



EU RegCORE Client Alert

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From rulebook to market architecture: MiCAR 1.0, the emerging MiCAR 2.0, MISP and the EU–UK–US divide

QuickTake

The Markets in Crypto-Assets Regulation (**MiCAR**) was designed to bring crypto-assets and crypto-asset services within a common European Union (**EU**) regulatory perimeter. The next stage goes beyond extending that perimeter to deciding how digital money, intermediated and decentralised services, tokenised financial instruments, market infrastructure and the failure of critical institutions fit together. As explored in our separate series of Client Alerts, the September and October 2026 consultations, opinions and supervisory programmes increasingly expose that second-order question.

Three recent developments are decisive. First, on 9 October 2026 the Council agreed the key elements of its position on the Market Integration and Supervision Package (**MISP**), ahead of a final legislative text. It rejected the Commission's proposed immediate ESMA supervision of every crypto-asset service provider (**CASP**) in favour of the “most significant cross-border CASPs”, while maintaining a more integrated model for selected trading and post-trading infrastructures. Secondly, the MiCAR review consultation closed on 30 September; responses from the European Banking Authority (**EBA**), European System of Central Banks (**ESCB**), European Securities and Markets Authority (**ESMA**),

European Systemic Risk Board (**ESRB**), Authority for Anti-Money Laundering and Countering the Financing of Terrorism (**AMLA**) and Single Resolution Board (**SRB**) converge around specific gaps, which MiCAR itself has yet to address. Thirdly, supervisory action is already moving under existing law: ESMA's 8 October opinion calls for CASPs to stop services involving non-compliant stablecoins and to remediate existing client exposures promptly.

Developments outside the EU have also moved. The United Kingdom (**UK**) authorisation gateway opened on 30 September 2026 for a regime principally commencing on 25 October 2027. In the United States (**US**), the enacted GENIUS Act is being populated by proposed prudential rules, notably the Federal Reserve's 29 September 2026 notice; the Securities and Exchange Commission (**SEC**) proposed a crypto-custody regime for advisers and funds on 1 October 2026; and the Commodity Futures Trading Commission (**CFTC**) published an advance notice of proposed rulemaking (**ANPRM**) on market structure on 13 October 2026. The SEC's September tokenised-stock exemption and the CFTC's passive-software relief remain narrower, conditional routes under existing legislation.

Our central reading is that firms should stop organising implementation around a supposed single future "MiCAR 2.0". A defensible operating model has at least four distinct legal layers: the token's classification and holder's rights; the issuer's balance sheet and reserves; the service and the supervisor with jurisdiction; and the infrastructure through which ownership, collateral and settlement become legally effective. A token moving on a ledger does not, by itself, move each of those four legal relationships. This Client Alert examines those layers across the EU, UK and US and distinguishes binding law, supervisory expectations and policy proposals.

Recent developments at a glance

The developments below differ markedly in legal effect. Consultation responses are policy options, a supervisory opinion changes expectations under existing law, proposed rules remain subject to finalisation, and only adopted legislation alters the rulebook itself. Firms should read each entry with that hierarchy in mind.

The table below records each development alongside its legal status and the immediate implication for firms.

Date	Development and legal status	So what for firms?
21 September 2026	Operational: the Eurosystem launched Pontes for wholesale tokenised transactions settled in central bank money; the European Central Bank (ECB) also began preparations to invest part of its own funds in tokenised securities.	A credible cash settlement leg is emerging, but title, collateral, insolvency and finality still require legal analysis.
24–30 September 2026	Consultation responses: EBA, ESCB, ESMA and ESRB set out different positions on stablecoin reserves, third-country multi-issuance, classification, staking and decentralised finance (DeFi). The Commission's MiCAR review consultation closed on 30 September.	Analyse the recommendations as competing policy options and prepare alternative target-state designs.
29 September 2026	US proposed rule: Federal Reserve GENIUS Act implementing notice of proposed rulemaking (NPRM) for Board-supervised permitted payment stablecoin issuers and related entities; comments due 30 November 2026.	Test reserve composition, segregation, redemption, custody and concentration under proposed US rules rather than assuming the statutory GENIUS text is the whole regime.
30 September 2026	UK gateway opened: Financial Conduct Authority (FCA) applications and variations now accepted; window closes 28 February 2027, ahead of October 2027 commencement.	Entity, activity and UK territorial analyses need an execution-ready authorisation submission now.

Date	Development and legal status	So what for firms?
1 October 2026	US proposed rule: SEC crypto-custody framework for registered advisers and regulated funds.	Custody, self-custody and qualified custodian analysis needs a separate securities-law workstream.
7–9 October 2026	EU policy and supervision: AMLA response (7 October); ESMA opinion on non-compliant stablecoins (8 October); SRB crisis-management response, ESMA call for evidence on tokenised central counterparty (CCP) collateral and Council MISP political agreement (9 October).	Immediate CASP service remediation; reserve-bank and crisis mapping; and a revised, more selective ESMA supervision scenario.
13 October 2026	US advance notice: CFTC ANPRM on crypto-asset transactions and markets under Commodity Exchange Act section 2(c)(2)(D); comments due 14 December 2026.	A live, pre-proposal US design consultation; US market-structure legislation remains unenacted and no generally available, legislatively enshrined spot-market licence exists yet.

PwC Legal summary of developments as at 14 October 2026. Consultation responses, proposed rules and advance notices are not final operative legislation.

Four legal states, not four comparable crypto laws

What “MiCAR 2.0” does and does not mean

“MiCAR 2.0” is **not** the name of an enacted EU regulation. The market uses it solely as shorthand to describe the potential result of the Commission’s review under Articles 140 and 142 MiCAR, read together with MISP’s separate supervisory and post-trade reforms. The Commission’s review report under Article 140 is due by 30 June 2027, accompanied by a legislative proposal where appropriate. The Council’s 9 October MISP agreement is a political step towards a negotiating mandate, with formal adoption and the European Parliament’s position still required.

Dimension	EU — MiCAR 1.0	EU — potential MiCAR 2.0 and MISP	UK	US
Governing law	Operative: Regulation (EU) 2023/1114; stablecoin Titles III–IV since 30 June 2024; principal CASP rules since 30 December 2024.	Not enacted: Commission review, COM(2025) 943 and associated proposed directive/finality regulation. Council agreed key MISP elements on 9 October only.	Enacted but mainly future: FSMA 2000, as amended; SI 2026/102; FCA rules and PS26/18. Principal start 25 October 2027; authorisation gateway open now.	Hybrid: GENIUS Act enacted; Securities Act 1933, Exchange Act 1934 and Commodity Exchange Act apply by activity. CLARITY bill not enacted. Agency rules, interpretation and exemptions differ in legal effect.
Primary perimeter	ARTs, EMTs and other crypto-assets; crypto-assets qualifying as financial instruments excluded.	Proposed recalibration of classification, stablecoin structure and new intermediary-facing services; no general expansion yet.	Activity-based specified-investment and qualifying stablecoin services, with financial-promotion and AML overlays.	Payment stablecoin issuer regime under GENIUS; SEC securities-law and CFTC commodity/derivatives powers for other activities.
Supervisory allocation	Home-state NCAs authorise most CASPs; EU passport, ESMA coordination; EBA supervises significant ART/EMT issuers within its mandate.	Commission: all CASPs transferred to ESMA. Council 9 October: immediate direct supervision only for most significant cross-border CASPs; national authorities remain relevant to others.	FCA authorisation/supervision; Bank of England layer for recognised systemic stablecoin payment systems/issuers under Banking Act 2009.	Federal/state payment stablecoin regulators under GENIUS; SEC, CFTC, bank regulators and state authorities retain distinct mandates.
Stablecoin design	Statutory reserve, safeguarding, redemption and prudential framework;	Competing proposals on deposit floors, third-country multi-issuance, bank	FCA qualifying stablecoins and separate Bank systemic regime; BoE policy	GENIUS 1:1 reserve backing, with Fed/OCC implementation under

Dimension	EU — MiCAR 1.0	EU — potential MiCAR 2.0 and MISP	UK	US
	different ART/EMT legal rights.	EMT treatment, redemption timing and crisis response.	statement is final, Code remains draft.	consultation; generally not a MiCAR-style ART framework.
Services beyond exchange/custody	Enumerated CASP services (MiCAR Article 3(1)(16)); no freestanding licence category for staking or lending.	EBA, ESMA and AMLA favour calibrated regulation for staking, lending/borrowing, controllable DeFi access and financial crime.	New specified activities include arranging qualifying cryptoasset staking; FCA rules/guidance address lending/borrowing risks.	SEC/CFTC treatment depends on securities, derivatives, intermediaries and conduct; passive software no-action relief is fact-specific.
Tokenised securities	MiFID II, MiFIR, CSDR and DLT Pilot, not MiCAR merely because tokenised.	MISP proposes expanded DLT Pilot and new settlement finality architecture; Pontes already operational.	Securities perimeter plus Digital Securities Sandbox.	Securities laws retained; conditional SEC five-year tokenised-NMS-stock venue exemption; new adviser/fund custody proposal.
Market abuse and admission to trading	Title VI MiCAR: inside information disclosure, insider dealing, unlawful disclosure and market manipulation prohibitions; persons professionally arranging or executing transactions must detect and report suspicious orders.	Council MISP design retains national supervision for most CASPs but points to stronger central cross-border market-abuse monitoring; ESMA seeks additional enforcement tools.	New FCA admissions, disclosures and market-abuse regime for cryptoassets alongside the authorisation regime.	No dedicated crypto market-abuse statute; anti-fraud and anti-manipulation powers under Exchange Act and Commodity Exchange Act depend on whether the asset is a security or commodity.
Marketing and financial promotion	White-paper, marketing communication and conduct rules for offerors, issuers and CASPs; no general crypto financial-promotion approval gateway.	ESMA proposes rules on influencer/third-party marketing, fee transparency and targeted disclosure; proposals only.	Financial-promotion restrictions apply to cryptoasset promotions; approval, exemption or authorised-person routes required.	No single federal promotion regime; securities offering rules, anti-fraud provisions and state law apply by product.
Prudential and safeguarding requirements for intermediaries	CASP minimum capital by service class plus prudential safeguards; segregation and safeguarding of client crypto-assets and funds.	Proposals for stronger outsourcing, interface and client-control analysis; no recalibrated CASP capital framework yet adopted.	FCA prudential and client-asset safeguarding rules for authorised cryptoasset firms under the new regime.	Varies by charter and registration; bank, broker-dealer, adviser, fund and state-licence requirements apply separately; SEC custody proposal not operative.
AML/CFT and sanctions	CASPs are obliged entities under EU AML/CFT law; transfer-of-funds rules apply to crypto-asset transfers; AMLR applies generally from 10 July 2027.	AMLA flags direct ART issuers, DeFi control, lending/staking and cross-border supervisory data as gaps.	Money Laundering Regulations registration continues alongside, but does not substitute for, FSMA permission.	Bank Secrecy Act and OFAC obligations; OCC GENIUS AML/CFT and sanctions proposal for relevant issuers.
Third-country access	Authorisation within the EU required for CASP services; third-country firms limited to reverse solicitation under narrow conditions; passport is EU/EEA-only.	Competing positions on third-country multi-issuance: ESRB ban recommendation versus conditional equivalence; no decision enacted.	Overseas firms dealing with UK consumers generally need UK permission; no reliance on EU passport.	GENIUS foreign-issuer and comparable-regime mechanisms subject to determinations; securities and derivatives registration otherwise applies.
Transition and timing	Grandfathering periods for pre-MiCAR service providers have ended; ESMA 8 October opinion sets a three-month remediation expectation for non-compliant stablecoins.	Article 140 review report due 30 June 2027; MISP transition (including a two-year ESMA/NCA joint-team period) depends on a legal trigger not yet fixed.	Gateway open 30 September 2026 to 28 February 2027; principal commencement 25 October 2027.	GENIUS effective date is the earlier of 18 January 2027 or 120 days after final implementing regulations; SEC exemption expires 17 September 2031 unless modified.
Key divergence for firms	Single rulebook with passport, but sectoral exclusions for financial instruments and deposits.	Direction of travel is towards selective centralisation, not a single EU crypto supervisor.	Activity-based, FSMA-integrated regime with a separate systemic-payments layer.	Fragmented, regulator-by-regulator model; status depends on asset and activity characterisation.

The comparison maps legal function rather than permissiveness. A firm may be permitted to issue a token in one jurisdiction, prohibited from distributing it through particular services in another, and unable to achieve the desired proprietary transfer or finality under the law governing its collateral or securities. The architecture must therefore be tested along the *transaction chain*.

MISP after the Council's 9 October agreement

As explored in a standalone series of Client Alerts, MISP comprises a proposed master regulation, a proposed master directive and a proposed settlement finality regulation. It addresses the supervision, scale and connectivity of capital markets, including CASPs. The most relevant first comparison is therefore internal to the EU: the Commission's December 2025 design against the Council's October 2026 political position.

Issue	Commission's original proposal	Council key elements agreed 9 October 2026	Implementation implication
CASP direct supervision	ESMA authorisation and direct supervision proposed for all CASPs .	Only most significant cross-border CASPs immediately under ESMA direct supervision; criteria require final legislative text.	Do not assume every CASP's existing NCA licence will migrate to ESMA. Segment the population and preserve dual allocation scenarios.
Trading venues / CCPs / CSDs	Wider categories of directly supervised cross-border market operators.	More selective importance and cross-border tests; ESMA for specified major venues, CCPs and CSDs.	Legal-entity, volume, venue and corporate-group mapping matters for supervisory perimeter.
Pan-European market operator (PEMO)	New single-licence ESMA-supervised option for eligible market operators.	Retained and eligibility broadened/clarified, on a voluntary basis for qualifying venues.	Consider the economics of a PEMO structure against existing national venues; it is not an automatic passport replacement.
ESMA governance	Strengthened central supervisory capacity.	Full-time executive board (chair plus five independent members); national Board of Supervisors retains rulemaking/strategy functions.	Expect an EU-wide decision process but continuing national interfaces and accountability.
Transition	Transfer of functions under legislation yet to be enacted.	Two-year ESMA/NCA joint-team transition envisaged after the relevant trigger.	Do not backdate the two-year period to 9 October; the legal trigger is not yet fixed.
DLT Pilot	Expand usability and scale of Reg (EU) 2022/858.	Broader eligible financial activity and stronger support for DLT infrastructures.	Revisit infrastructure scale limits and exemptions when legislative drafting crystallises.
Depository passport	Facilitate cross-border asset-management depositaries.	Optional adoption for Member States under Council design.	Related fund/tokenised-MMF structures may still face national unevenness.
Finality	Replace/update the existing EU settlement-finality instrument via a proposed regulation.	Included in MISP's three-file package; subject to legislative process.	Technical ledger immutability is not yet a harmonised EU property/title rule.

So what: the supervisory centralisation debate has shifted from “whether every CASP will be supervised by ESMA” to “which CASPs are significant and sufficiently cross-border to justify direct EU supervision, and how will national supervision interact with central market-abuse monitoring”. The difference is material for licensing cost, governance, remedial powers, on-site inspections, reporting and group structuring. It would be premature to bake the Commission's blanket transfer into the design of a 2027 European CASP platform.

Nor should an expansion of the DLT Pilot be confused with bringing financial instruments under MiCAR. Article 2(4) MiCAR excludes financial instruments; title and post-trade obligations must still be analysed under applicable securities, custody, private international and insolvency law. A future MISP derogation would apply only within its scope and conditions.

What the MiCAR review responses converge on

The MiCAR consultation is finished; the legislative decision is still to come. Responses are recommendations that remain subject to the legislative process. They are useful because they show the risks supervisors and central banks expect issuers, banks and CASPs to demonstrate that they can manage today, even if new sectoral powers come later.

Issue	Present MiCAR position	Response / possible MiCAR 2.0 direction	Current task — not speculative compliance
Token classification	Classification follows legal substance; financial instruments and deposits sit outside MiCAR; Article 97 has cooperation/opinion mechanisms.	ESMA seeks binding classification opinions (including own-initiative capability), addressing wrappers, governance, hybrid and fractionalised tokens; EBA/ESCB defend legal and technological neutrality.	Record rights, issuer obligations, cash-flow claims and underlying asset; make a cross-border classification file. Do not describe the binding-opinion idea as law.
Reserve-bank liquidity	ARTs/EMTs have different issuer and reserve requirements; existing MiCAR thresholds remain operative.	EBA/ESCB question fixed bank-deposit minima and favour liquidity-sensitive design; SRB focuses on reserve-bank resolution and concentrated withdrawal.	Model liquidity available after reserve-bank distress, in addition to nominal backing at inception.
Redemption	EMT holder redeemed at par at any time (Art 49); ART redemption under Art 39 is linked to market value/delivery of referenced assets.	EBA advocates a defined operational deadline and harmonised rules; SRB seeks usable crisis procedures.	Keep EMT and ART waterfalls separate; test the settlement cut-off, fees, withdrawal rights and insolvency ranking.
EU/third-country multi-issuance	MiCAR contains no straightforward express all-scheme approval or blanket prohibition.	ESRB recommends disallowing EU/third-country multi-issuer arrangements; EBA/ESCB explore safeguards and equivalence if such models are permitted.	Document legal issuer, EU-holder rights, where redemption reserves are actually accessible, and adverse regulatory scenarios.
Bank-issued EMTs	Direct credit-institution issuance has sectoral prudential safeguards; MiCAR exceptions apply in relevant cases.	EBA/ESCB resist blanket mandatory reserve ringfencing for directly bank-issued EMTs; contemplate case-by-case supervisory separation/EMI subsidiary where justified.	Compare direct issuance with subsidiary under CRR/CRD, LCR, NSFR, deposit ranking, DGS and BRRD/SRM, rather than assume ringfencing is already imposed.
DeFi access	Fully decentralised activity without an intermediary may fall outside service requirements; actual control and intermediation remain determinative.	ESMA proposes a distinct regulated gateway for CASP protocol access/routing, calibrated to control; AMLA requests effective-control tests.	Map interfaces, keys, discretion, upgrade power, fee flows and who gives client instructions.
Staking and crypto lending	No standalone MiCAR Article 3(1)(16) service expressly named “staking” or “lending”. Other regulated activity may still be triggered.	ESMA/EBA/AMLA support proportionate service obligations; distinguish self-staking, custodial pools, liquid-staking tokens, borrowing and yield arrangements.	Identify custody, beneficial title, re-hypothecation, validators, slashing, lock-ups, creditor ranking and financial-crime obligations.
Enforceable EU consumer/investor protections	Current consumer and market-integrity rules already apply to authorised services.	ESMA suggests influencer/third-party marketing rules, fee transparency, targeted disclosure, white-paper notification simplification and additional enforcement tools.	Repair current controls without waiting for proposed powers; separately track any future Level 1 mandates.
AML	AML obligations flow from operative AML/CFT rules and entity/activity perimeter, not every entity called a token issuer.	AMLA flags direct ART issuers, DeFi control, lending/staking and cross-border supervisory data.	Perform an issuer-by-issuer and service-by-service obliged-entity mapping.

The single most actionable new EU point arises under existing law. ESMA's 8 October 2026 opinion tells NCAs to expect authorised CASPs to cease the full range of services in relation to non-MiCAR-compliant ARTs and EMTs, including listing, exchange, custody, transfer, routing, advice and other MiCAR services. Existing exposures should be remediated as soon as possible and no later than three months from publication. The opinion allows narrowly limited, time-bound liquidation, conversion, transfer, withdrawal or safekeeping needed for an orderly exit. This is a supervisory interpretation under existing law; the proposed express statutory ban remains a distinct legislative question.

One drafting point matters to boards and clients. An ESMA, EBA, ECB/ESCB, ESRB, AMLA or SRB consultation response does not itself bind firms. An ESMA opinion may materially change supervisory expectations without adding new text to MiCAR. Both differ from a Regulation adopted by the co-legislators. Treating those sources as interchangeable risks either missing an immediate supervisory requirement or imposing future policy ideas as if they had already been enacted.

Stablecoins: from reserve percentages to failure and redemption

The comparison between Europe and the US is often reduced to the assets eligible to back a coin. That misses the more important question: against which entity does the holder have a claim, and can that entity meet it when its reserve bank, custodian or redemption channel fails? The SRB's 9 October response makes the links between banking resolution and token issuance explicit. It identifies banks as issuers, holders of issuer/CASP funding, critical service providers and intermediaries with token exposures. A run on a token can drain bank deposits; a bank's resolution can immobilise reserves needed for redemptions.

Dimension	EU — MiCAR 1.0	EU — response/re-form debate	UK — FCA / BoE	US — GENIUS and implementing proposals
Token/issuer	Separate asset-referenced token (ART) and e-money token (EMT) rules; banks and electronic-money institutions follow differentiated requirements.	EBA/ESCB favour clearer classification of deposit, EMT, ART, MMF share and hybrid claim; no generic “tokenised money” status.	Qualifying stablecoins under FCA framework; HM Treasury systemic designation can engage Bank of England oversight.	Payment stablecoin definition in GENIUS excludes a deposit (including a DLT-recorded deposit) and a security; banking and securities laws remain relevant.
Reserve portfolio	EMT Article 54: at least 30% of funds received in separate credit-institution accounts; ART Article 36 applies asset-reserve/custody constraints; significant-token rules may tighten requirements.	EBA/ESCB ask whether fixed deposit floors mis-price run and concentration risk; any change would need legislation.	FCA safeguarding/reserve rules for qualifying issuers; BoE systemic regime has distinct policy positions and a draft Code.	GENIUS requires 1:1 permissible high-quality reserves; Fed 29 September NPRM proposes detailed reserve custody, liquidity, segregation and concentration rules for Board-supervised entities; not final.
Redemption claim	EMT par at any time (Art 49); ART market-value/delivery right under Art 39.	Ordinary-course timing, operational settlement and stress/insolvency mechanisms under discussion.	Issuer redemption and safeguarding under FCA rules; proposed BoE systemic requirements should be checked for the recognised entity.	Statutory GENIUS fixed-value redemption; Fed NPRM proposes generally two-business-day timely redemption for Board-supervised issuers, subject to detail and exceptions.
Deposit / banking resolution	Bank reserves remain claims against reserve banks; BRRD/SRMR, DGS and national insolvency law determine legal consequences.	SRB seeks stronger coordination, data exchange, deposit treatment, segregation, ranking and non-bank systemic crisis arrangements.	Bank resolution/special administration and Banking Act 2009 interact with the payment system and issuer structure.	Reserve treatment depends on permitted custodian/deposit claim and bankruptcy protections; Fed proposal distinguishes an eligible bank deposit liability from safekept assets.
Multi-issuer cross-border schemes	No easy single EU-to-third-country passport for a fungible token jointly issued across jurisdictions.	ESRB's ban recommendation competes with conditional equivalence/safeguard options; neither creates an enacted ban or equivalence decision.	UK rules alone cannot supply EU issuance/redemption recognition.	GENIUS has foreign-issuer and reciprocal/equivalent-regime mechanisms subject to applicable determinations, conditions and implementation.
Yield / services	EMT interest restrictions and service rules must be assessed separately from staking/yield products.	Hybrid staking, liquid-staking and lending products may require clearer perimeter classification.	FCA rules and product/consumer protection; separate stablecoin payment risks.	GENIUS prohibits issuer-paid interest/yield merely for holding payment stablecoins; Fed NPRM proposes implementing restrictions.

For the EU reserve portfolio distinction, practitioners should avoid compressing MiCAR Articles 36 and 54 into an undifferentiated “stablecoin reserve”. Article 54 addresses safeguarded funds received for EMTs; ARTs have their own reserve and custody architecture. For directly bank-issued EMTs, the statutory and prudential interaction is not identical to a non-bank e-money institution's structure. The EBA and ESCB do not call for every bank EMT to be put behind a separately ringfenced reserve: they instead highlight existing LCR/NSFR treatment, the possibility of double counting and targeted supervisory powers.

For third-country multi-issuer EMT schemes, the ESRB advocates a restrictive interpretation and prohibition; other institutional proposals envisage equivalence and safeguards. Neither is a new legal permission or ban enacted by the ESRB paper. A firm should document whether all holders access the same enforceable issuer, reserve, redemption timetable and insolvency pool. A common token ticker is not a common legal claim.

For the US, the Federal Reserve's 29 September proposal is especially useful in testing the assertion that GENIUS offers a simple Treasuries-versus-deposits alternative. The rule proposes eligibility, segregation, redemptions and risk management for Board-supervised issuers, alongside other regulators' implementation work. GENIUS is enacted; the Fed proposal is not. The statutory operative-date formula remains the earlier of 18 months after the 18 July 2025 enactment (18 January 2027) or 120 days after issuance of the relevant final implementing regulations, not the date of the September proposal.

Services, intermediaries and DeFi: three theories of the gateway

The clearest fault-line in services is intermediation. MiCAR defines an exhaustive list of crypto-asset services in Article 3(1)(16); it does not create a generic licence for “every on-chain product”. The UK has legislated specific cryptoasset activities within the FSMA perimeter, including qualifying staking intermediation. The US applies different statutes to securities, commodity derivatives, advisers, banks and payment-stablecoin issuers, supplemented by agency relief limited to the defined fact pattern.

Activity	EU now	Potential EU direction	UK	US
Custody and administration of crypto-assets	Licensed CASP service with client safeguarding; financial-instrument custody remains under securities legislation.	Stronger interface/out-sourcing/client-control analysis; ESMA current opinion captures non-compliant stablecoins even in custody/transfer.	New FCA authorisation rules and safeguarding standards; distinguish existing MLR registration from FSMA permission.	Exchange Act/Advisers Act/Investment Company Act and bank-custody rules where relevant; SEC 1 October 2026 adviser/fund custody proposal is not operative.
Exchange, execution, routing, advice	MiCAR Article 3(1)(16) service map and conduct rules; market abuse under Title VI.	ESMA requests cost transparency, marketing safeguards, supervisory powers and simplification.	FCA-permitted activities and designated-activities market-abuse/admission rules; PS26/18 guides perimeter.	SEC or CFTC plus state requirements according to token/right/activity; SEC Innovation Exemption is not a universal CASP authorisation.
Staking	No freestanding MiCAR staking service; custody, operating model and marketing may trigger other duties.	ESMA/AMLA favour proportionate custodial/intermediary duties, slashing, lock-up and conflicts disclosures.	Arranging qualifying cryptoasset staking within new specified activities; licensing gateway open .	SEC/CFTC March interpretive analysis of protocol staking; no-action/rules must be checked against specific arrangements.
Lending and borrowing	Not separately listed as a MiCAR CASP service; other finance, payments and market rules may apply.	EBA/ESMA/AMLA seek differentiated legislation covering custodial pools, borrowing, DeFi lending gateways.	FCA crypto lending/borrowing conduct protections under broader FSMA model; consider credit perimeter separately.	Applicable securities, CEA, banking, credit and state law; no all-purpose DeFi safe harbour.
DeFi interfaces / software	Full decentralisation without an intermediary is distinct from an operator that controls/arranges client activity.	ESMA proposes a new protocol-access/gateway service; AMLA seeks effective-control criteria.	Regulatory status rests on actual arrangement/dealing/safeguarding/staking and territorial nexus, not “DeFi” branding.	CFTC Staff Letter 26-25 narrow conditional passive-software no-action position for specified IB/AP registration only; CFTC crypto-market ANPRM is earlier-stage rulemaking.
Non-compliant ART/EMT services	ESMA 8 October opinion signals current supervisory cessation expectations across services and fast remediation.	Proposal to make prohibition explicit may follow; no amendment adopted.	UK listing/safeguarding legality independently tested by FCA rules and UK promotion restrictions.	Foreign or EU non-compliance does not itself determine GENIUS, securities or derivatives status; cross-border distribution

				still needs independent checks.
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The UK gateway is no longer a diary item. FCA applications and variations have been accepted since 30 September 2026; the formal application window closes 28 February 2027, and the regime principally commences 25 October 2027. Current Money Laundering Regulations registration, payments/e-money permission or another FSMA permission does not automatically confer permission for new crypto activities. HM Treasury's further September amendments were laid as a draft affirmative statutory instrument; they should not be treated as made legislation at this cut-off.

That distinction is particularly important for a CASP serving EU and UK clients. A MiCAR passport is an EU/EEA proposition, not a UK passport; October EU–UK political dialogue does not by itself restore mutual recognition or authorisation rights. Firms should independently assess solicitation, marketing, client location and where the relevant regulated activity is carried on, without assuming that UK or EU sales contact is a valid reverse-solicitation route.

Tokenised securities: settlement is becoming available, legal effectiveness is not automatic

Our recent work on end-to-end on-chain securitisation (see [Client Alert](#)) makes the central distinction unavoidable: a ledger can evidence, automate or instruct part of a transaction; it does not necessarily constitute the transferable title, perfect an assignment or security interest, or render an insolvency challenge ineffective. Tokenised financial instruments remain subject to MiFID II, MiFIR, the Central Securities Depositories Regulation (**CSDR**), national property and conflict-of-laws rules and, where applicable, the DLT Pilot regime. For securitisations, the Securitisation Regulation, including Article 7 disclosures and Article 6 retention, remains relevant regardless of where the notes are represented.

The 21 September 2026 launch of Pontes is nevertheless important. It means wholesale tokenised transactions can now use a Eurosystem central-bank-money settlement route, rather than relying entirely on a commercial-bank or private stablecoin cash leg. The ECB's separate preparatory investments in tokenised securities provide an institutional demand-side signal. Neither announcement harmonises the law determining the asset's owner, validity of the security interest or the insolvency consequences of a participant default.

Transaction layer	EU	UK	US
Legal character of tokenised share/note	MiFID II/MiFIR security where legally a financial instrument; MiCAR is generally excluded for such rights. National law governs proprietary character.	Specified investments and relevant company/property law; tokenisation does not take a security outside FSMA.	Securities Act 1933/Exchange Act 1934 and applicable state commercial/property law; token wrapper does not erase shareholder rights.
Issuance and trading infrastructure	DLT Pilot (Reg 2022/858), CSDR, current exchange/MTF/SS permissions; MISP expansion only proposed.	Digital Securities Sandbox under FSMA 2023 and SI 2023/1398, within specific sandbox approvals and modified requirements.	SEC 17 September Innovation Exemption , under Exchange Act §36(a)(1), for narrowly defined permitted tokenised NMS-stock venues and related liquidity providers; temporary/conditional, not for all securities.
Cash settlement	Pontes operational from 21 September in central-bank money for participating wholesale activity; access and settlement arrangements still govern.	Existing sterling settlement architecture and permitted sandbox settlement arrangements; additional stablecoin/digital-money routes subject to their own rules.	Relevant US payment, banking and securities settlement rules; GENIUS tokens do not by themselves supply securities finality.
Collateral at CCPs	EMIR and national collateral law remain relevant; ESMA 9 October Call for Evidence on tokenised CCP collateral closes 15 January 2027 .	UK CCP collateral/margin and enforcement rules apply subject to relevant modifications.	SEC/CFTC collateral frameworks; CFTC 24 September FAQs clarify some tokenised permitted-

			investment and blockchain record-keeping treatment.
Transfer and finality	Current Settlement Finality Directive 98/26/EC; MISP's proposed settlement finality regulation is unlegislated; law of relevant instruments and systems remains decisive.	Applicable UK settlement finality framework, sandbox permissions, company/property/insolvency law.	Federal market regulation plus UCC/state-law transfer, perfection and intermediary rights; settlement-platform code is not dispositive.
End-to-end securitisation	True sale/assignment of underlying claims, SPV separation, servicing and data, waterfall instructions, note issuance, custody, collateral, central-bank/commercial cash leg and insolvency enforceability all need separate proof.	Same discipline, adapted to relevant UK conveyance/property and securitisation regime.	Same discipline, adapted to US assignment, UCC/perfection, securities and bankruptcy law.

A practical on-chain securitisation control chain therefore runs from (i) eligibility/origination and legally effective transfer of receivables to the special purpose vehicle, to (ii) SPV asset segregation and servicing data, (iii) creation/registration of the noteholder's interest, (iv) investor custody and exchange/settlement permissions, (v) legally effective cash settlement and payment allocation, and finally (vi) an enforceable waterfall on servicer, issuer, custodian or reserve-bank failure. Smart contracts may automate eligibility tests, payment instructions or reporting. They do not prove that national true-sale formalities, third-party effects or creditor-ranking rules have been satisfied.

The ESMA tokenised-collateral exercise sharpens the issue: collateral must remain transferable, valued, liquid and enforceable in default, including when the validator, custodian, bridge, token registrar or participant becomes unavailable. This is also a reason to keep MiCAR/crypto-asset services distinct from the securities infrastructure / post-trade laws. MISP may simplify the latter; it does not abolish the need for a valid security interest.

US: from one stablecoin statute to layered agency rulemaking

It would now be misleading to say merely that the US has enacted GENIUS while Europe debates MiCAR 2.0. US rulemaking is building multiple operating layers. The GENIUS Act (Pub L 119-27, 12 USC 5901 et seq.) establishes the federal payment-stablecoin framework, but its general statutory commencement depends on the Act's trigger and implementing regulations. The OCC's February proposal and Federal Reserve's September proposal are regulator-specific implementations, not one omnibus federal final rulebook.

Equally, market structure is not frozen because the Digital Asset Market Clarity Act (H.R. 3633) has not been enacted (Senate cloture on the motion to proceed failed on 15 September). The SEC used Exchange Act section 36(a)(1) on 17 September to grant a temporary, conditional exemption for certain tokenised NMS-stock venues and liquidity providers; the order should be read with its permissioning, volume, record-keeping, shareholder-rights and expiry conditions. On 1 October the SEC separately proposed tailored custody rules for registered advisers and funds under the Investment Advisers Act 1940 and Investment Company Act 1940, including possible qualified-custody routes and conditional self-custody. That proposal is not yet binding.

The CFTC's 24 September staff FAQs on tokenised permitted investments and blockchain records are interpretive/operational rather than statutory collateral reform. Its 17 September passive-software no-action position is narrower still: it concerns particular registration consequences and does not exempt all DeFi services, fraud or CEA obligations. The 13 October Federal Register advance notice seeks input on crypto-

asset transactions and markets under CEA section 2(c)(2)(D); this is a pre-proposal consultation, with a 14 December comment deadline.

Three lessons for cross-border operators follow. First, “US-compliant” describes a set of separate permissions: issuer authorisation, securities custody, trading venue, derivatives and state activities may be subject to different regulators. Secondly, a SEC exemption is limited to its terms and confers neither a GENIUS licence nor a global approval of on-chain securities infrastructure. Thirdly, an EU/UK entity cannot rely on a US agency no-action position to resolve MiCAR, FSMA, insolvency or cross-border financial-promotion requirements.

The next implementation decisions — and where advice is most valuable

The compliance perimeter must be translated into a client-by-client and entity-by-entity control map. Generic cross-border gap analyses, based only on the words “stablecoin”, “DeFi” or “tokenisation”, are unlikely to survive supervisory scrutiny or a default event.

Organisation / transaction	Immediate decision (2026)	Scenario to prepare (2027+)
EU CASP / trading platform	Inventory ARTs/EMTs and all related services against ESMA 8 October opinion ; block new EU exposure to non-compliant tokens; set managed exit and evidence trail.	Dual licensing/supervision plan for significant cross-border CASPs if Council/Parliament MISP design becomes law.
Global stablecoin issuer	Model legally accessible reserves, redemption by legal issuer, multi-issuer controls, bank failure, concentration and emergency funding; separate EMT from ART rights.	Alternative scenarios for ESRB restrictive approach, conditional equivalence, revised deposit floors and new non-bank crisis powers.
Bank issuing EMT / holding reserves	Compare direct issuance, EMI subsidiary and reserve-bank concentration; assess LCR/NSFR, intragroup exposures, depositor claims and BRRD/SRMF.	Stress-test potential supervisory separation powers, joint supervisory/resolution data and differentiated group reporting.
UK crypto firm / overseas platform	Submit or prepare FCA authorisation/variation within live 30 September 2026–28 February 2027 window; identify territorial nexus and marketing.	October 2027 go-live, transitional/rundown triggers, separate systemic stablecoin recognition and BoE Code once final.
US permitted payment stablecoin issuer	Implement statutory GENIUS planning; comment or model Fed NPRM by 30 November ; check OCC/FinCEN/OFAC jurisdiction.	Final rules, earlier-of statutory effective date, custody/segregation and resolution design.
US tokenised securities participant	Compare SEC Innovation Exemption conditions with ordinary Exchange Act status; review SEC custody proposal and CFTC tokenised collateral FAQs.	Rulemaking replacing/altering temporary exemptive status, and response to CFTC 14 December ANPRM.
Tokenised MMF, deposit, note or securitisation issuer	Establish asset/right classification, legal title, transfer/perfection, custody, reliable data, waterfall, DORA and settlement finality under existing instruments; test Pontes eligibility.	MISP DLT Pilot/SFR, CCP tokenised collateral treatment and national property-law harmonisation options.
Cross-border bank/asset manager group	Maintain EU/UK/US authorisation and client-access matrices; no assumed UK–EU passport; identify outsourcing/control points and linked AML obligors.	Potential ESMA significant-operator status, group supervision, AMLR and integrated reporting obligations.

The ESMA 2027 Annual Work Programme (see our [Client Alert](#)) reinforces this approach: market integration, innovation, supervision, data quality and operational resilience are becoming tests of the firm's actual operating model rather than exercises in drafting a policy binder. The Digital Operational Resilience Act (**DORA**) obligations continue to operate for in-scope EU firms independently of MiCAR review legislation.

Legal and regulatory diary

The above developments should also be assessed in how they interact with the longer arc of scheduled publications and milestone events:

Date	Instrument / event	Legal effect or response required
8 October 2026 + no more than three months	ESMA opinion on non-compliant ARTs/EMTs	Existing exposures to be remediated as soon as possible and within the supervisory opinion's three-month outer expectation; do not use the period as permission for new exposures.
30 November 2026	Federal Reserve GENIUS NPRM (Docket R-1899)	Comments close; rule proposed , not in force.
14 December 2026	CFTC ANPRM (RIN 3038-AF80)	Comments close; advance notice only.
End-2026 target	BoE systemic stablecoin Code	Bank intends final Code after consultation; check actual publication rather than assume effective rules.
15 January 2027	ESMA tokenised CCP collateral call for evidence	Stakeholder responses due; not yet an EMIR amendment or general collateral permission.
18 January 2027, subject to earlier statutory trigger	GENIUS Act general effective-date formula	18 months from 18 July 2025 enactment, or earlier if 120 days after final implementing rules occurs first.
28 February 2027	FCA cryptoasset gateway	End of prescribed application window.
30 June 2027	Commission Article 140 MiCAR review report	Statutory review milestone; legislative proposal only where appropriate.
10 July 2027	EU AMLR general application	Regulation (EU) 2024/1624 general application date; subject to its transitional provisions and entity-by-entity reach.
25 October 2027	UK FSMA cryptoasset regime	Main operative date, with individual permissions, saving/transitional and rundown rules to assess.
17 September 2031	SEC Innovation Exemption	Scheduled sunset in the SEC's September 2026 order, subject to amendment or replacement.

The above does also have a number of practical and in particular documentation considerations for in-scope firms.

Contractual and policy documentation: where the legal lens should fall first

The analysis above has a direct documentation consequence. Supervisors and courts will test what a firm's contracts and policies actually say about rights, failure and control, not the regulatory label attached to a product. Regulated firms should prioritise the following points, many of which can be addressed under existing law without waiting for MiCAR 2.0.

- **Contractual documentation.** First, client terms should name the legal issuer against which the holder has a claim and state what happens if the reserve bank, custodian or redemption channel fails; in multi-issuer schemes, terms should confirm whether every holder accesses the same issuer, reserves, redemption timetable and insolvency pool. Secondly, custody, staking and lending terms should expressly address beneficial title, rehypothecation, validator arrangements, slashing, lock-ups and creditor ranking, given that MiCAR contains no standalone staking or lending service. Thirdly, client and distribution agreements should give CASPs clear rights to cease all services relating to non-compliant ARTs and EMTs and to conduct a limited, time-bound orderly exit consistent with ESMA's 8 October opinion. Fourthly, collateral and securitisation documentation should be drafted so that transfer, perfection and enforcement survive the unavailability of a validator, custodian, bridge or token registrar; smart-contract automation should be documented as an operational tool, with true sale and creditor ranking evidenced separately. Finally, cross-border distribution and marketing arrangements should reflect where the regulated activity is actually carried on, with any reverse-solicitation analysis tested and documented.

- **Policy documentation.** Policies should first establish a source hierarchy that distinguishes non-binding consultation responses, supervisory opinions with immediate effect on expectations, and adopted legislation. They should then require a cross-border classification file for each token, an issuer-by-issuer and service-by-service mapping of AML/CFT obligations ahead of AMLR application, and a record of actual control points in any DeFi-facing activity, including interfaces, keys, upgrade powers, fee flows and client instructions. Liquidity and recovery policies should model the liquidity available after reserve-bank distress, not merely nominal backing at issuance. Governance and licensing policies should preserve both national and ESMA supervisory scenarios rather than assume a blanket transfer of CASP supervision.

In practice: every product should be supported by a document that answers, in plain terms, who owes the client what, under which law, through which entity and supervisor, and what happens on failure. Where current documentation cannot answer those questions, it should be remediated now; future MiCAR 2.0 or MISP changes should be tracked separately rather than anticipated in live terms.

Outlook: the new perimeter is a legal chain, not a label

Europe's first generation of digital-asset regulation answered the question "When is a crypto-asset regulated?" The current cycle asks a harder one: what happens when the issuer, bank, intermediary, securities register, trading platform, collateral taker or settlement system fails, and which supervisor can act across the whole chain? The Council's narrower MISP position makes that question more important, because material segments of the market are likely to continue under national supervision even as selected systemic and cross-border nodes move towards ESMA.

The UK is building an activity-led FCA regime with a defined application gateway and a separate systemic-payments layer. The US is building from a narrow enacted payment-stablecoin statute towards regulator-specific custody, clearing, tokenised trading and crypto-market reforms. None of the three eliminates private-law title, insolvency, redemption or cross-border access questions by legislative fiat.

For firms, the practical next step is to map rights → balance sheet → services → supervision → settlement → failure. That sequence identifies where permission is required, where investor protections are legally enforceable and where tokenisation creates genuine efficiency rather than merely relocating risk.

Put simply, businesses should act now on the ESMA opinion and the UK gateway, keep proposals such as MISP and MiCAR 2.0 in scenario plans rather than live terms, and be able to show for every product who owes the client what and what happens if any link in the chain fails.



About us

PwC Legal is assisting a number of financial services firms and market participants in forward planning for changes stemming from relevant related developments. We have assembled a multi-disciplinary and multi-jurisdictional team of sector experts to support clients navigate challenges and seize opportunities as well as to proactively engage with their market stakeholders and regulators.

Moreover, we have developed a number of RegTech and SupTech tools for supervised firms, including PwC Legal's Rule Scanner tool, backed by a trusted set of managed solutions from PwC Legal Business Solutions, allowing for horizon scanning and risk mapping of all legislative and regulatory developments as well as sanctions and fines from multiple thousands of legislative and regulatory policymakers and other industry voices in over 170 jurisdictions impacting financial services firms and their business.

Equally, in leveraging our Rule Scanner technology, we offer a further solution for clients to digitise financial services firms' relevant internal policies and procedures, create a comprehensive documentation inventory with an established documentation hierarchy and embedded glossary that has version control over a defined backward plus forward looking timeline to be able to ensure changes in one policy are carried through over to other policy and procedure documents, critical path dependencies are mapped and legislative and regulatory developments are flagged where these may require actions to be taken in such policies and procedures.

The PwC Legal Team behind Rule Scanner are proud recipients of ALM Law.com's coveted "2024 Disruptive Technology of the Year Award" and the "2025 Regulatory, Governance and Compliance Technology Award in 2025".

If you would like to discuss any of the developments mentioned above, or how they may affect your business more generally, please contact any of our key contacts or PwC Legal's RegCORE Team via de_regcore@pwc.com or our [website](#).



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