.

¹⁹ Trading venues are a regulated market, a multilateral trading facility or an organised trading facility under MiFID II

Question 27. In your opinion and beyond market integrity risks (see section III. C. 1. below), what are the main risks in relation to trading platforms of crypto-assets?

Please rate from 1 (completely irrelevant) to 5 (highly relevant)

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	1 (completely irrelevant)	2	3	4	5 (highly relevant)	Don't know / no opinion / not relevant
Absence of accountable entity in the EU	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Lack of adequate governance arrangements, including operational resilience and ICT security	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Absence or inadequate segregation of assets held on the behalf of clients (e.g. for 'centralised platforms')	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Conflicts of interest arising from other activities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Absence/inadequate recordkeeping of transactions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Absence/inadequate complaints or redress procedures are in place	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Bankruptcy of the trading platform	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Lacks of resources to effectively conduct its activities	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Losses of users' crypto-assets through theft or hacking (cyber risks)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Lack of procedures to ensure fair and orderly trading	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Access to the trading platform is not provided in an undiscriminating way	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Delays in the processing of transactions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
For centralised platforms: Transaction settlement happens in the book of the platform and not necessarily recorded on DLT. In those cases, confirmation that the transfer of ownership is complete lies with the platform only (counterparty risk for investors vis-à-vis the platform)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of rules, surveillance and enforcement mechanisms to deter potential market abuse	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

27.1 Is there any other main risks posed by trading platforms of crypto-assets not mentioned above that you would foresee? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Risk of violation of the CSDR (Central Securities Depository Regulation) for all investment token being traded on a regulated market in the Union.

27.2 Please explain your reasoning for your answer to question 27:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 1: If citizens choose a broker / bank without a permanent establishment in the Union there is basically no room for local enforcement. Services publicly promoted / offered in the Union should therefore ensure an accountable entity is present in the EU.

Question 4-7: trading platforms are currently regulated a e-money institution at maximum. Lack of regulation of token infrastructures (CSD level) as well as lack of regulation on the level exchange / MTF / OTF leads to deficiencies.

Question 9: lack of deposit protection / sound regulation

Question 11: access to trading platforms should be possible for retail as well. It's all a matter of pooling utmost demand / supply in one trading venue to avoid a fragmentation of the market into different liquidity pools (see MIFID 2 / consolidated tape).

Question 28. What are the requirements that could be imposed on trading platforms in order to mitigate those risks?

Please rate from 1 (completely irrelevant) to 5 (highly relevant)

	1 (completely irrelevant)	2	3	4	5 (highly relevant)	Don't know / no opinion / not relevant
Trading platforms should have a physical presence in the EU	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Trading platforms should be subject to governance arrangements (e.g. in terms of operational resilience and ICT security)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Trading platforms should segregate the assets of users from those held on own account	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Trading platforms should be subject to rules on conflicts of interest	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Trading platforms should be required to keep appropriate records of users' transactions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Trading platforms should have an adequate complaints handling and redress procedures	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Trading platforms should be subject to prudential requirements (including capital requirements)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Trading platforms should have adequate rules to ensure fair and orderly trading	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Trading platforms should provide access to its services in an undiscriminating way	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Trading platforms should have adequate rules, surveillance and enforcement mechanisms to deter potential market abuse	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Trading platforms should be subject to reporting requirements (beyond AML/CFT requirements)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Trading platforms should be responsible for screening crypto-assets against the risk of fraud	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

28.1 Is there any other requirement that could be imposed on trading platforms in order to mitigate those risks? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Secondary market / exchanges topic can only be solved together with the central securities depository topic / market infrastructure topic.

28.2 Please indicate if those requirements should be different depending on the type of crypto-assets traded on the platform and explain your reasoning for your answers to question 28:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 12: risk of fraud might be mitigated either with a "Crypto CSD" or listing requirements by the relevant exchange. Risk of reputational damage (provided accountability is ensured) will likely drive out "aggressive" exchanges out of the market quite rapidly.

3. Exchanges (fiat-to-crypto and crypto-to-crypto)

Crypto-asset exchanges are entities that offer exchange services to crypto-asset users, usually against payment of a certain fee (i.e. a commission). By providing broker/dealer services, they allow users to sell their crypto-assets for fiat currency or buy new crypto-assets with fiat currency. It is important to note that some exchanges are pure crypto-to-crypto exchanges, which means that they only accept payments in other crypto-assets (for instance, Bitcoin). It should also be noted that many cryptocurrency exchanges (i.e. both fiat-to-crypto and crypto-to-crypto exchanges) operate as custodial wallet providers (see section III.B.4 below). Many exchanges usually function both as a trading platform and as a form of exchange (study from the European Parliament on "Cryptocurrencies and Blockchain", July 2018).

Question 29. In your opinion, what are the main risks in relation to crypto-to-crypto and fiat-to-crypto exchanges?

Please rate from 1 (completely irrelevant) to 5 (highly relevant)

	1 (completely irrelevant)	2	3	4	5 (highly relevant)	Don't know / no opinion / not relevant
Absence of accountable entity in the EU	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of adequate governance arrangements, including operational resilience and ICT security	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Conflicts of interest arising from other activities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Absence/inadequate recordkeeping of transactions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Absence/inadequate complaints or redress procedures are in place	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Bankruptcy of the exchange	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Inadequate own funds to repay the consumers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Losses of users' crypto-assets through theft or hacking	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Users suffer loss when the exchange they interact with does not exchange crypto-assets against fiat currency (conversion risk)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Absence of transparent information on the crypto-assets proposed for exchange	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

29.1 Is there any other main risks in relation to crypto-to-crypto and fiat-to-crypto exchanges not mentioned above that you would foresee? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

see Q 28

29.2 Please explain your reasoning for your answer to question 29:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

see Q 28

Question 30. What are the requirements that could be imposed on exchanges in order to mitigate those risks?

Please rate from 1 (completely irrelevant) to 5 (highly relevant)

--	--	--	--	--	--	--

	1 (completely irrelevant)	2	3	4	5 (highly relevant)	Don't know / no opinion / not relevant
Absence of accountable entity in the EU	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exchanges should be subject to governance arrangements (e.g. in terms of operational resilience and ICT security)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exchanges should segregate the assets of users from those held on own account	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exchanges should be subject to rules on conflicts of interest	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exchanges should be required to keep appropriate records of users' transactions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exchanges should have an adequate complaints handling and redress procedures	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exchanges should be subject to prudential requirements (including capital requirements)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exchanges should be subject to advertising rules to avoid misleading marketing/promotions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exchanges should be subject to reporting requirements (beyond AML/CFT requirements)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exchanges should be responsible for screening crypto-assets against the risk of fraud	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

30.1 Is there any other requirement that could be imposed exchanges in order to mitigate those risks? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

see Q 28

30.2 Please indicate if those requirements should be different depending on the type of crypto-assets available on the exchange and explain your reasoning for your answers to question 30:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

see Q 28

4. Provision of custodial wallet services for crypto-assets

Crypto-asset wallets are used to store public and private keys²⁰ and to interact with DLT to allow users to send and receive crypto-assets and monitor their balances. Crypto-asset wallets come in different forms. Some support multiple crypto-assets/DLTs while others are crypto-asset/DLT specific²¹. DLT networks generally provide their own wallet functions (e.g. Bitcoin or Ether).

There are also specialised wallet providers. Some wallet providers, so-called custodial wallet providers, not only provide wallets to their clients but also hold their crypto-assets (i.e. their private keys) on their behalf. They can also provide an overview of the customers’ transactions. Different risks can arise from the provision of such a service.

²⁰ DLT is built upon a cryptography system that uses pairs of keys: public keys, which are publicly known and essential for identification, and private keys, which are kept secret and are used for authentication and encryption.

²¹ There are software/hardware wallets and so-called cold/hot wallets. A software wallet is an application that may be installed locally (on a computer or a smart phone) or run in the cloud. A hardware wallet is a physical device, such as a USB key. Hot wallets are connected to the internet while cold wallets are not.

Question 31. In your opinion, what are the main risks in relation to the custodial wallet service provision?

Please rate from 1 (completely irrelevant) to 5 (highly relevant)

	1 (completely irrelevant)	2	3	4	5 (highly relevant)	Don't know / no opinion / not relevant
No physical presence in the EU	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Lack of adequate governance arrangements, including operational resilience and ICT security	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Absence or inadequate segregation of assets held on the behalf of clients	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Conflicts of interest arising from other activities (trading, exchange)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Absence/inadequate recordkeeping of holdings and transactions made on behalf of users	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Absence/inadequate complaints or redress procedures are in place	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Bankruptcy of the custodial wallet provider	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Inadequate own funds to repay the consumers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Losses of users' crypto-assets/private keys (e.g. through wallet theft or hacking)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The custodial wallet is compromised or fails to provide expected functionality	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The custodial wallet provider behaves negligently or fraudulently	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
No contractual binding terms and provisions with the user who holds the wallet	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

31.1 Is there any other risk in relation to the custodial wallet service provision not mentioned above that you would foresee? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

see Q 28
Reference is also made to the Liechtenstein blockchain act

31.2 Please explain your reasoning for your answer to question 31:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

see Q 28

Reference is also made to the Liechtenstein blockchain act

Question 32. What are the requirements that could be imposed on custodial wallet providers in order to mitigate those risks?

Please rate from 1 (completely irrelevant) to 5 (highly relevant)

	1 (completely irrelevant)	2	3	4	5 (highly relevant)	Don't know / no opinion / not relevant
Custodial wallet providers should have a physical presence in the EU	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Custodial wallet providers should be subject to governance arrangements (e.g. in terms of operational resilience and ICT security)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Custodial wallet providers should segregate the asset of users from those held on own account	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Custodial wallet providers should be subject to rules on conflicts of interest	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Custodial wallet providers should be required to keep appropriate records of users' holdings and transactions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Custodial wallet providers should have an adequate complaints handling and redress procedures	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Custodial wallet providers should be subject to capital requirements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Custodial wallet providers should be subject to advertising rules to avoid misleading marketing/promotions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Custodial wallet providers should be subject to certain minimum conditions for their contractual relationship with the consumers/investors



32.1 Is there any other requirement that could be imposed on custodial wallet providers in order to mitigate those risks? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

see Q 28
Reference is also made to the Liechtenstein blockchain act

32.2 Please indicate if those requirements should be different depending on the type of crypto-assets kept in custody by the custodial wallet provider and explain your reasoning for your answer to question 32:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

see Q 28
Reference is also made to the Liechtenstein blockchain act

Question 33. Should custodial wallet providers be authorised to ensure the custody of all crypto-assets, including those that qualify as financial instruments under MiFID II (the so-called ‘security tokens’, see section IV of the public consultation) and those currently falling outside the scope of EU legislation?

- Yes
- No
- Don't know / no opinion / not relevant

33.1 Please explain your reasoning for your answer to question 33:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Provided the market infrastructure has been regulated accordingly investment / security token should be allowed for custody as well. Competition enhances the market and might force established service providers to adopt / improve services and better align with consumer needs.

Question 34. In your opinion, are there certain business models or activities /services in relation to digital wallets (beyond custodial wallet providers) that should be in the regulated space?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Depending on the type of token (e.g. partial ownership) there is a need for an authority to ensure the underlying asset is available in the promised quality / quantity.

A notary function (along the lines of the current CSDs) could be beneficial as well. Likely we'll need a trusted party to ensure the correct number of tokens are minted / available. I personally wouldn't trust the market correction mechanisms to avoid harm to consumers.

5. Other services providers

Beyond custodial wallet providers, exchanges and trading platforms, other actors play a particular role in the crypto-asset ecosystem. Some bespoke national regimes on crypto-currency regulate (either on an optional or mandatory basis) other crypto-assets related services, sometimes taking examples of the investment services listed in Annex I of MiFID II. The following section aims at assessing whether some requirements should be required for other services.

Question 35. In your view, what are the services related to crypto-assets that should be subject to requirements?

(When referring to execution of orders on behalf of clients, portfolio management, investment advice, underwriting on a firm commitment basis, placing on a firm commitment basis, placing without firm commitment basis, we consider services that are similar to those regulated by Annex I A of MiFID II.)

Please rate from 1 (completely irrelevant) to 5 (highly relevant)

									Don't know /
--	--	--	--	--	--	--	--	--	--------------

	1 (completely irrelevant)	2	3	4	5 (highly relevant)	no opinion / not relevant
Reception and transmission of orders in relation to crypto-assets	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Execution of orders on crypto-assets on behalf of clients	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Crypto-assets portfolio management	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Advice on the acquisition of crypto-assets	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Underwriting of crypto-assets on a firm commitment basis	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Placing crypto-assets on a firm commitment basis	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Placing crypto-assets without a firm commitment basis	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Information services (an information provider can make available information on exchange rates, news feeds and other data related to crypto-assets)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Processing services, also known as 'mining' or 'validating' services in a DLT environment (e.g. 'miners' or validating 'nodes' constantly work on verifying and confirming transactions)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Distribution of crypto-assets (some crypto-assets arrangements rely on designated dealers or authorised resellers)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Services provided by developers that are responsible for maintaining/updating the underlying protocol	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Agent of an issuer (acting as liaison between the issuer and to ensure that the regulatory requirements are complied with)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

35.1 Is there any other services related to crypto-assets not mentioned above that should be subject to requirements? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Without a proper taxonomy any answer to these questions will not be precise & beneficial.

35.2 Please illustrate your response to question 35 by underlining the potential risks raised by these services if they were left unregulated and by identifying potential requirements for those service providers:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Without a proper taxonomy any answer to these questions will not be precise & beneficial.

Crypto-assets are not banknotes, coins or scriptural money. For this reason, crypto-assets do not fall within the definition of 'funds' set out in the [Payment Services Directive \(PSD2\)](#), unless they qualify as electronic money. As a consequence, if a firm proposes a payment service related to a crypto-asset (that do not qualify as e-money), it would fall outside the scope of PSD2.

Question 36. Should the activity of making payment transactions with crypto-assets (those which do not qualify as e-money) be subject to the same or equivalent rules as those currently contained in PSD2?

- Yes
- No
- Don't know / no opinion / not relevant

36.1 Please explain your reasoning for your answer to question 36:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

PSD2 is a directive relating to FIs / payment service providers. In my opinion, depending on the design of the underlying market infrastructure there is no need to consider this question / topic.

C. Horizontal questions

Those horizontal questions relate to four different topics: Market integrity (1.), AML/CFT (2.), consumer protection (3.) and the supervision and oversight of the various service providers related to crypto-assets (4).

1. Market Integrity

Many crypto-assets exhibit high price and volume volatility while lacking the transparency and supervision and oversight present in other financial markets. This may heighten the potential risk of market manipulation and insider dealing on exchanges and trading platforms. These issues can be further exacerbated by trading platforms not having adequate systems and controls to ensure fair and orderly trading and protect against market manipulation and insider dealing. Finally there may be a lack of information about the identity of participants and their trading activity in some crypto-assets.

Question 37. In your opinion, what are the biggest market integrity risks related to the trading of crypto-assets?

Please rate from 1 (completely irrelevant) to 5 (highly relevant)

	1 (completely irrelevant)	2	3	4	5 (highly relevant)	Don't know / no opinion / not relevant
Price manipulation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Volume manipulation (wash trades...)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Pump and dump schemes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Manipulation on basis of quoting and cancellations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Dissemination of misleading information by the crypto-asset issuer or any other market participants	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Insider dealings	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

37.1 Is there any other big market integrity risk related to the trading of crypto-assets not mentioned above that you would foresee? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

If the Union can provide for a sound regulatory framework of crypto-assets, is providing nondiscriminatory access and thus able to pool a large part of liquidity with EU exchanges the above mentioned risks will get significantly less severe.

37.2 Please explain your reasoning for your answer to question 37:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See Q 37.1

While market integrity is the key foundation to create consumers' confidence in the crypto-assets market, the extension of the [Market Abuse Regulation \(MAR\)](#) requirements to the crypto-asset ecosystem could unduly restrict the development of this sector.

Question 38. In your view, how should market integrity on crypto-asset markets be ensured?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Same business, same risks same rules.

While the information on executed transactions and/or current balance of wallets are often openly accessible in distributed ledger based crypto-assets, there is currently no binding requirement at EU level that would allow EU supervisors to directly identify the transacting counterparties (i.e. the identity of the legal or natural person(s) who engaged in the transaction).

Question 39. Do you see the need for supervisors to be able to formally identify the parties to transactions in crypto-assets?

- Yes
- No
- Don't know / no opinion / not relevant

39.1 Please explain your reasoning for your answer to question 39:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As mentioned further above. The relevant question is how the market infrastructure in being regulated / shaped / designed.

Question 40. Provided that there are new legislative requirements to ensure the proper identification of transacting parties in crypto-assets, how can it be ensured that these requirements are not circumvented by trading on platforms/exchanges in third countries?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Harmonization of international rules / regulation with an ability to rely on foreign service providers. If this cannot be done - for whatever reason - the market in the EU will remain a "ring-fenced" market which is safe but does not exploit the global opportunities to the full extent.

Basically the answer is a question of risk vs. opportunities which can be somehow mitigated by offering foreign participants to "onboard" conveniently with EU entities.

2. Anti-Money Laundering (AML)/Countering the Financing of Terrorism (CFT)

Under the current EU anti-money laundering and countering the financing of terrorism (AML/CFT) legal framework ([Anti-Money Laundering Directive \(Directive 2015/849/EU\)](#) as amended by [AMLD5 \(Directive 2018/843/EU\)](#)), providers of services (wallet providers and crypto-to-fiat exchanges) related to "virtual currency" are "obliged entities". A virtual currency is defined as: "*a digital representation of value that is neither issued by a central bank or a public authority, nor necessarily attached to a fiat currency, but is accepted by natural or legal persons as a means of payment and can be transferred, stored or traded electronically*". The Financial Action Task Force (FATF) uses a broader term "virtual asset" and defines it as: "*a digital representation of value that can be digitally traded or transferred, and can be used for payment or investment purposes, and that does not include digital representations of fiat currencies, securities and other financial assets that are already covered elsewhere in the FATF Recommendations*". Therefore, there may be a need to align the definition used in the EU AML/CFT framework with the FATF recommendation or with a "crypto-asset" definition, especially if a crypto-asset framework was needed.

Question 41. Do you consider it appropriate to extend the existing "virtual currency" definition in the EU AML/CFT legal framework in order to align it with a broader definition (as the one provided by the FATF or as the definition of "crypto-assets" that could be used in a potential bespoke regulation on crypto-assets)?

Yes

- No
- Don't know / no opinion / not relevant

41.1 Please explain your reasoning for your answer to question 41:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Same business, same risks, same rules. Depending what's exactly "wrapped" into a token, the corresponding AML / CFT rules should be applied, by additionally accounting for a potentially increased risk stemming from the eased transferability.

Some crypto-asset services are currently covered in internationally recognised recommendations without being covered under EU law, such as the provisions of exchange services between different types of crypto-assets (crypto-to-crypto exchanges) or the "*participation in and provision of financial services related to an issuer's offer and/or sale of virtual assets*". In addition, possible gaps may exist with regard to peer-to-peer transactions between private persons not acting as a business, in particular when done through wallets that are not hosted by custodial wallet providers.

Question 42. Beyond fiat-to-crypto exchanges and wallet providers that are currently covered by the EU AML/CFT framework, are there crypto-asset services that should also be added to the EU AML/CFT legal framework obligations?

- Yes
- No
- Don't know / no opinion / not relevant

42.1 Please explain your reasoning for your answer to question 42:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Reference is made to the Liechtenstein blockchain act.

Question 43. If a bespoke framework on crypto-assets is needed, do you consider that all crypto-asset service providers covered by this potential framework should become 'obliged entities' under the EU AML/CFT framework?

- Yes
- No

- Don't know / no opinion / not relevant

43.1 Please explain your reasoning for your answer to question 43:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

International financial services depends on cooperation. Without a minimum level of AML/CFS rules no cooperation will be possible and network effects cannot be exploited.

Question 44. In your view, how should the AML/CFT risks arising from peer-to-peer transactions (i.e. transactions without intermediation of a service provider) be mitigated?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Proper wealth tax reporting in all jurisdiction which provides for transparency on changes in assets. If significant changes in wealth cannot be explained by a taxpayer a closer look is needed.

Another possibility: by providing a convenient market infrastructure most consumers are happy to conduct even p2p transaction within such a framework which can be easily analysed for unusual transactions. If the regulatory burden is too high on a p2p level, I'd expect a tendency / flight into anonymous token or shady infrastructures.

In order to tackle the dangers linked to anonymity, new FATF standards require that "*countries should ensure that originating Virtual Assets Service Providers (VASP) obtain and hold required and accurate originator information and required beneficiary information on virtual asset transfers, submit the above information to the beneficiary VASP or financial institution (if any) immediately and securely, and make it available on request to appropriate authorities. Countries should also ensure that beneficiary VASPs obtain and hold required originator information and required and accurate beneficiary information on virtual asset transfers and make it available on request to appropriate authorities*" (FATF Recommendations).

Question 45. Do you consider that these requirements should be introduced in the EU AML/CFT legal framework with additional details on their practical implementation?

- Yes
 No
 Don't know / no opinion / not relevant

45.1 Please explain your reasoning for your answer to question 45:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In my opinion FATF is applying an old-fashioned framework to the digital age which might significantly limit the benefits of new technology.

Let me try to give a metaphor: does facebook need a written report where users currently are being located? My means of data mining / analysis this is no longer needed given inherent transparency has overcome the need of "manual documentation". If data is being recorded (which is done by blockchain per default) all matters of fact are already there, it's only a question of link the data correctly and a precise picture of reality will be possible - even more precise than due to manual reportings

Question 46. In your view, do you consider relevant that the following requirements are imposed as conditions for the registration and licensing of providers of services related to crypto-assets included in section III. B?

Please rate from 1 (completely irrelevant) to 5 (highly relevant)

	1 (completely irrelevant)	2	3	4	5 (highly relevant)	Don't know / no opinion / not relevant
Directors and senior management of such providers should be subject to fit and proper test from a money laundering point of view, meaning that they should not have any convictions or suspicions on money laundering and related offences	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Service providers must be able to demonstrate their ability to have all the controls in place in order to be able to comply with their obligations under the anti-money laundering framework	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

46.1 Please explain your reasoning for your answer to question 46:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

3. Consumer/investor protection²¹

Information on the profile of crypto-asset investors and users is limited. Some estimates suggest however that the user base has expanded from the original tech-savvy community to a broader audience, including both retail and institutional investors²². Offerings of utility tokens, for instance, do not provide for minimum investment amounts nor are they necessarily limited to professional or sophisticated investors. When considering the consumer protection, the functions of the crypto-assets should also be taken into consideration. While some crypto-assets are bought for investment purposes, other are used as a means of payment or for accessing a specific product or service. Beyond the information that is usually provided by crypto-asset issuer or sponsors in their 'white papers', the question arises whether providers of services related to crypto-assets should carry out suitability checks depending on the riskiness of a crypto-asset (e.g. volatility, conversion risks, ...) relative to a consumer's risk appetite. Other approaches to protect consumers and investors could also include, among others, limits on maximum investable amounts by EU consumers or warnings on the risks posed by crypto-assets.

²¹ The term 'consumer' or 'investor' are both used in this section, as the same type of crypto-assets can be bought for different purposes. For instance, payment tokens can be acquired to make payment transactions while they can also be held for investment, given their volatility. Likewise, utility tokens can be bought either for investment or for accessing a specific product or service.

²² ESMA, "Advice on initial coin offerings and Crypto-Assets", January 2019.

Question 47. What type of consumer protection measures could be taken as regards crypto-assets?

Please rate from 1 (completely irrelevant) to 5 (highly relevant)

	1 (completely irrelevant)	2	3	4	5 (highly relevant)	Don't know / no opinion / not relevant
Information provided by the issuer of crypto-assets (the so-called 'white papers')	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Limits on the investable amounts in crypto-assets by EU consumers	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Suitability checks by the crypto-asset service providers (including exchanges, wallet providers, ...)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Warnings on the risks by the crypto-asset service providers (including exchanges, platforms, custodial wallet providers, ...)



47.1 Is there any other type of consumer protection measures that could be taken as regards crypto-assets? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It's all about transparency by ensuring accountability of the provider.

47.2 Please explain your reasoning for your answer to question 47 and indicate if those requirements should apply to all types of crypto assets or only to some of them:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Same business, same risks same rules. Personally I think we'll see a tendency towards "self-led investment decisions" due to the internet and availability of information in general. The classical financial advisor is getting less and less important or does not want to bear the regulatory risks / liability for providing such service. Hence, it's all about transparency.

Question 48. Should different standards of consumer/investor protection be applied to the various categories of crypto-assets depending on their prevalent economic (i.e. payment tokens, stablecoins, utility tokens, ...) or social function?

- Yes
- No
- Don't know / no opinion / not relevant

48.1 Please explain your reasoning for your answer to question 48:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Same business, same risks same rules.

Before an actual ICO (i.e. a public sale of crypto-assets by means of mass distribution), some issuers may choose to undertake private offering of crypto-assets, usually with a discounted price (the so-called “private sale”), to a small number of identified parties, in most cases qualified or institutional investors (such as venture capital funds). Furthermore, some crypto-asset issuers or promoters distribute a limited number of crypto-assets free of charge or at a lower price to external contributors who are involved in the IT development of the project (the so-called “bounty”) or who raise awareness of it among the general public (the so-called “air drop”) (see Autorité des Marchés Financiers, French ICOs – A New Method of financing, November 2018).

Question 49. Should different standards in terms of consumer/investor protection be applied depending on whether the crypto-assets are bought in a public sale or in a private sale?

- Yes
- No
- Don't know / no opinion / not relevant

49.1 Please explain your reasoning for your answer to question 49:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Do we really want to regulate private transactions???

If the question should rather aim at the question of an prospectus exempt offering the answer is: Same business, same risks same rules. If its an offering to professional investors only why should the same rules be applied?

Question 50. Should different standards in terms of consumer/investor protection be applied depending on whether the crypto-assets are obtained against payment or for free (e.g. air drops)?

- Yes
- No
- Don't know / no opinion / not relevant

50.1 Please explain your reasoning for your answer to question 50:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Can you regulate a donation? Tax-wise if there is an increase in wealth it must be reported but why should I say no by law if someone is inviting me for a coffee at Starbucks?

The vast majority of crypto-assets that are accessible to EU consumers and investors are currently issued outside the EU (in 2018, for instance, only 10% of the crypto-assets were issued in the EU (mainly, UK, Estonia and Lithuania) – Source Satis Research). If an EU framework on the issuance and services related to crypto-assets is needed, the question arises on how those crypto-assets issued outside the EU should be treated in regulatory terms.

Question 51. In your opinion, how should the crypto-assets issued in third countries and that would not comply with EU requirements be treated?

Please rate from 1 (factor not relevant at all) to 5 (very relevant factor)

	1 (factor not relevant at all)	2	3	4	5 (very relevant factor)	Don't know / no opinion / not relevant
Those crypto-assets should be banned	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Those crypto-assets should be still accessible to EU consumers/investors	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Those crypto-assets should be still accessible to EU consumers/investors but accompanied by a warning that they do not necessarily comply with EU rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

51.1 Is there any other way the crypto-assets issued in third countries and that would not comply with EU requirements should be treated? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

51.2 Please explain your reasoning for your answer to question 51:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Very important factor is to come up with a comprehensive framework on digital-assets to ensure an utmost amount of token can be offered in the Union in a compliant way.

When it comes to the question of a ban of a warning it depends on how effectively a ban can be enforced within the EU. If this is not possible, I'd rather recommend to work with a warning to ensure trust & effectiveness is government and authorities can be upheld.

4. Supervision and oversight of crypto-assets service providers

As a preliminary remark, it should be noted that where a crypto-asset arrangement, including “stablecoin” arrangements qualify as payment systems and/or scheme, the [Eurosystem oversight frameworks may apply](#). In accordance with its mandate, the Eurosystem is looking to apply its oversight framework to innovative projects. As the payment landscape continues to evolve, the Eurosystem oversight frameworks for payments instruments, schemes and arrangements are currently reviewed with a view to closing any gaps that innovative solutions might create by applying a holistic, agile and functional approach. The European Central Bank and Eurosystem will do so in cooperation with other relevant European authorities. Furthermore, the Eurosystem supports the creation of cooperative oversight frameworks whenever a payment arrangement is relevant to multiple jurisdictions.

That being said, if a legislation on crypto-assets service providers at EU level is needed, a question arises on which supervisory authorities in the EU should ensure compliance with that regulation, including the licensing of those entities. As the size of the crypto-asset market is still small and does not at this juncture raise financial stability issues, the supervision of the service providers (that are still a nascent industry) by national competent authorities would be justified. At the same time, as some new initiatives (such as the “global stablecoin”) through their global reach and can raise financial stability concerns at EU level, and as crypto-assets will be accessible through the internet to all consumers, investors and firms across the EU, it could be sensible to ensure an equally EU-wide supervisory perspective. This could be achieved, *inter alia*, by empowering the European Authorities (e.g. in cooperation with the European System of Central Banks) to supervise and oversee crypto-asset service providers. In any case, as the crypto-asset market rely on new technologies, EU regulators could face new challenges and require new supervisory and monitoring tools.

Question 52. Which, if any, crypto-asset service providers included in Section III. B do you think should be subject to supervisory coordination or supervision by the European Authorities (in cooperation with the ESCB where relevant) ?
Please explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Reference is again made to the Liechtenstein blockchain act.

Question 53. Which are the tools that EU regulators would need to adequately supervise the crypto-asset service providers and their underlying technologies?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Knowledge, expertise to be ensure a proper framework from the beginning and pave the way for a digital European Union.

IV. Crypto-assets that are currently covered by EU legislation

This last part of the public consultation consists of general questions on security tokens (A.), an assessment of legislation applying to security tokens (B.) and an assessment of legislation applying to e-money tokens (C.).

A. General questions on ‘security tokens’

Introduction

For the purpose of this section, we use the term ‘security tokens’ to refer to crypto-assets issued on a DLT and that qualify as transferable securities or other types of MiFID financial instruments. By extension, activities concerning security tokens would qualify as MiFID investment services/activities and transactions in security tokens admitted to trading or traded on a trading venue²³ would be captured by MiFID provisions. Consequently, firms providing services concerning security tokens should ensure they have the relevant MiFID authorisations and that they follow the relevant rules and requirements. MiFID is a cornerstone of the EU regulatory framework as financial instruments covered by MiFID are also subject to other financial legislation such as [CSDR](#) or [EMIR](#), which therefore equally apply to post-trade activities related to security tokens.

Building on [ESMA's advice on crypto-assets and ICOs](#) issued in January 2019 and on a preliminary legal assessment carried out by Commission services on the applicability and suitability of the existing EU legislation (mainly at level 1²⁴) on trading, post-trading and other financial services concerning security tokens, such as asset management, the purpose of this part of the consultation is to seek stakeholders’ views on the issues identified below that are relevant for the application of the existing regulatory framework to security tokens.

Technology neutrality is one of the guiding principles of the Commission’s policies. A technologically neutral approach means that legislation should not mandate market participants to use a particular type of technology. It is therefore crucial to address any obstacles or identify any gaps in existing EU laws which could prevent the take-up of financial innovation, such as DLT, or leave certain risks brought by these innovations unaddressed. In parallel, it is also

important to assess whether the market practice or rules at national level could facilitate or be an impediment that should also be addressed to ensure a consistent approach at EU level.

²³ Trading venues are a regulated market, a multilateral trading facility or an organised trading facility.

²⁴ At level 1, the European Parliament and Council adopt the basic laws proposed by the Commission, in the traditional co-decision procedure. At level 2 the Commission can adopt, adapt and update technical implementing measures with the help of consultative bodies composed mainly of EU countries representatives. Where the level 2 measures require the expertise of supervisory experts, it can be determined in the basic act that these measures are delegated or implemented acts based on draft technical standards developed by the European supervisory authorities.

Current trends concerning security tokens

For the purpose of the consultation, we consider the instances where security tokens would be admitted to trading or traded on a trading venue within the meaning of MiFID. So far, however, there is evidence of only a few instances of security tokens issuance²⁵, with none of them having been admitted to trading or traded on a trading venue nor admitted in a CSD book-entry system²⁶.

Based on the limited evidence available at supervisory and regulatory level, it appears that existing requirements in the trading and post-trade area would largely be able to accommodate activities related to security tokens via permissioned networks and centralised platforms²⁷. Such activities would be overseen by a central body or operator, de facto similarly to traditional market infrastructures such as multilateral trading venues or central security depositories. Based on the limited evidence currently available from the industry, it seems that activities related to security tokens would most likely develop via authorised centralised solutions. This could be driven by the relative efficiency gain that the use of the legacy technology of a central provider can generally guarantee (with near-instantaneous speed and high liquidity with large volumes), along with the business expertise of the central provider that would also ensure higher investor protection and easier supervision and enforcement of the rules.

On the other hand, it seems that adjustment of existing EU rules would be required to allow for the development of permissionless networks and decentralised platforms where activities would not be entrusted to a central body or operator but would rather occur on a peer-to-peer²⁸ basis. Given the absence of a central body that would be accountable for enforcing the rules of a public market, trading and post-trading on permissionless networks could also potentially create risks as regards market integrity and financial stability, which are regarded as being of utmost importance by the EU financial acquis.

The Commission services' understanding is that permissionless networks and decentralised platforms²⁹ are still in their infancy, with uncertain prospects for future applications in financial services due to their higher trade latency and lower liquidity. Permissionless decentralised platforms could potentially develop only at a longer time horizon when further maturing of the technology would provide solutions for a more efficient trading architecture. Therefore, it could be premature at this point in time to make any structural changes to the EU regulatory framework.

Security tokens are, in principle, covered by the EU legal framework on asset management in so far as such security tokens fall within the scope of "financial instrument" under MiFID II. To date, however, the examples of the regulatory use cases of DLT in the asset management domain have been incidental.

To conclude, depending on the feedback to this consultation, a gradual regulatory approach might be considered, trying to provide first legal clarity to market participants as regards permissioned networks and centralised platforms before considering changes in the regulatory framework to accommodate permissionless networks and decentralised platforms.

At the same time, the Commission services would like to use this opportunity to gather views on market trends as regards permissionless networks and decentralised platforms, including their potential impact on current business models and the possible regulatory approaches that may be needed to be considered, as part of a second step. A list of questions is included after the assessment by legislation.

²⁵ For example the German Fundament STO which received the authorisation from Bafin in July 2019

²⁶ See section IV.2.5 for further information

²⁷ Type of crypto-asset trading platforms that holds crypto-assets on behalf of its clients. The trade settlement usually takes place in the books of the platforms, i.e. off-chain.

²⁸ In the trading context, going peer-to-peer means having participants buy and sell assets directly with each other, rather than working through an intermediary or third party service

²⁹ Type of crypto-asset trading platforms that do not hold crypto-assets on behalf of its clients. The trade settlement usually takes place on the DLT itself, i.e. on-chain.

Question 54. Please highlight any recent market developments (such as issuance of security tokens, development or registration of trading venues for security tokens, ...) as regards security tokens (at EU or national level)?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Issuance of security token is possible and has been conducted in several member states. However, a liquid secondary market has yet not been evolving - despite demand - due to the limitation stemming from the CSDR (obligation to have securities listed at a regulated exchange to be held with a CSD) as well as lack of guidance on regulation of crypto exchanges. The security exchange cases which are being brought forward these days all aim for an MTF type of license as far as I know.

Possibly a look into the Swiss draft DLT legislation might be an option which specifically allows for a new type of DLT trading venue (with the option to onboard retail clients). I personally do envisage such a setup as an appropriate way of presneting a suitable framework for a secondary market / token market infrastructure. see e.g. <https://www.pwc.ch/en/insights/regulation/dlt-security-token.html>

Given the lack of clarity, especially institutional investors still tend to prefer the classical security setup for reasons of security, trust, convenience.

Question 55. Do you think that DLT could be used to introduce efficiencies or other benefits in the trading, post-trade or asset management areas?

- Completely agree
- Rather agree
- Neutral
- Rather disagree
- Completely disagree
- Don't know / no opinion / not relevant

If you agree with question 55, please indicate the specific areas where, in your opinion, the technology could afford most efficiencies when compared to the legacy system:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

- Possibility for instant settlement
- Reduction of settlement cycle which significantly reduces counterparty risk maybe even lead to the redundancy of CCPs
- Possibility to pave the technological way towards an integrated post-trade environment for securities (one of the remaining areas of a need for harmonisation)
- Competition for a well established oligopoly of the ICSDs in Europe which might enhance innovation and benefit consumers
- Reduction of cost for SME capital market financings
- Possibility of transparent data towards a consolidated tape in Europe
- Enhancement of the capital market as funding possibility in times of difficulties to get a financing from banks due to regulatory rules as well as negative interest rate environment

55.1 Please explain your reasoning for your answer to question 55:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

see Q55

Question 56. Do you think that the use of DLT for the trading and post-trading of financial instruments poses more financial stability risks when compared to the traditional trading and post-trade architecture?

- Completely agree
- Rather agree
- Neutral
- Rather disagree
- Completely disagree
- Don't know / no opinion / not relevant

56.1 Please explain your reasoning for your answer to question 56:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

If the token market infrastructure is designed well the risks will definitely decrease. There might be a decreased flexibility of funding (for banks) compared to the T+2 cycle, however I do see a general tendency towards instant processing (see SEPA payments etc) so this should not be an issue.

Question 57. Do you consider that DLT will significantly impact the role and operation of trading venues and post-trade financial market infrastructures (CCPs, CSDs) in the future (5/10 years' time)? Please explain your reasoning.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Yes.

I envisage CSDs to still exist in the future but rather as an independent notary taking care of a correct reflection of "reality" in the DLT environment.

CCPs likely wont be needed anymore in case of instant settlement (which requires pre-funding or at least funds available to trade).

Trade reporting could be publicly and immutable available by way of blockchain.

In general DLT enables processes which had been remained literally "untouched" for years to be updated and upgraded into the digital age.

Question 58. Do you agree that a gradual regulatory approach in the areas of trading, post-trading and asset management concerning security tokens (e.g. provide regulatory guidance or legal clarification first regarding permissioned centralised solutions) would be appropriate?

- Completely agree
- Rather agree
- Neutral
- Rather disagree
- Completely disagree
- Don't know / no opinion / not relevant

58.1 Please explain your reasoning for your answer to question 58:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Completely decentralized solutions likely will face difficulties in being able to attract institutional demand and supply due to lack of liquidity, regulation, safety in the light of applicable duties of care.

Decentralized solutions might gain acceptance once they are operating steadily for years and provide for an ex-ante inclusion of all possible "corporate actions" which - at least for equity - is currently nearly impossible.

Furthermore, the key edge of any digital solution are economies of scale in a network. The winner of the most convenient solution likely takes it all. Therefore a proactive approach by the Union is highly needed.

B. Assessment of legislation applying to ‘security tokens’

1. Market in Financial Instruments Directive framework (MiFID II)

The Market in Financial Instruments Directive framework consists of a [directive \(MiFID\)](#) and a [regulation \(MiFIR\)](#) and their delegated acts. MiFID II is a cornerstone of the EU’s regulation of financial markets seeking to improve their competitiveness by creating a single market for investment services and activities and to ensure a high degree of harmonised protection for investors in financial instruments. In a nutshell MiFID II sets out: (i) conduct of business and organisational requirements for investment firms; (ii) authorisation requirements for regulated markets, multilateral trading facilities, organised trading facilities and broker/dealers; (iii) regulatory reporting to avoid market abuse; (iv) trade transparency obligations for equity and non-equity financial instruments; and (v) rules on the admission of financial instruments to trading. MiFID also contains the harmonised EU rulebook on investor protection, retail distribution and investment advice.

1.1 Financial instruments

Under MiFID, financial instruments are specified in Section C of Annex I. These are inter alia ‘transferable securities’, ‘money market instruments’, ‘units in collective investment undertakings’ and various derivative instruments. Under Article 4(1)(15), ‘transferable securities’ notably means those classes of securities which are negotiable on the capital market, with the exception of instruments of payment.

There is currently no legal definition of security tokens in the EU financial services legislation. Indeed, in line with a functional and technologically neutral approach to different categories of financial instruments in MiFID, where security tokens meet necessary conditions to qualify as a specific type of financial instruments, they should be regulated as such. However, the actual classification of a security token as a financial instrument is undertaken by National Competent Authorities (NCAs) on a case-by-case basis.

[In its Advice, ESMA indicated](#) that in transposing MiFID into their national laws, the Member States have defined specific categories of financial instruments differently (i.e. some employ a restrictive list to define transferable securities, others use broader interpretations). As a result, while assessing the legal classification of a security token on a case by case basis, Member States might reach diverging conclusions. This might create further challenges to adopting a common regulatory and supervisory approach to security tokens in the EU.

Furthermore, some ‘hybrid’ crypto-assets can have ‘investment-type’ features combined with ‘payment-type’ or ‘utility-type’ characteristics. In such cases, the question is whether the qualification of ‘financial instruments’ must prevail or a different notion should be considered.

Question 59. Do you think that the absence of a common approach on when a security token constitutes a financial instrument is an impediment to the effective development of security tokens?

- Completely agree
- Rather agree
- Neutral
- Rather disagree
- Completely disagree
- Don’t know / no opinion / not relevant

59.1 Please explain your reasoning for your answer to question 59:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

My understanding of Union does encompass an adequate level of harmonization to be effective.

A common understanding and harmonized definitions are fueling the European integration.

Question 60. If you consider that the absence of a common approach on when a security token constitutes a financial instrument is an impediment, what would be the best remedies according to you?

Please rate from 1 (factor not relevant at all) to 5 (very relevant factor)

	1 (factor not relevant at all)	2	3	4	5 (very relevant factor)	Don't know / no opinion / not relevant
Harmonise the definition of certain types of financial instruments in the EU	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Provide a definition of a security token at EU level	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Provide guidance at EU level on the main criteria that should be taken into consideration while qualifying a crypto-asset as security token	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

60.1 Is there any other solution that would be the best remedies according to you?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See Q 60: definition is what matters. Guidance is only half a step.

60.2 Please explain your reasoning for your answer to question 60:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

see Q 60.1

Question 61. How should financial regulators deal with hybrid cases where tokens display investment-type features combined with other features (utility-type or payment-type characteristics)?

Please rate from 1 (factor not relevant at all) to 5 (very relevant factor)

	1 (factor not relevant at all)	2	3	4	5 (very relevant factor)	Don't know / no opinion / not relevant
Hybrid tokens should qualify as financial instruments/security tokens	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Hybrid tokens should qualify as unregulated crypto-assets (i.e. like those considered in section III. of the public consultation document)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The assessment should be done on a case-by-case basis (with guidance at EU level)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

61.1 Is there any other way financial regulators should deal with hybrid cases where tokens display investment-type features combined with other features?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As stated further above: with a smart taxonomy the set of hybrid cases can be decreased significantly in my opinion.

61.2 Please explain your reasoning for your answer to question 61:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

see Q 60.1

1.2. Investment firms

According to Article 4(1)(1) and Article 5 of MiFID, all legal persons offering investment services/activities in relation to financial instruments need be authorised as investment firms to perform those activities/services. The actual authorisation of an investment firm is undertaken by the NCAs with respect to the conditions, requirements and procedures to grant the authorisation. However, the application of these rules to security tokens may create challenges, as they were not designed with these instruments in mind.

Question 62. Do you agree that existing rules and requirements for investment firms can be applied in a DLT environment?

- Completely agree
- Rather agree
- Neutral
- Rather disagree
- Completely disagree
- Don't know / no opinion / not relevant

62.1 Please explain your reasoning for your answer to question 62:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

To establish a promising framework additional rules are needed to knit digital service providers into legis- and regulation. Again I want to reference the Liechtenstein approach which could well serve as a solid basis for a basic EU solution.

Question 63. Do you think that a clarification or a guidance on applicability of such rules and requirements would be appropriate for the market?

- Completely agree
- Rather agree
- Neutral
- Rather disagree
-

- Completely disagree
- Don't know / no opinion / not relevant

63.1 Please explain your reasoning for your answer to question 63:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Capital market participants do significantly prefer rules over guidelines. Safety provides comfort which is the basis for investments as a starting point for innovation.

1.3 Investment services and activities

Under MiFID Article 4(1)(2), investment services and activities are specified in Section A of Annex I, such as 'reception and transmission of orders, execution of orders, portfolio management, investment advice, etc. A number of activities related to security tokens are likely to qualify as investment services and activities. The organisational requirements, the conduct of business rules and the transparency and reporting requirements laid down in MiFID II would also apply, depending on the types of services offered and the types of financial instruments.

Question 64. Do you think that the current scope of investment services and activities under MiFID II is appropriate for security tokens?

- Completely agree
- Rather agree
- Neutral
- Rather disagree
- Completely disagree
- Don't know / no opinion / not relevant

64.1 Please explain your reasoning for your answer to question 64:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Same business same risks same rules. The part which already fits into MIFID II can be regulated accordingly. Providing a framework for the remainder will be key.

Question 65. Do you consider that the transposition of MiFID II into national laws or existing market practice in your jurisdiction would facilitate or otherwise prevent the use of DLT for investment services and activities? Please explain your reasoning.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See Q. 64.1

1.4. Trading venues

Under MiFID Article 4(1)(24) 'trading venue' means a regulated market (RM), a Multilateral Trading Facility (MTF) or an Organised Trading Facility (OTF) which are defined as a multilateral system operated by a market operator or an investment firm, bringing together multiple third-party buying and selling interests in financial instruments. This means that the market operator or an investment firm must be an authorised entity, which has legal personality.

As also [reported by ESMA in its advice](#), platforms which would engage in trading of security tokens may fall under three main broad categories as follows:

- Platforms with a central order book and/or matching orders would qualify as multilateral systems;
- Operators of platforms dealing on own account and executing client orders against their proprietary capital, would not qualify as multilateral trading venues but rather as investment firms; and
- Platforms that are used to advertise buying and selling interests and where there is no genuine trade execution or arranging taking place may be considered as bulletin boards and fall outside of MiFID II scope (recital 8 of MiFIR).

Question 66. Would you see any particular issues (legal, operational) in applying trading venue definitions and requirements related to the operation and authorisation of such venues to a DLT environment which should be addressed?

Please explain your reasoning.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

- Change / modification of the CSDR to fit into the digital environment
- Provide a sound framework for market infrastructure (e.g. CSDR equivalent) to enhance establishment of venues
- Allow venues to have consumers as well as foreign entities / individuals as members to provide utmost attractiveness for a large liquidity pool to establish
- Sound regulation to ensure trust & safety for participants

1.5. Investor protection

A fundamental principle of MiFID II (Articles 24 and 25) is to ensure that investment firms act in the best interests of their clients. Firms shall prevent conflicts of interest, act honestly, fairly and professionally and execute orders on terms most favourable to the clients. With regard to investment advice and portfolio management, various information and product governance requirements apply to ensure that the client is provided with a suitable product.

Question 67. Do you think that current scope of investor protection rules (such as information documents and the suitability assessment) are appropriate for security tokens? Please explain your reasoning.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There is a consultation open on MiFID II, depending on the outcome today's opinion might change. Nevertheless, MiFID II already provides for a sound protection.

Nevertheless, protection should be a well kept balance between protection and liberty. Providing utmost protection by literally making investments impossible cannot be the solution. The overarching principle in my eyes is transparency. If you know what you do, facing the consequences (be it a gain or loss) is the logical consequence.

PRIPs might need some modification too, however as far as I am aware this is also being tackled currently.

Finally, as stated previously, if rules get too burdensome for FIs, execution only / self-led decisions are the logical consequence.

Question 68. Would you see any merit in establishing specific requirements on the marketing of security tokens via social media or online? Please explain your reasoning.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

This is only possible in the light of an international coordination. For as long as an offer in English without disclaimer / Regulation S statement and measures to comply with the corresponding US rules is deemed a public offer, or an offer without measures in German might be deemed as an offer in Germany there is no straightforward solution.

In this case I'd expect a kind of harmonized (publicity) guidelines as helpful. Such guidelines are (in the classical securities world) compiled by law firms on a case by case basis, however this contributes to the expenses of a "deal". Having a harmonized set of guidelines (at least for the Union) available might contribute to the value of offering a token out of the Union.

Question 69. Would you see any particular issue (legal, operational,) in applying MiFID investor protection requirements to security tokens? Please explain your reasoning.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See comment on MIDIF 2 consultation / PRIIPS further above, however in principle not.

1.6. SME growth markets

To be registered as SME growth markets, MTFs need to comply with requirements under Article 33 (e.g. 50% of SME issuers, appropriate criteria for initial and ongoing admission, effective systems and controls to prevent and detect market abuse). SME growth markets focus on trading securities of SME issuers. The average number of transactions in SME securities is significantly lower than those with large capitalisation and therefore less dependent on low latency and high throughput. Since trading solutions on DLT often do not allow processing the amount of transactions typical for most liquid markets, the Commission is interested in gathering feedback on whether trading on DLT networks could offer cost efficiencies (e.g. lower costs of listing, lower transaction fees) or other benefits for SME Growth Markets that are not necessarily dependent on low latency and high throughput.

Question 70. Do you think that trading on DLT networks could offer cost efficiencies or other benefits for SME Growth Markets that do not require low latency and high throughput? Please explain your reasoning.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

see answers further above. Pros of DLT also hold for SME Growth Markets. Again, key is pooling utmost demand / supply on a dedicated venue to ensure proper liquidity and thus a proper price development of the securities.

1.7. Systems resilience, circuit breakers and electronic trading

According to Article 48 of MiFID, Member States shall require a regulated market to have in place effective systems, procedures and arrangements to ensure its trading systems are resilient, have sufficient capacity and fully tested to ensure orderly trading and effective business continuity arrangements in case of system failure. Furthermore regulated markets that permits direct electronic access³⁰ shall have in place effective systems procedures and arrangements to ensure that members are only permitted to provide such services if they are investment firms authorised under MiFID II or credit institutions. The same requirements also apply to MTFs and OTFs according to Article 18(5). These requirements could be an issue for security tokens, considering that crypto-asset trading platforms typically provide direct access to retail investors.

³⁰ As defined by article 4(1)(41) and in accordance with Art 48(7) of MIFID by which trading venues should only grant permission to members or participants to provide direct electronic access if they are investment firms authorised under MiFID or credit institutions authorised under the [Credit Requirements Directive \(2013/36/EU\)](#)

Question 71. Would you see any particular issue (legal, operational) in applying these requirements to security tokens which should be addressed? Please explain your reasoning.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Not at all. Same business same risks same rules.

1.8. Admission of financial instruments to trading

In accordance with Article 51 of MiFID, regulated markets must establish clear and transparent rules regarding the admission of financial instruments to trading as well as the conditions for suspension and removal. Those rules shall ensure that financial instruments admitted to trading on a regulated market are capable of being traded in a fair, orderly and efficient manner. Similar requirements apply to MTFs and OTFs according to Article 32. In short, MiFID lays down general principles that should be embedded in the venue's rules on admission to trading, whereas the specific rules are established by the venue itself. Since markets in security tokens are very much a developing phenomenon, there may be merit in reinforcing the legislative rules on admission to trading criteria for these assets.

Question 72. Would you see any particular issue (legal, operational) in applying these requirements to security tokens which should be addressed? Please explain your reasoning.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Not at all. As stated several times further above its all a matter of transparency. Even providing for an "open market" segment or a pink sheets segment (along the lines of the US) might be beneficial from a capital markets perspective. With appropriate warnings / eligibility tests such a segment could provide for a ring-fenced environment of higher risk instead of forcing such cases in a virtually unregulated environment.

Question 1.9 Access to a trading venues

In accordance with Article 53(3) and 19(2) of MiFID, RMs and MTFs may admit as members or participants only investment firms, credit institutions and other persons who are of sufficient good repute; (b) have a sufficient level of trading ability, competence and ability (c) have adequate organisational arrangements; (d) have sufficient resources for their role. In effect, this excludes retail clients from gaining direct access to trading venues. The reason for limiting this kind of participants in trading venues is to protect investors and ensure the proper functioning of the financial markets. However, these requirements might not be appropriate for the trading of security tokens as crypto-asset trading platforms allow clients, including retail investors, to have direct access without any intermediation.

Question 73. What are the risks and benefits of allowing direct access to trading venues to a broader base of clients? Please explain your reasoning.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See consultation in Switzerland on the DLT venues / exchanges which likely will allow for a broader member / participant base e.g. <https://www.pwc.ch/en/insights/regulation/dlt-security-token.html>

Main goal should be to provide access for an utmost high extent of supply / demand.

1.10 Pre and post-transparency requirements

In its Articles 3 to 11, MiFIR sets out transparency requirements for trading venues in relations to both equity and non-equity instruments. In a nutshell for equity instruments, it establishes pre-trade transparency requirements with certain waivers subject to restrictions (i.e. double volume cap) as well as post-trade transparency requirements with authorised deferred publication. Similar structure is replicated for non-equity instruments. These provisions would apply to security tokens. The availability of data could perhaps be an issue for best execution³¹ of security tokens platforms. For the transparency requirements, it could perhaps be more difficult to establish meaningful transparency thresholds

according to the calibration specified in MIFID, which is based on EU wide transaction data. However, under current circumstances, it seems difficult to clearly determine the need for any possible adaptations of existing rules due to the lack of actual trading of security tokens.

³¹ MiFID II investment firms must take adequate measures to obtain the best possible result when executing the client's orders. This obligation is referred to as the best execution obligation.

Question 74. Do you think these pre- and post-transparency requirements are appropriate for security tokens?

- Completely agree
- Rather agree
- Neutral
- Rather disagree
- Completely disagree
- Don't know / no opinion / not relevant

74.1 Please explain your reasoning for your answer to question 74:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See especially my thoughts on CSDR / CCPs further above.

Question 75. Would you see any particular issue (legal, operational) in applying these requirements to security tokens which should be addressed (e.g. in terms of availability of data or computation of thresholds)? Please explain your reasoning.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Applying current rules to tokens does not allow for an exploitation of all benefits. The approach should rather be:

What can be changed by using token on a market infrastructure level -> how can we provide an appropriate framework -> what does this mean for the current understanding of requirements

1.11. Transaction reporting and obligations to maintain records

In its Article 25 and 26, MiFIR sets out detailed reporting requirements for investment firms to report transactions to their competent authority. The operator of the trading venue is responsible for reporting the details of the transactions where the participants is not an investment firm. MiFIR also obliges investment firms or the operator of the trading venue to maintain records for five years. Provisions would apply to security tokens very similarly to traditional financial instruments. The availability of all information on financial instruments required for reporting purposes by the Level 2 provisions could perhaps be an issue for security tokens (e.g. ISIN codes are mandatory).

Question 76. Would you see any particular issue (legal, operational) in applying these requirement to security tokens which should be addressed? Please explain your reasoning.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Based on Q 75 the benefits of using blockchain might lead to the conclusion that any records are publicly available on-chain forever. Exchanges "matching trades" internally should fall under requirements as per now.

2. Market Abuse Regulation (MAR)

[MAR](#) establishes a comprehensive legislative framework at EU level aimed at protecting market integrity. It does so by establishing rules around prevention, detection and reporting of market abuse. The types of market abuse prohibited in MAR are insider dealing, unlawful disclosure of inside information and market manipulation. The proper application of the MAR framework is very important for guaranteeing an appropriate level of integrity and investor protection in the context of trading in security tokens.

Security tokens are covered by the MAR framework where they fall within the scope of that regulation, as determined by its Article 2. Broadly speaking, this means that all transactions in security tokens admitted to trading or traded on a trading venue (under MiFID Article 4(1)(24) 'trading venue' means a regulated market (RM), a Multilateral Trading Facility (MTF) or an Organised Trading Facility (OTF')) are captured by its provisions, regardless of whether transactions or orders in those tokens take place on a trading venue or are conducted over-the-counter (OTC).

2.1. Insider dealing

Pursuant to Article 8 of MAR, insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates. In the context of security tokens, it might be the case that new actors, such as miners or wallet providers, hold new forms of inside information and use it to commit market abuse. In this regard, it should be noted that Article 8(4) of MAR contains a catch-all provision applying the notion of insider dealing to all persons who possess inside information other than in circumstances specified elsewhere in the provision.

Question 77. Do you think that the current scope of Article 8 of MAR on insider dealing is appropriate to cover all cases of insider dealing for security tokens? Please explain your reasoning.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

If there is an issuer in my opinion yes. Guidances should extend the scope to software architects / coders to catch these contractors of the issuer explicitly if not already in scope of the issuer itself.

2.2. Market manipulation

In its Article 12(1)(a), MAR defines market manipulation primarily as covering those transactions and orders which (i) give false or misleading signals about the volume or price of financial instruments or (ii) secure the price of a financial instrument at an abnormal or artificial level. Additional instances of market manipulation are described in paragraphs (b) to (d) of Article 12(1) of MAR.

Since security tokens and blockchain technology used for transacting in security tokens differ from how trading of traditional financial instruments on existing trading infrastructure is conducted, it might be possible for novel types of market manipulation to arise that MAR does not currently address. Finally, there could be cases where a certain financial instrument is covered by MAR but a related unregulated crypto-asset is not in scope of the market abuse framework. Where there would be a correlation in values of such two instruments, it would also be conceivable to influence the price or value of one through manipulative trading activity of the other.

Question 78. Do you think that the notion of market manipulation as defined in Article 12 of MAR is sufficiently wide to cover instances of market manipulation of security tokens? Please explain your reasoning.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

For security token within the framework of MIFID II yes.

Question 79. Do you think that there is a particular risk that manipulative trading in crypto-assets which are not in the scope of MAR could affect the price or value of financial instruments covered by MAR?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

For less liquid crypto-assets - if being manipulated - there might be the chance of affecting the price in a financial instrument covered by MAR. However, I'd personally expect producers of financial instruments to account for crypto-asset liquidity when deciding which crypto-assets at which weighting to be included in any financial instrument.

3. Short Selling Regulation (SSR)

The [Short Selling Regulation \(SSR\)](#) sets down rules that aim to achieve the following objectives: (i) increase transparency of significant net short positions held by investors; (ii) reduce settlement risks and other risks associated with uncovered short sales; (iii) reduce risks to the stability of sovereign debt markets by providing for the temporary suspension of short-selling activities, including taking short positions via sovereign credit default swaps (CDSs), where sovereign debt markets are not functioning properly. The SSR applies to MiFID II financial instruments admitted to trading on a trading venue in the EU, sovereign debt instruments, and derivatives that relate to both categories.

According to [ESMA's advice](#), security tokens fall in the scope of the SSR where a position in the security token would confer a financial advantage in the event of a decrease in the price or value of a share or sovereign debt. However, ESMA remarks that the determination of net short positions for the application of the SSR is dependent on the list of financial instruments set out in Annex I of Commission Delegated Regulation (EU) 918/2012), which should therefore be revised to include those security tokens that might generate a net short position on a share or on a sovereign debt. According to ESMA, it is an open question whether a transaction in an unregulated crypto-asset could confer a financial advantage in the event of a decrease in the price or value of a share or sovereign debt, and consequently, whether the Short Selling Regulation should be amended in this respect.

Question 80. Have you detected any issues that would prevent effectively applying SSR to security tokens?

Please rate from 1 (not a concern) to 5 (strong concern)

									Don't know /
--	--	--	--	--	--	--	--	--	--------------

	1 (not a concern)	2	3	4	5 (strong concern)	no opinion / strong concern
Transparency for significant net short positions	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Restrictions on uncovered short selling	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Competent authorities' power to apply temporary restrictions to short selling	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

80.1 Is there any other issue that would prevent effectively applying SSR to security tokens?
Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Applying the SSR without taking into account the instant settlement feature of tokens is not beneficial in my eyes. Naked short selling in security tokens - at least in my eyes is technically not possible. Naked shortselling in crypto (with instant settlement) requires one to hold the corresponding amount crypto beforehand. Without a T+2 settlement cycle there is technically no option to cover the naked short post effecting the trade.

80.2 Please explain your reasoning for your answer to question 80:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As mentioned in 80.1 technically it shouldnt be possible to go shot without having entered into a lending beforehand.

Question 81. Have you ever detected any unregulated crypto-assets that could confer a financial advantage in the event of a decrease in the price or value of a share or sovereign debt?
Please explain your reasoning.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Market participants do choose their investments according to sentiment, their evaluation of risk & return and according to availability.

A dedicated crypto-asset that confers a financial advantage in the event of a devaluation of sovereign debt is not known to me. However, I'd expect several market participants to buy into large crypto-assets as well as gold-backed coins in case of central banks losing control over sovereign debt.

4. Prospectus Regulation (PR)

The [Prospectus Regulation](#) establishes a harmonised set of rules at EU level about the drawing up, structure and oversight of the prospectus, which is a legal document accompanying an offer of securities to the public and/or an admission to trading on a regulated market. The prospectus describes a company's main line of business, its finances, its shareholding structure and the securities that are being offered and/or admitted to trading on a regulated market. It contains the information an investor needs before making a decision whether to invest in the company's securities.

4.1. Scope and exemptions

With the exception of out of scope situations and exemptions (Article 1(2) and (3)), the PR requires the publication of a prospectus before an offer to the public or an admission to trading on a regulated market (situated or operating within a Member State) of transferable securities as defined in MiFID II. The definition of 'offer of securities to the public' laid down in Article 2(d) of the PR is very broad and should encompass offers (e.g. STOs) and advertisement relating to security tokens. If security tokens are offered to the public or admitted to trading on a regulated market, a prospectus would always be required unless one of the exemptions for offers to the public under Article 1(4) or for admission to trading on a RM under Article 1(5) applies.

Question 82. Do you consider that different or additional exemptions should apply to security tokens other than the ones laid down in Article 1(4) and Article 1(5) of PR?

- Completely agree
- Rather agree
- Neutral
- Rather disagree
- Completely disagree
- Don't know / no opinion / not relevant

82.1 Please explain your reasoning for your answer to question 82:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Same business, same risks same rules. The only feature worth considering is to enhance international cooperation in terms of regulation / oversight, such that prospectuses from other established jurisdictions can more easily be accepted / approved in Europe & and vice versa. The prospectus directive allows for such a simplified procedure, however the detail regulations have not been applied yet.

4.2. The drawing up of the prospectus

[Delegated Regulation \(EU\) 2019/980](#), which lays down the format and content of all the prospectuses and its related documents, does not include schedules for security tokens. However, Recital 24 clarifies that, due to the rapid evolution of securities markets, where securities are not covered by the schedules to that Regulation, national competent authorities should decide in consultation with the issuer which information should be included in the prospectus. Such approach is meant to be a temporary solution. A long term solution would be to either (i) introduce additional and specific schedules for security tokens, or (ii) lay down 'building blocks' to be added as a complement to existing schedules when drawing up a prospectus for security tokens.

The level 2 provisions of prospectus also defines the specific information to be included in a prospectus, including Legal Entity Identifiers (LEIs) and ISIN. It is therefore important that there is no obstacle in obtaining these identifiers for security tokens.

The eligibility for specific types of prospectuses or relating documents (such as the secondary issuance prospectus, the EU Growth prospectus, the base prospectus for non-equity securities or the universal registration document) will depend on the specific types of transferable securities to which security tokens correspond, as well as on the type of the issuer of those securities (i.e. SME, mid-cap company, secondary issuer, frequent issuer).

Article 16 of PR requires issuers to disclose risk factors that are material and specific to the issuer or the security, and corroborated by the content of the prospectus. [ESMA's guidelines on risk factors under the PR](#) assist national competent authorities in their review of the materiality and specificity of risk factors and of the presentation of risk factors across categories depending on their nature. The prospectus could include pertinent risks associated with the underlying technology (e.g. risks relating to technology, IT infrastructure, cyber security, etc, ...). ESMA's guidelines on risk factors could be expanded to address the issue of materiality and specificity of risk factors relating to security tokens.

Question 83. Do you agree that Delegated Regulation (EU) 2019/980 should include specific schedules about security tokens?

- Yes
- No
- Don't know / no opinion / not relevant

83.1 If you do agree that Delegated Regulation (EU) 2019/980 should include specific schedules about security tokens, please indicate the most effective approach: a 'building block approach' (i.e. additional information about the issuer and/or security tokens to be added as a complement to existing schedules) or a 'full prospectus approach' (i.e. completely new prospectus schedules for security tokens). Please explain your reasoning.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Additional information about the smartcontract and related risks are needed.

e.g.

-Which standard is the smartcontract build upon? (Ethereum, Corda, etc.)

-What are the cost for a transfer (e.g. gas fees on the Ethereum blockchain)?

-Has there been a software audit on the smart contract?

-Are there any features to alter features of the coins post their deployment?

-Is there a limitation of transferability (e.g. stemming from a whitelist)?

-Is there a mechanism in case private keys have been lost by individual investors?
-Will a tax reporting occur on the level of the smart contract?
-etc.

Question 84. Do you identify any issues in obtaining an ISIN for the purpose of issuing a security token?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A specific numbering / identification along the lines of an ISIN is highly recommended. However, I would not call it ISIN but rather differently.

An ISIN for a token might lead an average investor to conclude that the token is also available as a intermediated security in the classical clearing-system, which should be the case only for token which exhibit such a feature.

Question 85. Have you identified any difficulties in applying special types of prospectuses or related documents (i.e. simplified prospectus for secondary issuances, the EU Growth prospectus, the base prospectus for non-equity securities, the universal registration document) to security tokens that would require amending these types of prospectuses or related documents? Please explain your reasoning.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Subject to 83.1. no.

Question 86. Do you believe that an *ad hoc* alleviated prospectus type or regime (taking as example the approach used for the EU Growth prospectus or for the simplified regime for secondary issuances) should be introduced for security tokens?

Yes

- No
- Don't know / no opinion / not relevant

86.1 Please explain your reasoning for your answer to question 86:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Same business same risks same rules.

Question 87. Do you agree that issuers of security tokens should disclose specific risk factors relating to the use of DLT?

- Completely agree
- Rather agree
- Neutral
- Rather disagree
- Completely disagree
- Don't know / no opinion / not relevant

87.1 If you do agree that issuers of security tokens should disclose specific risk factors relating to the use of DLT, please indicate if ESMA's guidelines on risks factors should be amended accordingly. Please explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Yes. With a standard set of specific DLT risk factors. See also 83.1

5. Central Securities Depositories Regulation (CSDR)

[CSDR](#) aims to harmonise the timing and conduct of securities settlement in the European Union and the rules for central securities depositories (CSDs) which operate the settlement infrastructure. It is designed to increase the safety and efficiency of the system, particularly for intra-EU transactions. In general terms, the scope of the CSDR refers to the 11 categories of financial instruments listed under MiFID. However, various requirements refer only to subsets of categories under MiFID.

Article 3(2) of CSDR requires that transferable securities traded on a trading venue within the meaning of MiFID II be recorded in book-entry form in a CSD. The objective is to ensure that those financial instruments can be settled in a securities settlement system, as those described by the Settlement Finality Directive (SFD). Recital 11 of CSDR indicates that CSDR does not prescribe any particular method for the initial book-entry recording. Therefore, in its

advice, ESMA indicates that any technology, including DLT, could virtually be used, provided that this book-entry form is with an authorised CSD. However, ESMA underlines that there may be some national laws that could pose restrictions to the use of DLT for that purpose.

There may also be other potential obstacles stemming from CSDR. For instance, the provision of ‘Delivery versus Payment’ settlement in central bank money is a practice encouraged by CSDR. Where not practical and available, this settlement should take place in commercial bank money. This could make the settlement of securities through DLT difficult, as the CSDR would have to effect movements in its cash accounts at the same time as the delivery of securities on the DLT.

This section is seeking stakeholders’ feedback on potential obstacles to the development of security tokens resulting from CSDR.

Question 88. Would you see any particular issue (legal, operational, technical) with applying the following definitions in a DLT environment?

Please rate from 1 (not a concern) to 5 (strong concern)

	1 (not a concern)	2	3	4	5 (strong concern)	Don't know / no opinion / strong concern
Definition of 'central securities depository' and whether platforms can be authorised as a CSD operating a securities settlement system which is designated under the SFD	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Definition of 'securities settlement system' and whether a DLT platform can be qualified as securities settlement system under the SFD	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Whether records on a DLT platform can be qualified as securities accounts and what can be qualified as credits and debits to such an account;	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Definition of 'book-entry form' and 'dematerialised form	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Definition of settlement (meaning the completion of a securities transaction where it is concluded with the aim of discharging the obligations of the parties to that transaction through the transfer of cash or securities, or both);	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

What could constitute delivery versus payment in a DLT network, considering that the cash leg is not processed in the network	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
What entity could qualify as a settlement internaliser	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

88.1 Is there any other particular issue with applying the following definitions in a DLT environment Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

CSD function as per CSDR is not appropriate in a DLT environment. I'd suggest a dedicated overhaul of the CSDR.

88.2 Please explain your reasoning for your answer to question 88:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Q1-4: What we need is a clear definition of roles / functions of a DLT environment and how this a) fits into CSDR or b) what changes / new regulation is necessary.

In my eyes a public key cannot qualify as an account in a settlement system (according to CSDR) for as long as the wallets are not kept with a licensed institution.

See Liechtenstein blockchain act for an inclusion of dematerialised rights in the context of blockchain.

Cash leg could be settled on chain provided there is a dedicated stablecoin / digital Euro available.

Question 89. Do you consider that the book-entry requirements under CSDR are compatible with security tokens?

- Yes
- No
- Don't know / no opinion / not relevant

89.1 Please explain your reasoning for your answer to question 89:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Not all member stated to have a legal basis for an alternative.

We'd need a harmonized framework for dematerialised securities in Europe, and based on that one can think of which basic functions a CSD should take over in a DLT environment.

I could as well think of DLT exchanges as providing for the notary function of a CSD. See eg. the intended DLT trading venue in Switzerland for a possible solution.

All in all I think we need a complete new CSD definition to exploit the full potential of securities on the blockchain.

Question 90. Do you consider that national law (e.g. requirement for the transfer of ownership) or existing market practice in your jurisdiction would facilitate or otherwise prevent the use of DLT solution? Please explain your reasoning.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See 89.1 on dematerialised securities (many Member States) do only know the concept of a global certificate (security in paper form) yet.

Besides that I think the biggest harm to a successful development of DLT in Europe is the lack of common definitions and the lack of a common framework.

Question 91. Would you see any particular issue (legal, operational, technical) with applying the current rules in a DLT environment?

Please rate from 1 (not a concern) to 5 (strong concern)

	1 (not a concern)	2	3	4	5 (strong concern)	Don't know / no opinion / strong concern

Rules on settlement periods for the settlement of certain types of financial instruments in a securities settlement system	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Rules on measures to prevent settlement fails	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Organisational requirements for CSDs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Rules on outsourcing of services or activities to a third party	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Rules on communication procedures with market participants and other market infrastructures	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Rules on the protection of securities of participants and those of their clients	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Rules regarding the integrity of the issue and appropriate reconciliation measures	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Rules on cash settlement	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Rules on requirements for participation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Rules on requirements for CSD links	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Rules on access between CSDs and access between a CSD and another market infrastructure	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

91.1 Is there any other particular issue with applying the current rules in a DLT environment, (including other provisions of CSDR, national rules applying the EU acquis, supervisory practices, interpretation, applications...)? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

- definitions / taxonomy
- lack of harmonized law concept re. dematerialization of securities
- current form of CSDR not ideal for exploiting the full benefits of DLT

91.2 Please explain your reasoning for your answer to question 91:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See the DLT trading venue as intended to enter into force in Switzerland as a good basis

Question 92. In your Member State, does your national law set out additional requirements to be taken into consideration, e.g. regarding the transfer of ownership (such as the requirements regarding the recording on an account with a custody account keeper outside a DLT environment)? Please explain your reasoning.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See Liechtenstein blockchain act. all token qualify as dematerialized rights, with a register of rights being able to be kept on the blockchain. Transfer of ownership is legally valid by transferring the token.

6. Settlement Finality Directive (SFD)

The [Settlement Finality Directive](#) lays down rules to minimise risks related to transfers and payments of financial products, especially risks linked to the insolvency of participants in a transaction. It guarantees that financial product transfer and payment orders can be final and defines the field of eligible participants. SFD applies to settlement systems duly notified as well as any participant in such a system.

The list of persons authorised to take part in a securities settlement system under SFD (credit institutions, investment firms, public authorities, CCPs, settlement agents, clearing houses, system operators) does not include natural persons. This obligation of intermediation does not seem fully compatible with the functioning of crypto-asset platforms that rely on retail investors' direct access.

Question 93. Would you see any particular issue (legal, operational, technical) with applying the following definitions in the SFD or its transpositions into national law in a DLT environment?

Please rate from 1 (not a concern) to 5 (strong concern)

	1 (not a concern)	2	3	4	5 (strong concern)	Don't know / no opinion / strong concern
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Definition of a securities settlement system	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Definition of system operator	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Definition of participant	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Definition of institution	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Definition of transfer order	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
What could constitute a settlement account	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
What could constitute collateral security	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

93.1 Is there any other particular issue with applying the following definitions in the SFD or its transpositions into national law in a DLT environment? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Legal and regulatory framework should be designed on the basis of a best suitable market infrastructure for token and not by applying existing concepts on a new technology.

93.2 Please explain your reasoning for your answer to question 93:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See Q 93.1.

Question 94. SFD sets out rules on conflicts of laws. According to you, would there be a need for clarification when applying these rules in a DLT network (in particular with regard to the question according to which criteria the location of the register or account should be determined and thus which Member State would be considered the Member State in which the register or account, where the relevant entries are made, is maintained)? Please explain your reasoning.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In case of security token, relevant law will likely be that of the issuers domicile, if the offering is not conducted intentionally in another jurisdiction.

Personally I think we all have not made up our minds what holding a share of a foreign entity in our securities account effectively means in the light of our home jurisdiction.

International cooperation in a digital token world is very important, or the other way round, if there is no cooperation, the jurisdiction with the most favorable / convenient law will attract the large portion of global token offerings / issuers.

Question 95. In your Member State, what requirements does your national law establish for those cases which are outside the scope of the SFD rules on conflicts of laws?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

no comment

Question 96. Do you consider that the effective functioning and/or use of DLT solution is limited or constrained by any of the SFD provisions?

- Yes
- No
- Don't know / no opinion / not relevant

96.1 Please explain your reasoning for your answer to question 96:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

no opinion

7. Financial Collateral Directive (FCD)

The [Financial Collateral Directive](#) aims to create a clear uniform EU legal framework for the use of securities, cash and credit claims as collateral in financial transactions. Financial collateral is the property provided by a borrower to a lender to minimise the risk of financial loss to the lender if the borrower fails to meet their financial obligations to the lender. DLT can present some challenges as regards the application of FCD. For instance, collateral that is provided without title transfer, i.e. pledge or other form of security financial collateral as defined in the FCD, needs to be enforceable in a distributed ledger³².

³² ECB Advisory Group on market infrastructures for securities and collateral, “the potential impact of DLTs on securities post-trading harmonisation and on the wider EU financial market integration” (2017).

Question 97. Would you see any particular issue (legal, operational, technical) with applying the following definitions in the FCD or its transpositions into national law in a DLT environment?

Please rate from 1 (not a concern) to 5 (strong concern)

	1 (not a concern)	2	3	4	5 (strong concern)	Don't know / no opinion / strong concern
If crypto-assets qualify as assets that can be subject to financial collateral arrangements as defined in the FCD	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
If crypto-assets qualify as book-entry securities collateral	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
If records on a DLT qualify as relevant account	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

97.1 Is there any other particular issue with applying the following definitions in the FCD or its transpositions into national law in a DLT environment? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

see Q 93 ff

97.2 Please explain your reasoning for your answer to question 97:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

see Q 93 ff

Question 98. FCD sets out rules on conflict of laws. Would you see any particular issue with applying these rules in a DLT network³²?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

see Q 93 ff

Question 99. In your Member State, what requirements does your national law establish for those cases which are outside the scope of the FCD rules on conflicts of laws?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

no opinion

Question 100. Do you consider that the effective functioning and/or use of DLT solution is limited or constrained by any of the FCD provisions?

- Yes
- No
- Don't know / no opinion / not relevant

100.1 Please explain your reasoning for your answer to question 100:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

no opinion

8. European Markets Infrastructure Regulation (EMIR)

The [European Markets Infrastructure Regulation \(EMIR\)](#) applies to the central clearing, reporting and risk mitigation of over-the-counter (OTC) derivatives, the clearing obligation for certain OTC derivatives, the central clearing by central counterparties (CCPs) of contracts traded on financial markets (including bonds, shares, OTC derivatives, Exchange-Traded Derivatives, repos and securities lending transactions) and services and activities of CCPs and trade repositories (TRs).

The central clearing obligation of EMIR concerns only certain OTC derivatives. MiFIR extends the clearing obligation by CCPs to regulated markets for exchange-traded derivatives. At this stage, however, the Commission services does not have knowledge of any project of securities token that could enter into those categories.

A recent development has also been the emergence of derivatives with crypto-assets as underlying.

Question 101. Do you think that security tokens are suitable for central clearing?

- Completely agree
- Rather agree
- Neutral
- Rather disagree
- Completely disagree
- Don't know / no opinion / not relevant

101.1 Please explain your reasoning for your answer to question 101:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

not central clearing as we know it until today. Technically token can be cleared "within" a smartcontract.

Question does not really make sense if the full potential of DLT shall be considered.

Question 102. Would you see any particular issue (legal, operational, technical) with applying the current rules in a DLT environment?

Please rate from 1 (not a concern) to 5 (strong concern)

	1 (not a concern)	2	3	4	5 (strong concern)	Don't know / no opinion / strong concern
Rules on margin requirements, collateral requirements and requirements regarding the CCP's investment policy	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Rules on settlement	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Organisational requirements for CCPs and for TRs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Rules on segregation and portability of clearing members' and clients' assets and positions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Rules on requirements for participation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Reporting requirements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

102.1 Is there any other particular issue (including other provisions of EMIR, national rules applying the EU acquis, supervisory practices, interpretation, applications, ...) with applying the current rules in a DLT environment? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

see Q 93 ff

102.2 Please explain your reasoning for your answer to question 102:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

see Q93 ff

Question 103. Would you see the need to clarify that DLT solutions including permissioned blockchain can be used within CCPs or TRs?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

in principle no.

See also Q 93 ff

Question 104. Would you see any particular issue with applying the current rules to derivatives the underlying of which are crypto assets, in particular considering their suitability for central clearing? Please explain your reasoning

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

yes.

See Q 93 ff

9. The Alternative Investment Fund Directive

The [Alternative Investment Fund Managers Directive \(AIFMD\)](#) lays down the rules for the authorisation, ongoing operation and transparency of the managers of alternative investment funds (AIFMs) which manage and/or market alternative investment funds (AIFs) in the EU.

The following questions seek stakeholders' views on whether and to what extent the application of AIFMD to tokens could raise some challenges. For instance, AIFMD sets out an explicit obligation to appoint a depositary for each AIF. Fulfilling this requirement is a part of the AIFM authorisation and operation. The assets of the AIF shall be entrusted to the depositary for safekeeping. For crypto-assets that are not 'security tokens' (those which do not qualify as financial instruments), the rules for 'other assets' apply under the AIFMD. In such a case, the depositary needs to ensure the safekeeping (which involves verification of ownership and up-to-date recordkeeping) but not the custody. An uncertainty can arguably occur whether the depositary can perform this task for security tokens and also whether the safekeeping requirements can be complied with.

Question 105. Do the provisions of the EU AIFMD legal framework in the following areas are appropriately suited for the effective functioning of DLT solutions and the use of security tokens?

Please rate from 1 (not suited) to 5 (very suited)

	1 (not suited)	2	3	4	5 (very suited)	Don't know / no opinion / very suited
AIFMD provisions pertaining to the requirement to appoint a depositary, safe-keeping and the requirements of the depositary, as applied to security tokens;	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
AIFMD provisions requiring AIFMs to maintain and operate effective organisational and administrative arrangements, including with respect to identifying, managing and monitoring the conflicts of interest;	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Employing liquidity management systems to monitor the liquidity risk of the AIF, conducting stress tests, under normal and exceptional	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

liquidity conditions, and ensuring that the liquidity profile and the redemption policy are consistent;						
AIFMD requirements that appropriate and consistent procedures are established for a proper and independent valuation of the assets;	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Transparency and reporting provisions of the AIFMD legal framework requiring to report certain information on the principal markets and instruments.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

105.1 Is there any other area in which the provisions of the EU AIFMD legal framework are appropriately suited for the effective functioning of DLT solutions and the use of security tokens? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

no opinion

105.2 Please explain your reasoning for your answer to question 105:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

I do not see any obstacles.

Question 106. Do you consider that the effective functioning of DLT solutions and/or use of security tokens is limited or constrained by any of the AIFMD provisions?

- Yes
- No
- Don't know / no opinion / not relevant

106.2 Please explain your reasoning for your answer to question 106:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

I do not see any obstacles.

10. The Undertakings for Collective Investment in Transferable Securities Directive (UCITS Directive)

The [UCITS Directive](#) applies to UCITS established within the territories of the Member States and lays down the rules, scope and conditions for the operation of UCITS and the authorisation of UCITS management companies. The UCITS directive might be perceived as potentially creating challenges when the assets are in the form of 'security tokens', relying on DLT.

For instance, under the UCITS Directive, an investment company and a management company (for each of the common funds that it manages) shall ensure that a single depositary is appointed. The assets of the UCITS shall be entrusted to the depositary for safekeeping. For crypto-assets that are not 'security tokens' (those which do not qualify as financial instruments), the rules for 'other assets' apply under the UCITS Directive. In such a case, the depositary needs to ensure the safekeeping (which involves verification of ownership and up-to-date recordkeeping) but not the custody. This function could arguably cause perceived uncertainty where such assets are security tokens.

Question 107. Do the provisions of the EU UCITS Directive legal framework in the following areas are appropriately suited for the effective functioning of DLT solutions and the use of security tokens?

Please rate from 1 (not suited) to 5 (very suited)

	1 (not suited)	2	3	4	5 (very suited)	Don't know / no opinion / very suited
Provisions of the UCITS Directive pertaining to the eligibility of assets, including cases where such provisions are applied in conjunction with the notion "financial instrument" and/or "transferable security"	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Rules set out in the UCITS Directive pertaining to the valuation of assets and the rules for calculating the sale or issue price and the repurchase or redemption price of the units of a UCITS, including where such rules are laid down	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

in the applicable national law, in the fund rules or in the instruments of incorporation of the investment company;						
UCITS Directive rules on the arrangements for the identification, management and monitoring of the conflicts of interest, including between the management company and its clients, between two of its clients, between one of its clients and a UCITS, or between two -UCITS;	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
UCITS Directive provisions pertaining to the requirement to appoint a depository, safe-keeping and the requirements of the depository, as applied to security tokens;	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Disclosure and reporting requirements set out in the UCITS Directive.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

107.1 Is there any other area in which the provisions of the EU UCITS Directive legal framework are appropriately suited for the effective functioning of DLT solutions and the use of security tokens? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

no opinon

107.2 Please explain your reasoning for your answer to question 107:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

I do not see any obstacles.

11. Other final comments and questions as regards tokens

It appears that permissioned blockchains and centralised platforms allow for the trade life cycle to be completed in a manner that might conceptually fit into the existing regulatory framework. However, it is also true that in theory trading in security tokens could also be organised using permissionless blockchains and decentralised platforms. Such novel ways of transacting in financial instruments might not fit into the existing regulatory framework as established by the EU acquis for financial markets.

Question 108. Do you think that the EU legislation should provide for more regulatory flexibility for stakeholders to develop trading and post-trading solutions using for example permissionless blockchain and decentralised platforms?

- Yes
- No
- Don't know / no opinion / not relevant

108.1 If you do think that the EU legislation should provide for more regulatory flexibility for stakeholders to develop trading and post-trading solutions using for example permissionless blockchain and decentralised platforms, please explain the regulatory approach that you favour. Please explain your reasoning.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

If no guidance is provided this will turn out to be the spot for high risk cases with as little regulation as possible. This potential development could be mitigated by presenting a guiding framework

Question 109. Which benefits and risks do you see in enabling trading or post-trading processes to develop on permissionless blockchains and decentralised platforms?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

permissionless blockchains / decentralised platform will develop anyway. Why not "attracting" them already as per now to have a certain jurisdictional connexion to the Union instead of watching them develop and choosing exotic domiciled out of reach?

Blockchain systems work in a fundamentally different way compared to the current trading and post-trading architecture. Tokens can be directly traded on blockchain and after the trade almost instantaneously settled following the validation of the transaction and its addition to the blockchain. Although existing EU acquis regulating trading and post-trading activities strives to be technologically neutral, existing regulation reflects a conceptualisation of how financial market currently operate, clearly separating the trading and post-trading phase of a trade life cycle. Therefore,

trading and post-trading activities are governed by separate legislation which puts distinct requirements on trading and post-trading financial infrastructures.

Question 110. Do you think that the regulatory separation of trading and post-trading activities might prevent the development of alternative business models based on DLT that could more efficiently manage the trade life cycle?

- Yes
- No
- Don't know / no opinion / not relevant

110.1 If you do think that the regulatory separation of trading and post-trading activities might prevent the development of alternative business models based on DLT that could more efficiently manage the trade life cycle, please identify the issues that should be addressed at EU level and the approach to address them. Please explain your reasoning.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

see Swiss model of DLT trading venue

Question 111. Have you detected any issues beyond those raised in previous questions on specific provisions that would prevent effectively applying EU regulations to security tokens and transacting in a DLT environment, in particular as regards the objective of investor protection, financial stability and market integrity?

- Yes
- No
- Don't know / no opinion / not relevant

111.1 Please provide specific examples and explain your reasoning for your answer to question 111:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Regulatory arbitrage. If regulation does not suit DLT cases, they'll choose other jurisdictions and technology / IP / skills and experience will further drain from the Union.

Question 112. Have you identified national provisions in your jurisdictions that would limit and/or constraint the effective functioning of DLT solutions or the use of security tokens?

- Yes
- No
- Don't know / no opinion / not relevant

112.1 Please provide specific examples (national provisions, implementation of EU acquis, supervisory practice, interpretation, application, ...) and explain your reasoning for your answer to question 112:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

referenc eis being made to the LIE blockchain act

C. Assessment of legislation for 'e-money' tokens

Electronic money (e-money) is a digital alternative to cash. It allows users to make cashless payments with money stored on a card or a phone, or over the internet. The [e-money directive \(EMD2\)](#) sets out the rules for the business practices and supervision of e-money institutions.

In [its advice on crypto-assets, the EBA noted](#) that national competent authorities reported a handful of cases where payment tokens could qualify as e-money, e.g. tokens pegged to a given currency and redeemable at par value at any time. Even though such cases may seem limited, there is merit in ensuring whether the existing rules are suitable for these tokens. In that this section, payments tokens, and more precisely "stablecoins", that qualify as e-money are called 'e-money tokens' for the purpose of this consultation. Consequently, firms issuing such e-money tokens should ensure they have the relevant authorisations and follow requirements under EMD2.

Beyond EMD2, payment services related to e-money tokens would also be covered by the [Payment Services Directive \(PSD2\)](#). PSD2 puts in place comprehensive rules for payment services, and payment transactions. In particular, the Directive sets out rules concerning a) strict security requirements for electronic payments and the protection of consumers' financial data, guaranteeing safe authentication and reducing the risk of fraud; b) the transparency of conditions and information requirements for payment services; c) the rights and obligations of users and providers of payment services.

The purpose of the following questions is to seek stakeholders' views on the issues they could identify for the application of the existing regulatory framework to e-money tokens.

Question 113. Have you detected any issue in EMD2 that could constitute impediments to the effective functioning and/or use of e-money tokens?

- Yes
- No

- Don't know / no opinion / not relevant

113.1 Please provide specific examples (EMD2 provisions, national provisions, implementation of EU acquis, supervisory practice, interpretation, application, ...) and explain your reasoning for your answer to question 113:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

no issues detected

Question 114. Have you detected any issue in PSD2 which would constitute impediments to the effective functioning or use of payment transactions related to e-money token?

- Yes
 No
 Don't know / no opinion / not relevant

114.1 Please provide specific examples (PSD2 provisions, national provisions, implementation of EU acquis, supervisory practice, interpretation, application, ...) and explain your reasoning for your answer to question 114:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

no issues detected

Question 115. In your view, do EMD2 or PSD2 require legal amendments and /or supervisory guidance (or other non-legislative actions) to ensure the effective functioning and use of e-money tokens?

- Yes
 No
 Don't know / no opinion / not relevant

115.1 Please provide specific examples and explain your reasoning for your answer to question 115:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

digital EUR should be considered by the ECB to be utmost reliable and internationally accepted.

Under EMD 2, electronic money means “*electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions [...], and which is accepted by a natural or legal person other than the electronic money issuer*”. As some “stablecoins” with global reach (the so-called “global stablecoin”) may qualify as e-money, the requirements under EMD2 would apply. Entities in a “global stablecoins” arrangement (that qualify as e-money under EMD2) could also be subject to the provisions of PSD2. The following questions aim to determine whether the EMD2 and/or PSD2 requirements would be fit for purpose for such “global stablecoins” arrangements that could pose systemic risks.

Question 116. Do you think the requirements under EMD2 would be appropriate for “global stablecoins” (i.e. those that reach global reach) qualifying as e-money tokens?

Please rate from 1 (completely inappropriate) to 5 (completely appropriate)

	1 (completely inappropriate)	2	3	4	5 (completely appropriate)	Don't know / no opinion / very suited
Initial capital and ongoing funds	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Safeguarding requirements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Issuance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Redeemability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Use of agents	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Out of court complaint and redress procedures	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

116.1 Is there any other requirement under EMD2 that would be appropriate for “global stablecoins”?
Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

no opinion.

Global stablecoin will be voted on by consumers by way of usage / acceptance

116.2 Please explain your reasoning for your answer to question 116:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

no opinion

Global stablecoin will be voted on by consumers by way of usage / acceptance

Question 117. Do you think that the current requirements under PSD2 which are applicable to e-money tokens are appropriate for “global stablecoins” (i.e. those that reach global reach)?

- Completely agree
- Rather agree
- Neutral
- Rather disagree
- Completely disagree
- Don't know / no opinion / not relevant

117.1 Please explain your reasoning for your answer to question 117:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

no opinion

Global stablecoin will be voted on by consumers by way of usage / acceptance

Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:

The maximum file size is 1 MB.

You can upload several files.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

915c026f-eee6-499e-a5cc-d8308b6bb3c6/PUBLIC_CONSULTATION_-_addtl_information.pdf

Useful links

[More on the Transparency register \(http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en\)](http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

[More on this consultation \(https://ec.europa.eu/info/publications/finance-consultations-2019-crypto-assets_en\)](https://ec.europa.eu/info/publications/finance-consultations-2019-crypto-assets_en)

[Specific privacy statement \(https://ec.europa.eu/info/law/better-regulation/specific-privacy-statement_en\)](https://ec.europa.eu/info/law/better-regulation/specific-privacy-statement_en)

[Consultation document \(https://ec.europa.eu/info/files/2019-crypto-assets-consultation-document_en\)](https://ec.europa.eu/info/files/2019-crypto-assets-consultation-document_en)

Contact

fisma-crypto-assets@ec.europa.eu