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MiCAR 2.0: Examining the ECB and ESCB responses

The first review of the EU's Markets in Crypto-Assets Regulation (**MiCAR**) is no longer a narrow post-implementation clean-up. Read together, the September 2026 published responses to the MiCAR consultation from the European Banking Authority (**EBA**) and from the European System of Central Banks (**ESCB**) point toward a second-generation EU digital-finance architecture.[1] The common direction is not to bring every tokenised activity inside MiCAR. It is almost the opposite: preserve technological neutrality and the sectoral rulebook, while repairing the interfaces that are beginning to matter commercially - stablecoin liquidity, bank issuance models, third-country multi-issuance, group supervision, crypto lending, tokenised deposits, settlement and the private-law treatment of tokens. 'MiCAR 2.0' is used here as shorthand for that review process, not as the name of an existing legislative proposal.

The two responses overlap substantially, but not completely. The EBA starts repeatedly from limited supervisory experience: as at 1 September 2026, 39 e-money tokens (**EMTs**) had been issued under MiCAR, 36 by electronic money institutions (**EMIs**), while no asset-referenced token (**ART**) had yet been authorised. Its instinct is therefore often to clarify, collect evidence and use cost-benefit analysis before

[1] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets [2023] OJ L 150/40 (**MiCAR**); European Banking Authority, 'EBA Response to the EC Targeted Consultation on the Review of MiCA' (24 September 2026) (**EBA Response**); European System of Central Banks, 'ESCB response to the European Commission's targeted consultation on the Markets in Crypto-Assets Regulation (MiCAR)' (September 2026) (**ESCB Response**). The expression '**MiCAR 2.0**' in this alert is descriptive shorthand only and is not the title of an existing legislative proposal.

wholesale recalibration. The ESCB is more architecture-focused: it would redesign reserve liquidity, broaden financial-stability intervention, strengthen CASP and multi-function group supervision and use EU-level legal reform to prevent tokenisation from reproducing the fragmentation of national property, corporate and insolvency law. The EBA response is therefore best read as an implementation and supervisory baseline whereas the ESCB response is best read as a policy signal for where the next legislative cycle could become more structural. Neither is (as of yet) a reflection of the applicable law.[2]

Why this matters now

For firms, the important point is not whether every recommendation becomes law. The responses identify the assumptions most likely to be challenged as digital finance moves into mainstream banking and capital markets. A stablecoin business can no longer be modelled only against MiCAR Titles III and IV. A CASP cannot assume that entity-level authorisation will remain the end-state for a global group. A bank cannot treat a tokenised deposit and an EMT as merely two technology wrappers around the same product. A market infrastructure cannot assume technological atomicity equals legal finality. And a third-country issuer cannot assume that establishing an EU entity solves the reserve, redemption and supervisory problems created by a globally fungible token.

The Commission's targeted consultation closes on 30 September 2026. MiCAR then requires the Commission, by 30 June 2027, to report on the Regulation and, where appropriate, accompany that report with a legislative proposal. The review is therefore not yet a legislative package. It is, however, already a useful forward-looking map of the policy choices around which firms should build scenarios.[3]

The emerging proposition is simple: the next phase is likely to be less about enlarging the crypto silo and more about connecting crypto regulation to the rest of financial regulation. That is a much more consequential exercise.

Five shifts in the architecture

1. **From classification to interfaces.** Both authorities defend technological neutrality and the sectoral treatment of tokenised financial instruments and deposits. The pressure point is increasingly the boundary between MiCAR, MiFID/MiFIR, CRR/CRD, PSD3/PSR and national private law, not an attempt to place every token under one rulebook.[4]

2. **From a deposit quota to a liquidity stack.** The EBA would not remove the 30%/60% bank-deposit minimum without further evidence and strong liquid-asset safeguards. The ESCB would replace the fixed quota with one-day and five-day liquidity buckets, using the EBA draft RTS as a starting point. The question shifts from where reserves sit to how quickly they can meet redemptions without transmitting stress elsewhere.[5]

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[2] EBA Response, pp 6 and 9-10 (39 EMTs issued as at 1 September 2026, 36 by EMIs, and no authorised ARTs; prudential calibration); ESCB Response, pp 2-6 (key messages on stablecoins, CASPs, crisis management and the wider digital-asset landscape).
[3] European Commission, Targeted consultation on the review of Regulation on the Markets in Crypto-Assets (MiCA) (opened 20 May 2026; closing 30 September 2026); MiCAR art 140(1), requiring the Commission by 30 June 2027 to present a report on MiCAR and, where appropriate, a legislative proposal.
[4] EBA Response, pp 5-8 (tokenised financial instruments, ART classification and wrapped/hybrid tokens); ESCB Response, pp 7-8 (technological neutrality, sectoral regulation and boundaries between MiCAR and other EU financial-services legislation).
[5] EBA Response, pp 11-13 and 19-21 (reserve assets, bank-deposit minima and interaction with bank liquidity); ESCB Response, pp 11-15 (prudential and liquidity framework, contagion channels and possible alternatives to fixed deposit requirements).

3. **More flexibility on the asset side, a tighter fence on the liability side.** The ESCB's reserve proposal is not a deregulatory package. It pairs greater flexibility over reserve composition with a firm defence of the prohibition on stablecoin remuneration, including concern that lending, staking, loyalty benefits and layered DeFi structures can recreate yield indirectly.[6]

4. **From issuer supervision to group architecture.** CASPs, EMT/ART issuers and mixed financial groups are moving toward risk-sensitive capital, group-level reporting, supervisory colleges, consolidated oversight and, for significant third-country groups, possible EU intermediate parent undertakings (**IPUs**). The regulatory unit is beginning to look more like the economic group than the individual licence.[7]

5. **From crypto regulation to market architecture.** The ESCB's private-law discussion reaches ownership, transfer, collateral, custody and insolvency; its settlement analysis puts central bank money at the core of wholesale tokenisation. Pontes is now operational, so that proposition is no longer merely a future design choice. The question is whether Europe can make its regulatory, legal and settlement layers work as one market.[8]

The five shifts above provide a high-level map; the table below offers a more granular comparison across sixteen specific issues. It distinguishes areas where the EBA takes an implementation-led approach from those where the ESCB points toward more structural reform.

Where the EBA and ESCB converge - and where the architecture differs

The following table compresses the principal recommendations in the two responses. It is not a forecast of the Commission's eventual legislative choices; it separates areas where the EBA is comparatively implementation-led from those where the ESCB points toward more structural reform.[9]

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[6] EBA Response, p 16 and pp 33-34 (continued prohibition on interest and interest-equivalent remuneration and lending/yield concerns); ESCB Response, pp 17-18 (direct and indirect remuneration, lending, staking, rewards and DeFi arrangements).

[7] EBA Response, pp 29-31 (group-level reporting, supervisory colleges, consolidated supervision and possible EU intermediate parent undertakings); ESCB Response, pp 33-35 and 41-42 (significant CASPs, group-level oversight and consolidated prudential treatment).

[8] ESCB Response, pp 49-52 (property, transfer, collateral, custody, insolvency and possible EU private-law responses); European Central Bank, 'Eurosystem brings central bank money to tokenised finance' (21 September 2026) (launch of Pontes for wholesale tokenised-asset settlement in central bank money).

[9] EBA Response, pp 5-39; ESCB Response, pp 7-55. The table summarises positions expressed in those consultation responses; it does not state the European Commission's eventual legislative position.

Issue	EBA position	ESCB position
Regulatory perimeter and ART classification	Keep tokenised financial instruments under MiFID/MiFIR and other sectoral law. Harmonise the definitions of financial instrument and deposit. The EBA flags commodities-linked, wrapped, hybrid and synthetic tokens as recurring boundary cases and even raises whether the ART category may ultimately be redundant for some investment structures.	Do not extend MiCAR to all tokenised assets. Keep tokenised financial instruments in securities law and tokenised deposits in CRR/CRD. Narrow or clarify the ART boundary where it overlaps with EMTs, financial instruments, MMF shares or products not validly offered in the EU.
Issuer own funds and risk sensitivity	Existing ART/EMT minimums are broadly relevant on limited experience, but the EBA supports a risk-based calculation method and wider supervisory discretion where issuers or CASPs combine activities such as lending, proprietary trading or other balance-sheet risk.	The size-driven approach is inadequate for non-bank issuers conducting additional activities. Own funds should reflect the entity or group as a whole and avoid both under-capture and double-counting across licensing regimes.
Stablecoin reserves	The 30%/60% bank-deposit minima are broadly appropriate for now but should be subject to rigorous cost-benefit review. Daily/weekly liquidity buckets may be more risk-sensitive. Adopt the EBA reserve-asset RTS without material dilution.	Remove fixed minimum bank-deposit percentages and replace them with one-day and five-day liquidity buckets, maturity limits and stronger diversification. Use the EBA RTS calibrations as a starting point.
Bank-issued EMTs	Keep direct balance-sheet issuance without mandatory segregated reserves. Consider supervisory discretion to require issuance through an EMI subsidiary in appropriate cases.	Keep both direct bank issuance and EMI-subsidiary models. Do not impose general reserve segregation, but allow banking supervisors to require an EMI subsidiary case-by-case.
Redemption timing and fees	Keep the permanent redemption right and business-as-usual fee prohibition, but clarify the maximum processing period. The EBA identifies emerging T+1, T+2 and T+4 practices and supports more standardised policies for significant tokens.	Retain unconditional redemption and no minimum redemption amount. Assess the redemption timeline, reserve liquidity and potentially proportionate fees holistically while avoiding cliff effects and pre-emptive runs.
Interest and indirect yield	Continue prohibiting interest and interest-equivalent remuneration for ARTs and EMTs. The EBA also treats EMT lending as a possible route to yield and regulatory arbitrage.	Maintain and strengthen the ban on direct and indirect remuneration, including through rewards, fee reductions, bundled services, lending, staking, liquidity mining and layered DeFi arrangements.
Significance, reporting and EU holders	Keep current quantitative thresholds for now, pending experience, but consider a multi-issuance criterion and clarify 'holder', international-system relevance and reporting mandates. The EBA wants a cohesive Level 1 reporting framework for issuers and CASPs.	Reassess significance on a global basis, broaden qualitative criteria to operational/systemic factors, define 'Union holder', improve geographical and sectoral data and make reporting usable for central-bank/statistical purposes.
CASP supervision and significant CASPs	Support enhanced oversight for mixed-activity groups, including group reporting, supervisory cooperation, colleges, consolidated supervision and potential EU intermediate parent undertakings for large non-EU groups.	Move authorisation, monitoring and enforcement for CASPs to ESMA, introduce risk-sensitive own funds, broaden the significant-CASP test and require an EU intermediate parent undertaking for significant third-country structures.

Issue	EBA position	ESCB position
Multi-function groups	Current non-bank mixed-activity group supervision is largely absent. The EBA proposes structured group-wide reporting and colleges, calibrated to nature, scale and complexity.	Move toward holistic and consolidated prudential supervision, including an EU financial holding company for certain complex groups and group-level recovery planning.
PSD3/PSR and MiCAR	Welcome the agreed functional delineation for EMT payment services but flag continuing dual-authorisation, notification/equivalence and safeguarding questions, including asymmetry between payment institutions and CASPs.	Treat EMTs as having a dual nature and seek clarity on agency, outsourcing, sub-custody, partnerships and client funds. Integrated crypto-payment models need a more holistic prudential approach.
Deposit guarantee/client-funds deposits	No tokenised-deposit-specific DGS issue: coverage follows legal classification. In the stablecoin context, reserve composition should nevertheless be assessed together with the DGSD.	The amended DGSD 'client funds deposits' framework may indirectly protect deposits backing EMT/ART safeguarding arrangements, affecting counterparty discipline, LCR treatment, contribution costs and legal-entity choice.
Lending, staking and DeFi	Regulate crypto borrowing/lending and consider rules for CASPs facilitating DeFi access, including suitability, leverage, disclosure, restrictions on unauthorised ART/EMT products and protocol-resilience measures.	Regulate staking, lending and borrowing at EU level on a substance basis. Distinguish agency from balance-sheet intermediation, test CRD/MiFID implications and recognise that full decentralisation is rarely straightforward.
Third-country multi-issuer stablecoins	If permitted, create a dedicated regime: equivalence as a baseline, strict reciprocity, stronger supervision, non-objection powers and potentially higher own funds.	MiCAR needs an explicit legislative basis before such schemes can be permitted. If allowed, require equivalence plus reserve, redemption, rebalancing, liquidity, crisis-management and cooperation safeguards.
Central bank money and wholesale settlement	Pontes and Appia affect the role that stablecoins and tokenised deposits may play by providing a route to DLT-compatible central-bank-money settlement.	Central bank money should remain the risk-free wholesale settlement anchor. Tokenised deposits are a natural private-money complement; EMTs should be more limited where central bank money is practical and available.
Crisis management and resolution	Keep current recovery/redemption plans for now, but consider a broader toolkit for non-bank issuers, including transfer of a failing business and better coordination with BRRD resolution authorities.	Create a tailored crisis regime for significant non-bank ART/EMT issuers, clarify reserve, bail-in and redemption claims and strengthen central-bank intervention on financial-stability grounds.
Private law, DORA and AML/CFT	No substantive private-law position in the consultation response. The EBA does, however, call for third-party-risk terminology and governance mandates to align MiCAR with wider sectoral standards.	Calls for urgent EU action on ownership, transfer, collateral, custody and insolvency; crypto-specific resilience standards for keys, smart contracts and permissionless infrastructure; and closer alignment with FATF/AML requirements, including self-hosted-wallet risks.

1. The first move is not to expand MiCAR - it is to fix the boundaries

One of the most important points in both responses is what they do not recommend. Neither the EBA nor the ESCB wants tokenisation, by itself, to move a financial instrument into MiCAR. The EBA strongly recommends that tokenised financial instruments remain outside MiCAR and under MiFID/MiFIR and the securities-markets acquis. The ESCB reaches the same conclusion through technological neutrality:

financial instruments producing the same economic effects and rights should not be regulated differently merely because they are issued, recorded or transferred on DLT.[10]

That sounds conservative. It is not. It shifts the legal problem from 'what new crypto regime do we need?' to 'which existing regime actually governs the underlying claim, and where are its DLT frictions?' The EBA identifies the absence of a fully harmonised EU definition of financial instrument as a recurring source of classification uncertainty. It points to commodities-linked tokens, wrapped tokens, hybrid tokens, synthetic exposures and nominal NFTs as examples where legal characterisation can become difficult. The ESCB similarly warns against an ART category becoming a route around the financial-instrument, EMT or money-market-fund regimes.

The practical consequence is straightforward. Start with the legal claim, not the blockchain. A token that represents a security, deposit, electronic-money claim or investment exposure does not escape the relevant sectoral framework because its transfer rail has changed. The technology may require targeted adaptations, but it should not determine the regulatory category.

For product teams, that puts legal classification back at the beginning of architecture design. White-paper drafting, contractual rights, reserve design, redemption mechanics and transferability are not disclosure afterthoughts. They are facts that can determine whether the product falls within MiCAR Title II, the ART/EMT regime, MiFID II, CRR/CRD or another sectoral framework. The EBA's concern that some structures appear designed to look like ARTs when they may economically be EMTs or financial instruments is a warning against designing first and classifying later.

2. Stablecoin reserves are becoming a liquidity-engineering question

The most commercially significant convergence concerns the 30%/60% minimum bank-deposit requirements for non-bank stablecoin issuers. Both bodies now acknowledge the same structural problem: forcing a large share of reserves into bank deposits creates a direct transmission channel between stablecoin issuers and credit institutions. In normal times those deposits provide immediately available liquidity. In stress, a stablecoin run can become a rapid withdrawal of bank funding; conversely, distress at a reserve bank can transmit directly into the stablecoin.[11]

The EBA is cautious. It judges the overall reserve framework broadly appropriate, but gives the minimum deposit requirement a lower score than the surrounding safeguards and accepts that a framework based on daily and weekly liquidity buckets, supplemented by maturity and diversification limits, may be more risk-sensitive. It would first require rigorous cost-benefit analysis and insists that any substitution away from deposits depends on the remaining reserve assets being genuinely high quality and liquid. It also wants its 2024 RTS on liquidity and highly liquid financial instruments adopted without material amendment.

The ESCB goes further. It proposes removing the predefined bank-deposit percentages and putting explicit minimum liquidity buckets into Level 1. As a starting point it cites the draft EBA RTS: at least 20% of reserve assets maturing within one working day for non-significant tokens and 40% for significant tokens; at least 30% and 60%, respectively, within five working days. The remainder would continue to be constrained by high-quality-asset, maturity and diversification requirements. The ESCB would also consider tighter

[10] EBA Response, pp 5-8 (tokenised financial instruments, ART classification and wrapped/hybrid tokens); ESCB Response, pp 7-8 (technological neutrality, sectoral regulation and boundaries between MiCAR and other EU financial-services legislation).
[11] EBA Response, pp 11-13 and 19-21 (reserve assets, bank-deposit minima and interaction with bank liquidity); ESCB Response, pp 11-15 (prudential and liquidity framework, contagion channels and possible alternatives to fixed deposit requirements).

counterparty diversification for significant stablecoins and even an overall limit on stablecoin funding received by an individual bank.[12]

That is more than a prudential calibration. Reserve design becomes market structure. Less compulsory bank deposit exposure could increase demand for short-dated sovereign instruments and reverse repo; more deposit concentration can reshape banks' funding mix. A rule written for redemption liquidity therefore also affects bank funding, sovereign-bond markets, repo markets and monetary-policy transmission.

Issuers should therefore model reserve reform as an asset-liability-management exercise rather than a compliance percentage. Which assets can be monetised intraday or overnight? Through which repo counterparties? What happens if a reserve bank is unavailable? How do concentration limits interact with the size of the token? What is the maximum contractual redemption time? And can the operating model produce the data supervisors will need to verify all of that? Those questions increasingly sit together.

3. Bank-issued EMTs: no mandatory ring-fence, but separation remains a supervisory tool

Both responses reject a general requirement that a credit institution issuing EMTs directly must build a segregated reserve equivalent to the reserve required of an EMI. The EBA and ESCB regard direct bank issuance as consistent with technological neutrality and with the existing treatment of traditional e-money. Banks already operate within a substantially more demanding prudential framework, including liquidity and funding requirements, and mandatory segregation could create double-counting, encumbrance and funding-efficiency problems.[13]

The EBA's snapshot of the market is useful: as at 1 September 2026, three credit institutions were issuing EMTs directly, one had established a subsidiary for issuance and a consortium of EU banks was considering a special-purpose vehicle. That is early evidence of multiple viable structures rather than one settled European model.

Neither authority, however, treats legal-entity choice as irrelevant. Both leave room for banking supervisors to require an EMI subsidiary in specific cases. Complexity, interconnectedness, scale and participation in a third-country multi-issuer arrangement can all make separation more attractive from a supervisory perspective. The ESCB also wants MiCAR notifications by banks to be transmitted to the prudential supervisor so that the banking authority can decide whether intervention is warranted.

For banks, the strategic question is therefore not 'balance sheet or subsidiary?' in the abstract. It is which model produces the best combination of customer clarity, capital and liquidity efficiency, operational control, recovery/resolution coherence and cross-border usability. The regulatory answer may differ by use case.

4. Interest stays banned; redemption gets a clock

There is little appetite in either response to turn stablecoins into interest-bearing deposit substitutes. The EBA supports retaining the prohibition on interest and interest-equivalent remuneration for both ARTs and EMTs. The ESCB is more explicit about circumvention: the restriction should capture indirect remuneration

[12] ESCB Response, pp 13-15. The ESCB cites the draft EBA RTS under art 36(4) MiCAR as a starting point: daily liquidity buckets of at least 20% for non-significant and 40% for significant tokens, and weekly buckets of at least 30% and 60% respectively. See also EBA Response, pp 12-13 and 20.

[13] EBA Response, pp 13-15 (no mandatory segregated reserve for credit institutions; three direct bank issuers, one subsidiary model and a proposed consortium vehicle as at 1 September 2026); ESCB Response, pp 18-20 (direct balance-sheet issuance, subsidiary choice and possible supervisory discretion).

through rewards, fee reductions, bundled services, lending, staking, liquidity mining and other layered structures that reproduce the economics of yield.[14]

That makes the perimeter around lending and staking directly relevant to the stablecoin regime. A token may comply with the letter of the issuer-level interest ban while a CASP or DeFi arrangement creates the economic equivalent around it. The review is therefore likely to examine the stablecoin and lending perimeters together rather than as independent files.

Redemption is the subtler issue. MiCAR gives EMT holders a right to redemption at par 'at any time', but it does not specify a maximum processing period. The EBA reports emerging practices of T+1, T+2 and T+4 and recommends legislative clarification of the maximum period. The ESCB reaches the same concern from liquidity risk: reserve calibration and the redemption deadline cannot sensibly be designed separately. In discussing systemically important stablecoin arrangements, it also notes the CPMI-IOSCO benchmark of processing redemptions as soon as possible, at least by end of day and ideally intraday; that is not itself a general MiCAR rule, but it illustrates the direction of the policy debate.[15]

The two responses are not identical on fees. The EBA would keep the business-as-usual prohibition while monitoring attempts to impose charges indirectly. The ESCB sees some merit in considering fees outside recovery scenarios as part of a broader liquidity toolkit, but warns that rigid thresholds can create cliff effects and pre-emptive runs. The durable proposition is more important than the difference: redemption terms, reserve liquidity and run incentives have to be calibrated as one system.

5. Third-country multi-issuer stablecoins move equivalence to the centre

The external edge of MiCAR is where both responses become most demanding. MiCAR expressly accommodates multiple EU issuers under common safeguards, but it does not expressly establish a regime for a fungible stablecoin issued by an EU entity and one or more third-country entities. The ESCB takes a strict legal position: permissibility cannot be created by supervisory interpretation alone and requires a legislative amendment. The EBA likewise treats the present framework as incomplete and says a dedicated regulatory and supervisory regime is needed if these arrangements are to be permitted.[16]

The risk is not theoretical. The EBA states that two EMIs were already participating in third-country multi-issuer schemes involving US-dollar-denominated EMTs, although one scheme had a relatively limited market capitalisation. It rates run risk, unbalanced reserve distribution, cross-border transfer restrictions, regulatory arbitrage, data-tracking problems and weaker third-country standards as 'significant'. It also regards the current MiCAR safeguards as only slightly effective in a multi-issuance context because supervisory powers aimed at the EU issuer cannot necessarily control reserve or issuance decisions elsewhere.

Both bodies therefore converge on equivalence, but not as a simple passport. The EBA describes equivalence as a baseline for access, accompanied by strict reciprocity, supervisory cooperation and powers to deny or condition access for a particular arrangement. The ESCB adds a more detailed architecture: comparable licensing and prudential outcomes, aligned redemption terms, reserve

[14] EBA Response, p 16 (continued prohibition on interest and interest-equivalent remuneration for ARTs and EMTs); ESCB Response, pp 17-18 (prohibition on direct and indirect remuneration and potential circumvention through lending, staking, rewards and DeFi arrangements).
[15] EBA Response, pp 16-17 (redemption rights, emerging T+1/T+2/T+4 practices and proposed clarification of a maximum timeframe); ESCB Response, pp 15-17 (redemption timing, fees and liquidity-risk interaction). The ESCB's reference to end-of-day/intraday timing derives from the CPMI-IOSCO application of the Principles for Financial Market Infrastructures to systemically important stablecoin arrangements, not from an existing general MiCAR deadline.
[16] EBA Response, pp 21-24 (risks and current safeguards for third-country multi-issuer stablecoin schemes); ESCB Response, pp 29-32 (legal basis, reserve mismatch, arbitrage and the need for legislative safeguards).

composition and custody, robust rebalancing, an EU liquidity buffer, cross-border transferability of reserves in stress, aligned recovery and redemption planning, data visibility and reciprocity.[17]

For global issuers, this changes the question from 'do we have an EU issuer?' to 'can the EU issuer actually meet the EU claim under stress?' That requires legal, treasury and operational answers: where reserves sit, who can move them, how fungible tokens are mapped to liabilities, which issuer owes which holder, how quickly reserves can be rebalanced and what happens when home and host authorities act at the same time.

The data problem is part of the same architecture. Both responses emphasise that a distributed ledger does not reliably tell a supervisor whether a token is 'held in the EU' or whether a particular transfer was a payment. Self-hosted wallets, cross-border CASPs and rapid movement of fungible tokens make geographic attribution inherently approximate. The EBA therefore wants a comprehensive Level 1 reporting mandate for issuers and CASPs; the ESCB wants reporting that is also usable for statistical and central-bank purposes. Cross-border stablecoin compliance is becoming as much a data-engineering question as a licensing question.[18]

The transatlantic comparison: interoperability versus equivalence

The contrast with the emerging UK-US approach is useful. The Transatlantic Taskforce for Markets of the Future begins with the transaction: a private-sector-led programme for cross-border tokenisation use cases; common regulatory approaches to issues such as settlement finality and possible stablecoin/tokenised-MMF collateral; a joint stablecoin workstream; and a 'multi-money' ecosystem in which stablecoins, tokenised deposits and other digital money coexist.[19]

The EU is organising the external edge differently. The EBA and ESCB responses point toward equivalence, reciprocity and specific safeguards before a global stablecoin structure receives durable EU access. That is not an argument for Europe to copy London and New York. It is a reason to treat external interoperability as part of product and market architecture: a token may be fully compliant in the EU yet still be commercially less useful if the surrounding transaction chain cannot move efficiently across Frankfurt, London and New York.

6. CASPs are being recast as financial intermediaries, not merely crypto service providers

The second large architectural shift concerns CASPs and multi-function groups. The EBA and ESCB both describe business models in which exchange, custody, payments, token issuance, proprietary trading, lending, staking and other regulated or unregulated activities sit in the same economic group. Entity-by-entity rules can then miss the very risks that matter: intra-group funding, shared technology, reputational contagion, conflicts, leverage and the migration of activity to the least regulated group entity.[20]

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[17] EBA Response, pp 26-27 (equivalence as a baseline for market access, case-by-case powers and strict reciprocity); ESCB Response, pp 30-32 (equivalence, cooperation, aligned contractual terms, reserve rebalancing, EU liquidity safeguards and reciprocity).
[18] EBA Response, pp 24-25 (undefined notions of 'held in the EU'/'EU holder', reporting gaps and the need for a comprehensive mandate); ESCB Response, pp 23-25 and 31-32 (geolocation/purpose limitations, enhanced reporting and data challenges in multi-issuer schemes).
[19] HM Treasury, 'Recommendations of the Transatlantic Taskforce for Markets of the Future' (14 July 2026), recommendations 1-5; HM Treasury, 'UK-US Joint Statement on Stablecoins' (14 July 2026).
[20] EBA Response, pp 29-31 (group-level reporting, supervisory colleges, consolidated supervision and potential EU intermediate parent undertakings); ESCB Response, pp 33-35 and 41-42 (significant CASPs, group-level oversight, consolidated prudential treatment and holding-company/IPU structures).

The EBA therefore supports group-level reporting, formal supervisory cooperation, supervisory colleges and consolidated supervision, with potential powers to require an intermediate parent undertaking in the EU for groups originating or operating substantially outside the Union. The ESCB goes further in several respects. It supports transferring authorisation, monitoring and enforcement of CASPs to ESMA, introducing risk-sensitive own-funds requirements, expanding the criteria for significant CASPs and requiring an EU IPU for significant third-country groups. For wider multi-function groups it envisages a lead European Supervisory Authority, prudential consolidation, a dedicated financial holding company and group recovery planning.

This is a familiar regulatory move in a new sector. Banking regulation learned that the legal entity is not always the economic risk unit. MiCAR's first generation was necessarily built around identifiable issuers and service providers. The review is asking whether that remains sufficient once a platform behaves more like a financial conglomerate.

For third-country groups the message is especially clear: EU market access may increasingly require an EU group architecture, not merely an EU licence. Legal-entity maps, intercompany agreements, service-company arrangements, shared technology, client-asset flows and intra-group exposures should therefore be reviewed now against an IPU/consolidation scenario, rather than after any Level 1 text is agreed.

The capital question follows naturally. Current MiCAR own-funds requirements for CASPs are heavily based on fixed minimums and fixed overheads. Both authorities question whether that captures balance-sheet lending, proprietary positions, leverage, market risk or the risk of several Class 2/3 services being combined. The direction of travel is toward capital that follows the actual risk profile and permits supervisory add-ons. For a platform, the consequence could be material: business lines that are currently cheap to combine inside one CASP may no longer be capital-neutral when assessed as one integrated intermediary.[21]

7. MiCAR and PSD3/PSR: clearer, but not clean

EMTs sit in two legal worlds. They are crypto-assets under MiCAR and electronic money - therefore 'funds' - for payment-services purposes. The EBA welcomes the political agreement on PSD3/PSR for clarifying which EMT activities are payment services and which exchange activities remain in MiCAR. But it also notes that the dual-authorisation model remains, and that the proposed notification route allowing payment institutions to provide certain MiCAR services could create asymmetry between payment institutions and CASPs.[22]

The more practical problem is safeguarding. A dual-licensed firm can receive money in connection with crypto-asset services that do not themselves amount to payment services. Article 70 MiCAR disapplies parts of the MiCAR safekeeping regime for certain payment institutions, while PSD3 safeguarding applies to funds received for payment services. The EBA wants the boundary clarified so that client money cannot fall into a gap between the two regimes.

The ESCB adds a prudential layer. It argues that neither MiCAR nor the payment-services framework adequately captures the combined risk of an integrated platform where payments, proprietary trading, lending, custody and crypto services share infrastructure and liquidity. It also identifies definitional tensions between MiCAR, PSD3/PSR and the CRR's concepts of crypto-assets, traditional assets, funds and tokenised traditional assets. The practical implication is that 'double regulation' and 'regulatory gaps' can

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[21] EBA Response, pp 9-10 (risk-based own-funds calculation, supervisory add-ons and risks from balance-sheet lending/proprietary activity); ESCB Response, pp 33-38 (risk-sensitive CASP capital, significant-CASP criteria and integrated platform risks).

[22] EBA Response, pp 31-33 (MiCAR/PSD3-PSR delineation, continuing dual authorisation, payment-institution notification/equivalence questions and safeguarding); ESCB Response, pp 35-38 (dual nature of EMTs, prudential gaps and integrated platform models).

coexist in the same group: one activity may need two licences while another risk sits between the prudential toolkits.

A related deposit-guarantee issue deserves attention. The EBA says it has not identified a tokenised-deposit-specific DGS problem: whether protection applies follows the legal classification of the token. The ESCB addresses a different question and warns that the revised Deposit Guarantee Schemes Directive's treatment of certain 'client funds deposits' may indirectly extend protection to bank deposits used to safeguard EMT/ART reserves, potentially affecting incentives, LCR treatment and stablecoin structuring. These are not contradictory positions because the underlying instruments differ, but together they show why DGS analysis is moving from background law into digital-money product design.[23]

8. Lending, staking and DeFi: the review moves from technology labels to economic substance

Crypto lending is one of the clearest candidates to move inside a formal EU regulatory perimeter. The EBA says borrowing and lending are already being intermediated in at least 16 Member States and that CASPs are increasingly providing interfaces into DeFi protocols. It also notes that general-purpose AI can make those interfaces easier to access, further blurring the practical boundary between centralised and decentralised finance. Its recommended policy analysis includes suitability tests, leverage limits, disclosures, restrictions on unauthorised ART/EMT products and potentially a certification regime for DeFi lending protocols.[24]

The ESCB arrives at the same destination through a substance-over-form analysis. Where a customer transfers control of crypto-assets to an intermediary that promises to return equivalent assets, the arrangement can resemble the taking of repayable funds. Where returns depend on a managed pool or standardised claims, MiFID questions can arise. Where the CASP merely performs a technical or agency function, the risk allocation is different. The legal classification should therefore follow control, credit exposure, rehypothecation, repayment obligations and economic substance rather than the technology used.

DeFi itself does not remove the problem. MiCAR excludes services provided in a 'fully decentralised' manner without an intermediary, but the ESCB notes that full decentralisation is rarely, if ever, achieved in practice. Governance token holders, developers and centralised exchanges do not automatically provide clean regulatory entry points. The response therefore floats a broader toolkit: improved traceability of governance and delegation, tailored legal structures for DAOs and controls at the regulated gateways through which investors access decentralised protocols.[25]

The so-what for firms is that yield is becoming a regulated product feature, not a marketing feature. A CASP offering 'earn', staking, lending or DeFi access should map who controls the asset, who owes the return, whether the client takes intermediary credit risk, how leverage is created and whether the arrangement creates an indirect return on an EMT. The labels will matter less than the balance sheet and the contract.

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[23] EBA Response, p 38 (no tokenised-deposit-specific deposit-guarantee issue; protection follows classification); ESCB Response, pp 38-40 (concerns that 'client funds deposits' under the amended DGSD may indirectly extend protection to deposits backing EMT/ART safeguarding arrangements and affect incentives and LCR treatment). The two passages concern different legal structures.
[24] EBA Response, pp 33-34 (crypto borrowing/lending in at least 16 Member States, CASP-facilitated DeFi access, AI-enabled gateways and possible suitability, leverage, disclosure and protocol-resilience measures).
[25] ESCB Response, pp 43-45 (DeFi scale and vulnerabilities, difficulty identifying regulatory anchor points, limits of 'full decentralisation' and possible governance/DAO approaches); see also pp 44-45 on staking and lending.

9. Tokenised deposits: the missing definition becomes strategic

The consultation responses may do more for tokenised deposits than for some products already inside MiCAR. The EBA reports a marked increase in bank interest: 26% of credit institutions responding to its spring 2026 risk-assessment questionnaire expected to deploy tokenised deposits within three years, compared with 16% in 2024. The use cases include on-chain settlement, cross-border transactions, corporate treasury and trade finance. Yet the legal foundation remains surprisingly basic: EU banking law still lacks one fully harmonised definition of 'deposit' for CRR/CRD purposes.[26]

The EBA therefore calls for a harmonised CRR/CRD definition that can then support a definition of tokenised deposit and a cleaner boundary with MiCAR. It distinguishes a 'native' structure, where the DLT record itself represents the deposit claim against the bank, from a 'non-native' token that references a balance recorded on a traditional ledger. The latter can require a more detailed assessment because the token may be a deposit, an EMT or another MiCAR crypto-asset depending on what the holder legally owns.

The ESCB supplies a more developed legal test. In its proposed formulation, the core deposit features remain: a credit balance arising from funds left in an account or equivalent record; funds taken from the public in the course of business; unconditional repayment at par, on demand or at an agreed time; and a claim on an authorised credit institution. DLT may record or transfer that claim, but it does not change the contractual relationship merely because the ledger has changed.[27]

That does not mean every token issued by a bank is a deposit. Transferability, openness of the network, negotiability, the rights embedded in the token and the relationship with the underlying ledger still matter. The ESCB distinguishes transferability of a deposit claim from negotiability on capital markets, where an instrument may instead become another form of repayable fund or a security. Open networks may also raise additional operational, ICT, financial-crime and legal risks requiring supervisory scrutiny.

If this direction survives, Europe may end up with a useful conceptual distinction: an EMT is regulated because it is a new tokenised form of electronic money; a tokenised deposit is regulated precisely because tokenisation does not stop it being a deposit. That distinction matters for prudential treatment, deposit protection, resolution, settlement and the commercial role each instrument can play.

For bank projects, the priority should therefore be to document the legal claim before choosing the token architecture. The product paper should answer: what sits on the bank's balance sheet; what is recorded on DLT; whether transfer changes the identity of the depositor; whether the instrument is negotiable; how AML/KYC controls travel with the token; which ledger is legally authoritative; and how settlement occurs between banks. Those are the questions that determine whether a tokenised-deposit network becomes a scalable interbank money instrument or remains an internal technology project.

Settlement is no longer theoretical: Pontes is live

On 21 September 2026 the Eurosystem launched Pontes, enabling wholesale transactions in tokenised assets to settle in central bank money. That changes the discussion from whether Europe will build a central-

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[26] EBA Response, pp 35-36. The EBA's Spring 2026 risk-assessment questionnaire data indicate that 26% of respondent credit institutions expected to deploy tokenised deposits within three years, compared with 16% in 2024; cited use cases include on-chain settlement, corporate treasury and trade finance.
[27] ESCB Response, pp 45-49 (absence of a harmonised EU definition of deposit, proposed core features of a tokenised deposit, technological neutrality, transferability/negotiability and treatment under the existing banking framework).

bank-money bridge for DLT to how banks, market infrastructures and tokenised products will actually use one.[28]

For tokenised deposits this matters strategically. A bank-money solution is more valuable if it can interoperate with tokenised securities, other banks and the central-bank-money settlement layer. For EMTs it sharpens the question of where a private settlement asset is genuinely necessary. For market infrastructures it makes the cash leg, finality, collateral and interoperability part of one operating model rather than separate innovation workstreams.

10. Private law is market infrastructure - and DORA is only the baseline

The ESCB's private-law section is easy to miss in a consultation dominated by stablecoins. It may prove the most important for institutional tokenisation. MiCAR can identify the issuer, set conduct requirements and regulate a service provider. It cannot, by itself, ensure that a token is recognised as property across Member States, that a transfer has the same third-party effects, that tokenised collateral is enforceable, that custody rights survive an intermediary insolvency or that settlement finality is treated consistently across legal systems.[29]

The ESCB warns that Member States are already developing different approaches in corporate, property and insolvency law. Its answer is urgent EU-level action before those differences harden into a new layer of market fragmentation. It describes four broad routes: an optional 28th regime recognising the legal effects of DLT registers; full harmonisation of private-law treatment; partial harmonisation of the key building blocks; or EU conflict-of-laws rules to identify which national law governs. These options have very different political and legal costs, but they address the same commercial problem - a cross-border tokenised market cannot scale if the legal effect of holding, transferring, pledging or enforcing the same token changes at the border.

The ESCB also links this to operational resilience. DORA provides the horizontal ICT framework, but private-key custody, smart-contract vulnerabilities, permissionless infrastructures, transaction irreversibility and even emerging quantum-computing risk may warrant crypto-specific technical standards or guidelines. The point is consistent with the wider review: horizontal rules remain the base, but tokenisation exposes interfaces that need more precise treatment.[30]

This is where the MiCAR review becomes market architecture rather than crypto policy. A tokenised market needs a legal asset, a regulated intermediary, a settlement asset, enforceable collateral, finality, custody, prudential treatment and a workable insolvency outcome - all at the same time. MiCAR is one component of that chain, not the chain itself.

The ESCB also identifies an adjacent financial-crime fault line. It asks the MiCAR review to reflect updated FATF payment-transparency work, address risks around self-hosted addresses and reconsider why an undertaking authorised only as an ART issuer under MiCAR Article 21 is not, by that status alone, an obliged

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[28] European Central Bank, 'Eurosystem brings central bank money to tokenised finance' (21 September 2026). The ECB states that Pontes enables wholesale tokenised-asset transactions to be settled in central bank money and is the first initiative under the Eurosystem's strategic programme for tokenised finance.

[29] ESCB Response, pp 49-52 (legal fragmentation in property, corporate and insolvency law and possible EU responses: an optional 28th regime, full or partial harmonisation, and conflict-of-laws rules).

[30] ESCB Response, pp 52-55 (crypto-asset-specific operational-resilience issues, including private-key custody, smart-contract vulnerabilities, permissionless infrastructures, irreversibility and emerging threats such as quantum computing; CRR/MiCAR and AML/CFT interfaces).

entity under the EU AML framework. The same self-hosted-wallet problem therefore appears simultaneously as a reporting, redemption, sanctions/AML and supervisory-visibility issue.[31]

Practical considerations for firms

Firms should use the two responses as a design stress test. The recommendations are not law, but they identify the assumptions most likely to be challenged in the next phase of European digital-finance supervision.

Stakeholder	Key points
If you are a bank considering EMT issuance	• Compare direct balance-sheet issuance, an EMI subsidiary and a consortium/SPV model under capital, liquidity, DGS, creditor-ranking and recovery/resolution assumptions. • Model a supervisory-separation scenario where scale, complexity or third-country multi-issuance is material. • Compare the economics with tokenised deposits rather than treating both as interchangeable digital-money wrappers.
If you are an EMI or non-bank stablecoin issuer	• Run the current 30%/60% deposit model and a maturity-bucket model in parallel. • Map reserve banks, repo capacity, sovereign exposures, concentration limits and stressed monetisation timelines. • Align redemption terms with actual liquidity and remove rewards, lending or connected features that may reproduce prohibited yield.
If you operate a CASP or multi-function group	• Build a group-wide regulatory map covering regulated and unregulated activities, intra-group funding and shared technology. • Quantify proprietary trading, lending, leverage, custody and client-asset risks under a risk-sensitive capital scenario. • For third-country groups, test an EU IPU/holding-company and consolidated-supervision model.
If you provide EMT payment services	• Map each activity simultaneously under MiCAR and PSD3/PSR. • Identify where dual authorisation remains and where notification/equivalence routes may apply. • Confirm that client funds cannot fall between MiCAR safekeeping and payment-services safeguarding rules.
If you are building tokenised deposits	• Document the legal claim before the token design: authoritative ledger, transferability, negotiability and depositor identity. • Model CRR/CRD, DGS, AML/KYC, resolution and operational dependencies. • Design interoperability with other banks, tokenised securities and Pontes from the outset.
If you participate in a global multi-issuer stablecoin	• Treat reserve rebalancing, EU liquidity, redemption rights, data, cooperation and crisis planning as market-access conditions. • Do not assume technical fungibility removes differences in legal claims. • Build equivalence, reciprocity and cross-border reserve-transfer constraints into launch and contingency planning.

[31] ESCB Response, pp 54-55 (FATF Recommendation 16/Travel Rule developments, self-hosted-address risks and the AML/CFT treatment of ART and EMT issuers, including Article 21-only issuers).

Stakeholder	Key points
If you provide lending, staking or DeFi access	• Map control of assets, rehypothecation, intermediary credit exposure, leverage and client repayment rights. • Test whether an earn/yield product circumvents the stablecoin remuneration ban. • Assume CASP-facilitated access to DeFi may attract duties even where the protocol itself claims decentralisation.
If you are an asset manager, CCP, CSD or collateral user	• Do not stop at classification. Test custody, transferability, collateral eligibility, haircuts, legal title, settlement finality and insolvency. • Treat the cash leg and securities leg as one transaction chain. • Model whether a tokenised instrument remains economically usable across EU, UK and US infrastructures.
If you operate DLT infrastructure or custody	• Treat property, transfer, collateral, custody and insolvency law as core diligence items. • Separate technological finality from legal finality. • Extend DORA analysis to private keys, smart contracts, permissionless dependencies and other crypto-specific operational risks.

Beyond firm-specific considerations, there are several regulatory and policy developments that all market participants should monitor in the coming months.

What to watch next

- **Commission follow-up and the 30 June 2027 report**. The immediate question is which consultation themes become Level 1 amendments and which are left to technical standards, guidance or supervisory convergence.

- **Reserve-asset RTS**. Both responses attach significance to the EBA liquidity and high-quality reserve-asset standards. Their adoption and final calibration matter directly to any move away from fixed deposit minima.

- **The first significance assessment**. The EBA is carrying out the significance process for the first time in 2026 and has said it will feed lessons learned back to the Commission. That evidence will matter to any recalibration of thresholds.
- **Third-country multi-issuer treatment**. Watch for a clear Commission position on permissibility, equivalence, reciprocity, reserve rebalancing, supervisory non-objection and the definition of EU holder/held in the EU.

- **PSD3/PSR implementation and MiCAR interfaces**. The EBA response is based on the compromise texts then available and identifies remaining questions on dual authorisation, payment-institution equivalence and safeguarding.

- **The EBA tokenised-deposit work**. The EBA expects to report in Q4 2026 on market developments and indicative features relevant to classification, while continuing work on the missing EU definition of deposit.[32]

- **EU private-law reform for tokens**. The policy choice between a 28th regime, targeted or full harmonisation and conflict-of-laws reform will determine how quickly tokenised assets can acquire genuinely cross-border legal effects.

- **Crypto-specific operational resilience and AML**. Watch for more explicit treatment of private keys, smart contracts, permissionless infrastructures, self-hosted wallets and third-party dependencies within the DORA/MiCAR and AML interfaces.

- **Pontes and Appia**. Pontes is now operational; the question is how quickly market infrastructures and banks connect real issuance, collateral and settlement flows to it, and how Appia develops the longer-term European architecture.

- **UK-US interoperability**. Follow the TTMF's tokenisation experiments, stablecoin access work and collateral/finality discussions. Divergence in external market usability may become a booking, collateral or product-design issue before it becomes an EU legislative issue.

Taken together, the EBA and ESCB responses point toward a second-generation architecture for EU digital finance.

Outlook

The first generation of MiCAR answered a perimeter question: which crypto-assets and service providers should be regulated, and on what common EU terms? The review is exposing a harder second-generation question: how does that crypto rulebook connect to banking, payments, securities, prudential supervision, deposit protection, private law, market infrastructure and third-country access when the same transaction crosses several of those regimes at once?

The EBA and ESCB do not propose one monolithic tokenisation code. Their common instinct is more disciplined. Keep the sectoral architecture where the economic function has not changed. Strengthen it where new business models create risks the existing entity-based rules cannot see. Clarify the legal boundaries where the same token can look like a deposit, EMT, ART or financial instrument. Build cross-border safeguards where technological fungibility outruns legal and supervisory control. And make central-bank-money settlement, collateral, finality and private-law enforceability part of the same market-design conversation.

For the market, that means 'MiCAR 2.0' may ultimately matter less for what it brings inside MiCAR than for what it forces the rest of EU financial law to explain. The competitive question is no longer only who has the most complete rulebook. It is whether the rulebook, balance sheet, legal asset and infrastructure can operate as one usable financial market - internally and across borders.

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[32] EBA Response, pp 35-37. The EBA states that it will report in Q4 2026 on latest developments and indicative features relevant to the regulatory classification of tokenised deposits/deposit tokens, while continuing supervisory-convergence work.

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 multijurisdictional 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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