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Dr. Michael Huertas

Tel: +49 160 97375760

michael.huertas@pwc.com

Dr. Hagen Weiss

Tel: +49 1511 5708446

hagen.weiss@pwc.com

**Fabian Joshua Schmidt,
LL.M.**

Tel: +49 151 41490437

fabian.jos-

hua.schmidt@pwc.com

EU RegCORE Team

de_regcore@pwc.com

MiCAR 2.0: Reading the further ESMA, ESRB, AMLA and SRB responses together

QuickTake

The latest responses to the review of the EU's Markets in Crypto-Assets Regulation (**MiCAR**) broaden the reform agenda across classification, market conduct, financial crime and crisis management. The European Securities and Markets Authority (**ESMA**) and European Systemic Risk Board (**ESRB**) add proposals on regulatory powers and global stablecoin risks.¹ "Stablecoin" is market terminology: for tokens within MiCAR's scope, an e-money token (**EMT**) purports to maintain a stable value by reference to one official currency; an asset-referenced token (**ART**) does so by reference to another value, right or combination, including official currencies. The Authority for Anti-Money Laundering and Countering the Financing of Terrorism (**AMLA**) published its response on 7 October,² while the Single Resolution Board (**SRB**) published its contribution on 9 October.³

¹ Regulation (EU) 2023/1114 of 31 May 2023 on markets in crypto-assets [2023] OJ L 150/40, as amended (**MiCAR**); ESMA, Response to the EC Consultation on the review of Regulation (EU) 2023/1114 (**MiCA**), ESMA75-113276571-1721 (30 September 2026) (**ESMA Response**); ESRB, Response to the European Commission's targeted consultation on the review of Regulation on the Markets in Crypto-Assets (**MiCA**) (29 September 2026) (**ESRB Response**).

² AMLA, AMLA's Response to the EC's Targeted Consultation on the Review of Regulation on the Markets in Crypto-Assets (30 September 2026) (**AMLA Response**).

³ SRB, SRB's response to the European Commission's Targeted Consultation on the review of Regulation on the Markets in Crypto-Assets (**MiCA**) (published 9 October 2026) (**SRB Response**). The SRB Response presents non-binding policy input and does not predetermine case-specific SRB action.

Together, they raise questions about crypto-asset service providers' (**CASPs**) permissions, client rights, financial-crime controls and continuity when a participant fails.

The policy debate now reaches beyond authorisation to the distribution, use and failure of tokens and services. Some issues call for current remediation; others require preparation for policy choices still under discussion. Firms should distinguish three priorities:

1. CASPs still providing services involving non-MiCAR-compliant ARTs or EMTs should remediate promptly. ESMA's opinion points to an outer limit of 8 January 2027, with earlier action expected and only limited, supervised arrangements for orderly exit.⁴
2. Banks issuing EMTs or holding stablecoin reserve deposits should test how a run or resolution affects funding, reserve access and redemption. Existing liquidity and resolution arrangements need to reflect those dependencies.
3. Issuers and CASPs should assess product permissions, client claims and financial-crime responsibilities together. Costed reform scenarios should distinguish changes to service definitions from changes to supervision or failure management.

This further Client Alert continues our earlier analysis⁵ of the European Banking Authority (**EBA**) and European System of Central Banks (**ESCB**) responses.⁶ It focuses on the additional ESMA, ESRB, AMLA and SRB contributions,⁷ ESMA's separate stablecoin opinion of 8 October and the Council's political agreement of 9 October on the Market Integration and Supervision Package (**MISP**). MISP is covered in a separate series of Client Alerts. Consultation recommendations, supervisory opinions and legislative negotiating positions have different legal effects; they do not constitute an enacted "MiCAR 2.0" package.

Why this matters now

The Commission's targeted consultation closed on 30 September 2026. Its MiCAR application report is due by 30 June 2027 and may, where appropriate, be accompanied by a legislative proposal. The additional responses sharpen the choices that will inform that work, without establishing a date for adopting or applying the eventual review legislation.⁸

The EBA's snapshot confirms that the SRB's analysis already concerns live arrangements. As at 1 September 2026, 39 EMTs had been issued under MiCAR, 36 by electronic money institutions (**EMIs**), and no ART had been authorised under Title III. Three credit institutions issued EMTs directly and one through a

⁴ ESMA, Opinion on the provision of crypto asset services in relation to non-MiCA-compliant asset-referenced tokens and e-money tokens, ESMA75-113276571-1742 (8 October 2026), paras 23–28. The three-month outer limit points to 8 January 2027 on a calendar-month basis, subject to earlier remediation and NCA instructions; it is not a general grace period.

⁵ Available [here](#).

⁶ EBA, EBA Response to the EC Targeted Consultation on the Review of MiCA (24 September 2026) (**EBA Response**); ESCB, ESCB response to the European Commission's targeted consultation on the Markets in Crypto-Assets Regulation (MiCAR) (September 2026) (**ESCB Response**).

⁷ Regulation (EU) 2023/1114 of 31 May 2023 on markets in crypto-assets, as amended (MiCAR); ESMA, Response to the EC Consultation on the review of Regulation (EU) 2023/1114, ESMA75-113276571-1721 (30 September 2026) (**ESMA Response**); ESRB, Response to the European Commission's targeted consultation on the MiCA review (29 September 2026) (**ESRB Response**); AMLA, Response to the EC's Targeted Consultation on the Review of MiCA (30 September 2026; published 7 October) (**AMLA Response**); SRB, Response to the European Commission's Targeted Consultation on the MiCA review (published 9 October 2026) (**SRB Response**); EBA, Response to the EC Targeted Consultation on the Review of MiCA (24 September 2026) (**EBA Response**); ESCB, Response to the European Commission's targeted consultation on MiCAR (September 2026) (**ESCB Response**).

⁸ European Commission, Targeted consultation on the review of MiCA Regulation (20 May–30 September 2026); MiCAR arts 140(1) and 142. Article 140(1) sets the 30 June 2027 report date, without establishing an adoption date for a review package.

subsidiary. Bank issuance and reserve-deposit funding therefore require current assessment, while much of the ART debate remains prospective.⁹

The SRB's contribution exposes dependencies that reserve backing alone cannot resolve. An issuer may segregate its reserve while its deposit claim remains subject to bank-resolution law. A token may remain technically transferable while redemption, custody or payment services are suspended. Product terms and crisis procedures need to address both legal rights and operational execution.

What the further responses add

The four responses identify different policy choices and their potential consequences for issuers, CASPs, banks and clients. The overview below distinguishes each authority's contribution from the practical preparation it suggests.

Publication	Additional policy contribution	Commercial and legal consequence
ESMA 30 September 2026	ESMA proposes binding classification opinions, a decentralised finance (DeFi) access service, targeted staking, lending and borrowing rules, stronger enforcement and selected simplification.	Reassess the permissions and contractual duties supporting the full client service, including protocol routing and distribution.
ESRB response dated 29 September and published 30 September 2026	The ESRB recommends interpreting MiCAR as not permitting EU/third-country multi-issuer schemes; if permitted, it seeks equivalence, reserve safeguards and better data.	Test global redemption demand against reserves actually accessible to the EU issuer. Prepare an adverse-interpretation or restructuring scenario.
AMLA dated 30 September and published 7 October 2026	AMLA proposes clearer financial-crime coverage for services and certain ART issuers, DeFi control criteria and more informative passport notifications.	Map due diligence and monitoring across issuance, intermediation and redemption, including host-state operations.
SRB published 9 October 2026	The SRB seeks clearer reserve-deposit and bail-in treatment, redemption-plan co-ordination and proportionate crisis-management options for significant non-bank issuers.	Separate issuer failure from reserve-bank failure. Test creditor treatment, reserve access and operational continuity.

The detailed analysis follows in the sections below.

1. Classification could become binding across the EU

The EBA and ESCB defend technological neutrality. Tokenised financial instruments remain subject to securities-market legislation, while genuine deposits remain within the banking framework. ESMA identifies difficulties at those boundaries, including hybrid tokens, fractionalised non-fungible tokens (NFTs), wrappers and governance tokens. Labels and technical design are insufficient to determine the applicable regime.¹⁰

ESMA proposes a material change in how disputes are resolved. Article 97(3) MiCAR provides for opinions requested by competent authorities; ESMA describes these as non-binding and notes that it

⁹ EBA Response, pp 6, 9 and 14 (data as at 1 September 2026).

¹⁰ EBA Response, pp 5–8; ESCB Response, pp 7–8; ESMA Response, section 3.1, p 4; MiCAR art 2(4)(a)–(b), concerning financial instruments and deposits.

has issued only one at a national authority's request. It proposes binding opinions, in consultation with the EBA or jointly, and the ability to act on its own initiative where recurring patterns emerge. This would reduce the scope for the same product to receive different classifications across the Union.¹¹

ESMA also seeks clarity on derivatives settled in ARTs, EMTs or other crypto-assets. Its position is that settlement in ARTs or EMTs should not prevent a derivative from qualifying as a financial instrument under the Markets in Financial Instruments Directive (**MiFID II**). Classification of the derivative and treatment of its settlement asset require separate analysis.¹²

Firms may wish to consider maintaining a product file showing the legal claim, issuer, redemption mechanism, transfer rights and any pooling, discretion or yield features. It should record the classification rationale and identify changes that would alter that conclusion. A binding opinion could affect permissions and documentation for an existing product even where its technology remains unchanged.

2. The SRB brings reserve banks into the crisis analysis

The SRB identifies four ways in which banks participate in stablecoin activity: (i) issuance, (ii) funding from token issuers and CASPs, (iii) services such as custody and payments and (iv) balance-sheet or intermediary exposures. Its response focuses principally on issuance and reserve-deposit funding. The implications therefore extend to banks that do not issue a token but hold its reserves or provide a critical service.¹³

The connection can transmit stress in both directions. A stablecoin run can withdraw large reserve deposits from a bank; failure or resolution of that bank can restrict access to the issuer's reserve assets and undermine confidence in the token. Concentrated and volatile funding can shorten the time available for supervisory or resolution action. The issue concerns both the bank's liquidity profile and the issuer's ability to honour redemption.

The size of that exposure depends partly on a reform the EBA and ESCB approach differently. For EMT funds subject to safeguarding, Article 54(a) requires at least 30% to be deposited in separate accounts at credit institutions. For ART reserves, Article 36(4)(d) sets a 30% floor for the minimum deposit amount in each referenced official currency; Article 45(7)(b) sets a 60% floor for significant ARTs' liquidity standards, with the relevant reserve regime extended to significant EMTs issued by electronic money institutions (**EMIs**). Those rules should not be generalised to directly issued bank EMTs. The EBA would retain the framework pending experience but supports analysing a lower deposit minimum, without diluting the quality of non-deposit reserves. The ESCB would replace fixed deposit percentages with minimum shares of assets maturing within one and five working days. Its starting calibration follows the draft regulatory technical standards (**RTS**): 20% daily and 30% weekly for non-significant tokens, and 40% and 60% for significant tokens. It also proposes diversification requirements and potentially a cap on deposit funding received by a bank from issuers.¹⁴

Changing the reserve mix changes the contagion channel. Deposits connect issuers to bank funding and generally attract a 100% outflow rate under the liquidity coverage ratio (**LCR**), unless they qualify for the operational-deposit treatment under Article 27 of Delegated Regulation (EU) 2015/61. Non-deposit reserves can connect issuers to sovereign bond markets: the draft RTS permits up to 35% of reserves in a single sovereign issuer's debt, and the ESCB notes that the EU sovereign market is more

¹¹ MiCAR art 97(3); ESMA Response, section 3.1, pp 4–5. Binding and own-initiative opinions are proposed changes.

¹² ESMA Response, section 3.1, p 5 (derivatives settled in stablecoins). Classification and settlement-asset risks remain distinct.

¹³ SRB Response, section 1, pp 1–3, and section 2.1, pp 4–5 (banks' roles, reserve-deposit funding, contagion, moratoria and operational dependencies).

¹⁴ EBA Response, pp 11–13 and 19–20; ESCB Response, section 3.2.1, pp 11–15; MiCAR arts 36(4)(d), 45(7)(b), 54(a) and 58(1)(a). The ART percentage floors relate to amounts referenced in each official currency; the relevant issuer category, safeguarding regime and applicable technical standards must be distinguished. The proposed recalibrations are not enacted changes.

fragmented than that of the United States. Bank treasury teams should model both lower-deposit and higher-deposit outcomes.¹⁵

Bank treasury, risk and resolution teams should equally identify reserve deposits separately from more stable funding and map the issuers, common custodians and redemption channels behind them. Material exposures should be visible in liquidity scenarios and operational-continuity planning. A deposit's availability to the issuer should be tested through the bank's resolution scenario, not only through the issuer's own stress test.

The same map should identify a bank's competing roles. A bank might hold reserve cash, safeguard securities and provide the payment route through which holders redeem. Diversification of reserve assets will not necessarily diversify those operational dependencies. Relevant agreements should (ideally) identify alternatives and the time required to activate them.

3. Redemption rights do not resolve reserve-bank failure

The SRB defends permanent redemption rights and asks for clearer ordinary-course timeframes, credible stress procedures and a harmonised basis for temporary, proportionate crisis measures. The applicable asset claim still matters: Article 49 provides EMT redemption at par, whereas Article 39 generally provides ART redemption through payment equivalent to the market value of the referenced assets or delivery of those assets. The SRB's use of at-par language should not be read as making all ARTs subject to the EMT redemption rule.¹⁶

The EBA and ESCB supply the benchmarks behind the SRB's call for clearer ordinary-course timeframes. MiCAR requires redemption 'at any time' but sets no maximum period. The EBA observes market practice ranging from T+1 to T+4 and recommends a defined maximum, aligned across issuers in any multi-issuer scheme to avoid incentives to run against one of them. It also proposes harmonised redemption-policy templates and warns against 'back-door' fees, such as requiring a wallet with the issuer. The ESCB regards an open-ended timeframe as a potential hidden cost to holders. It refers to the international standard that systemic arrangements settle by end of day and ideally intraday, and opposes any minimum redemption amount. Issuers should document their actual processing time and the reserve liquidity that supports it.¹⁷

Three scenarios require separate treatment. If a non-bank token issuer fails, MiCAR recovery/redemption arrangements and applicable insolvency law are relevant. If the reserve bank fails, the issuer's deposit claim must be assessed within the bank's insolvency or resolution framework. If the bank itself issues EMTs, the token liability belongs within that bank's creditor and resolution analysis. A generic reference to reserve backing does not answer any of these scenarios fully.

The SRB calls for clarity on reserve deposits, safeguarding, creditor ranking and the interaction with bail-in. Article 44(2) of the Bank Recovery and Resolution Directive (**BRRD**) contains relevant exclusions, including covered deposits and certain protected client-money or fiduciary liabilities, but no standalone exclusion for every deposit merely because it backs a stablecoin. The applicable exclusion, ownership and insolvency protection must be established for the actual arrangement.¹⁸

¹⁵ ESCB Response, printed pp 13 and 26–27, particularly footnote 19; EBA Response, p 12; Commission Delegated Regulation (EU) 2015/61 supplementing Regulation (EU) No 575/2013 with regard to liquidity coverage requirements for credit institutions, as amended, arts 31a and 27. The 100% rate is subject to qualifying operational-deposit treatment.

¹⁶ SRB Response, section 2.3, p 6; MiCAR arts 39(2) and 49(2). Article 39 provides ART redemption by reference to the market value or delivery of referenced assets; Article 49 provides EMT redemption at par. The SRB's at-par shorthand must be read with this statutory distinction.

¹⁷ EBA Response, pp 16–17; ESCB Response, section 3.2.2, pp 15–18; MiCAR arts 39 and 49.

¹⁸ SRB Response, section 2.8, pp 9–10; Directive 2014/59/EU establishing a recovery and resolution framework for credit institutions and investment firms (**BRRD**), as amended, art 44(2). Treatment depends on the actual liability and the conditions of any mandatory or discretionary exclusion; stablecoin backing does not supply a universal exclusion.

The SRB also expressly raises the new client-funds deposit provisions in Article 8b of the Deposit Guarantee Schemes Directive (**DGSD**), introduced by Directive (EU) 2026/804. Qualifying safeguarded deposits may receive protection subject to eligibility, segregation and identification conditions. Firms must check implementation and the applicable transition arrangements rather than assume that every stablecoin reserve deposit is covered. Protection of the reserve-bank liability also needs to be distinguished from the holder's claim against the token issuer. Coverage can affect the mandatory exclusion of covered deposits from bail-in, but does not replace the separate analysis of issuer insolvency, uncovered balances and other client-money protections. This adopted DGSD reform has its own implementation timetable, separate from the proposed MiCAR review changes.¹⁹

An ART reserve or redemption mechanism does not automatically create a legally enforceable security interest for secured-liability treatment under the Single Resolution Mechanism Regulation (**SRMR**) and BRRD. The SRB identifies this uncertainty and implications for the no-creditor-worse-off (**NCWO**) safeguard. Analysis should distinguish the issuer's assets, the reserve bank's liabilities and the holder's claim against the issuer.²⁰

Legal opinions and contractual terms should address account ownership, beneficial interests, bank set-off, segregation, security perfection, creditor ranking and the effect of a moratorium. They should also identify who can instruct a custodian if the issuer fails and whether assets are released to holders, a redemption administrator or an insolvency office-holder under applicable law. Those outcomes should not be implied by an assertion that assets are bankruptcy remote.

4. Bank issuance and non-bank crisis management need different approaches

For bank-issued EMTs, the SRB recognises the existing prudential and resolution framework as the basis for the reserve exemption. Its concern is whether token activity affects critical functions, transfer strategies, operational execution or loss-absorbing capacity. This is not a recommendation that every bank EMT must move into a segregated reserve vehicle, and it should not be generalised to the reserve treatment of bank-issued ARTs.²¹

The EBA and ESCB likewise oppose mandatory reserve segregation for directly issued bank EMTs. They cite technological neutrality and banks' existing LCR and net stable funding ratio (**NSFR**) requirements. The EBA identifies possible double-counting where EMT liabilities produce outflows but encumbered reserves cannot count as liquid assets, as well as preferential treatment of token holders relative to depositors. Both support considering case-by-case supervisory power to require issuance through an EMI subsidiary where the business's scale or risks justify separation. The ESCB would also amend Articles 17 and 48 so that the banking supervisor is informed of a bank's issuance notification.²²

The SRB's tokenised-deposit analysis is also operational. Recording a genuine deposit on a distributed ledger does not by itself change its legal nature or deposit-guarantee eligibility. Transferability and programmability can nevertheless complicate depositor identification, eligibility records, transfers, bail-

¹⁹ SRB Response, section 2.8, printed pp 9–10; Directive 2014/49/EU on deposit guarantee schemes (DGSD), as amended by Directive (EU) 2026/804 of 30 March 2026 [2026] OJ L 2026/804 (20 April 2026), newly inserted art 8b; Directive (EU) 2026/804, art 2 on implementation; EBA, Consultation Paper on ITS on depositor information (23 July 2026), paras 24–25. Coverage depends on the prescribed conditions and the applicable national implementation and transition arrangements. Protection of a reserve-bank deposit is distinct from protection of a token liability.

²⁰ SRB Response, p 4, footnote 7, and section 2.8, pp 9–10; BRRD arts 44(2)(b), 73 and 74; Regulation (EU) No 806/2014 establishing the Single Resolution Mechanism (SRMR), as amended. The SRB identifies secured-liability and NCWO uncertainty; this alert does not resolve every national-law ownership or security issue.

²¹ SRB Response, section 2.1, p 4, and section 2.7, p 9; MiCAR art 58; Directive 2014/49/EU on deposit guarantee schemes (**DGSD**), as amended, arts 5–7. Tokenised-deposit protection remains subject to eligibility, aggregation and coverage conditions.

²² EBA Response, pp 13–15; ESCB Response, section 3.2.5, pp 19–20.

in execution and communications. Neither bank issuance nor the deposit label gives universal protection to every holder: the DGSD eligibility and coverage conditions still apply.

For significant ARTs and EMTs issued by non-banks, the SRB questions whether liquidation and redemption planning alone will remain sufficient if the arrangement becomes systemic. It suggests a tailored, proportionate crisis-management or contingency regime, potentially allowing transfer of issuance business and preservation of important functions. Significance would then carry a more explicit failure-management dimension alongside prudential supervision.²³

This remains a reform option. The response does not extend the SRB's mandate to every EMI, ART issuer or CASP, or provide such entities with access to the bank-resolution toolkit or the Single Resolution Fund. Firms should model transfer and continuity options without assuming that a bank-style resolution authority or funding mechanism will be available.

5. The ESRB challenges third-country multi-issuance

The ESRB rates the listed multi-issuer risks as very significant and answers Question 30 by supporting disallowance of the model. Its explanation concerns arrangements involving EU and third-country issuers, which it distinguishes from multiple EU issuers operating under common MiCAR safeguards.²⁴

The legal position needs careful treatment. The consultation question says MiCAR does not currently prohibit multi-issuer models. The ESRB explains that MiCAR does not specifically provide for EU/third-country schemes and acknowledges divergent national interpretations. It reiterates Recommendation ESRB/2025/9 that the Commission interpret MiCAR as not permitting such schemes. The ESCB calls for an explicit legislative basis if the co-legislators decide to permit them. These are institutional interpretations and recommendations; the ESRB consultation response does not itself impose a directly binding prohibition on firms.²⁵

The concern is that fungible tokens can move towards the issuer offering more favourable redemption rights. EU reserves may then face demand associated with tokens issued elsewhere. Third-country restrictions, ring-fencing or insolvency rules may prevent the corresponding assets from arriving. Globally sufficient reserves are therefore not necessarily available to the EU issuer at the relevant time.

The SRB adds an execution test to the ESRB's permissibility analysis. If multi-issuer arrangements are permitted, the EU issuer should be able to meet redemption without uncertain or discretionary transfers from third-country affiliates. Authorities should know in advance which entity owes redemption, where the reserves sit, which law governs access, and whether the EU business can be transferred or wound down separately. Shared branding, governance, reserves or redemption channels also matter to its proposed wider significance assessment.²⁶

Firms should assess continuation under the competent authority's existing approach, a dedicated regime with additional safeguards, and an adverse interpretation or authorisation review requiring restructuring. Contingencies should cover separation of issuance streams, client communications, redemption continuity and contractual changes. A national authorisation does not resolve every question about the global arrangement's future treatment.

²³ SRB Response, section 1, p 3, section 2.2, p 5, and section 2.4, pp 6–7 (proportionate crisis-management options for significant non-bank issuers, including transfers). These are proposed reforms and do not themselves confer a new SRB mandate or access to the Single Resolution Fund.

²⁴ ESRB Response, question 29, p 1, and question 30, pp 4–5. Its explanation addresses third-country schemes, distinguishing EU-only arrangements.

²⁵ ESRB Response, question 30, pp 4–5; ESCB Response, section 3.7, pp 29–32; Recommendation of the ESRB of 25 September 2025 on third-country multi-issuer stablecoin schemes (ESRB/2025/9) [2025] OJ C/2025/6342 (21 November 2025), Recommendation A.

²⁶ SRB Response, section 2.2, p 5, and section 2.5, pp 7–8 (functionally connected arrangements, reserve access, redemption responsibility, operational separability and conditional treatment of third-country multi-issuance).

6. Equivalence would form part of a wider regime

If third-country multi-issuer schemes continue, the ESRB supports a dedicated framework with safeguards beyond equivalence. These include supervisory cooperation, assessment of reserve-transfer barriers, stronger significance criteria, prudential stress testing, operational readiness, data access and white-paper disclosures. It supports transitional review of existing authorisations when an equivalence framework is introduced, potentially including withdrawal where necessary.²⁷

The ESRB urges Commission action on equivalence by the end of 2026. This is a recommended policy timetable, rather than an existing deadline for firms to obtain an equivalence decision. The 30 June 2027 reporting obligation is a separate milestone. Proposed equivalence criteria reach redemption, reserves, recovery and redemption plans, anti-money laundering safeguards and relevant banking rules.²⁸

Operational evidence matters alongside comparison of legal regimes. The ESRB finds that current methods cannot reliably determine EU holdings, particularly through self-hosted wallets and offshore CASPs. It welcomes the EBA's cooperation memorandum with the New York State Department of Financial Services (**NYDFS**) but stresses that one agreement cannot provide global visibility. Its answer to Question 36 does not endorse restricting redemption to EU holders: it records no concluded position and first asks whether a robust definition of Union holder is feasible.²⁹

The EBA and ESCB would also change how significance is measured. Both support a criterion for participation in a third-country multi-issuer scheme. The EBA would further clarify existing criteria, including reading the transaction criterion as 'number or value'. The ESCB would assess holders, issuance value, reserves and transactions both inside and outside the EU, because ledger data cannot reliably locate holders. It would add operational criteria such as deployment across several networks, reliance on critical providers and use as a settlement asset. Both call for a legal definition of 'Union holder' or 'EU holder'. The EBA adds that a comprehensive reporting mandate, including for CASP-held data, is needed because its own-initiative guidelines cannot bind CASPs directly.³⁰

Legal and treasury teams should prepare a common record of liability by entity, redemption terms, reserve ownership and location, transfer restrictions, stress assumptions, payment-system access and data limitations. Guarantees and rebalancing arrangements need testing against insolvency and public-authority intervention. Ledger visibility cannot by itself prove residence or unrestricted reserve mobility.

7. ESMA proposes a regulated gateway into DeFi

ESMA seeks clarity on decentralised finance (**DeFi**) services provided in a fully decentralised manner without an intermediary. It favours narrow application of the exclusion described in Recital 22 and proposes legislative clarification or, alternatively, a mandate for technical guidelines. The objective is to address arrangements that claim decentralisation while an identifiable operator performs an intermediating role.³¹

Its gateway proposal would create a new regulated service covering CASPs that provide clients with access to DeFi protocols. Examples include interfaces, transaction routing and smart-contract

²⁷ ESRB Response, questions 34 and 38, pp 6–7 and 11–12, and question 40, pp 12–13; ESRB/2025/9, Recommendations B–J. A transitional authorisation review would depend on the envisaged framework and legislative changes.

²⁸ ESRB Response, questions 40–41, pp 12–13; MiCAR art 140(2)(v). The end-2026 recommendation is not an existing firm-level authorisation deadline.

²⁹ ESRB Response, question 35, pp 8–9, question 36, p 9, and question 37, p 10. The response discusses the NYDFS/EBA memorandum, global data gaps and reserve mobility. Details on the NYDFS-EBA MoU are covered in a dedicated Client Alert available [here](#).

³⁰ EBA Response, pp 15–16 and 24–25; ESCB Response, sections 3.2.4 and 3.3, pp 19 and 21–24.

³¹ ESMA Response, section 3.3, p 6; MiCAR recital 22. ESMA proposes legislative clarification or an alternative guidelines mandate.

interaction on clients' behalf. Proposed duties concern protocol due diligence, selection and routing transparency, conflicts, risk disclosure and operational safeguards. Obligations would be calibrated to the CASP's control over the protocol.³²

The proposal concentrates on the identifiable access service. It does not automatically classify every developer, self-custody user or permissionless network as an intermediary. Platforms should map protocol selection, interface control, routing defaults, remuneration and powers to alter or stop the service. Access terms and outsourcing arrangements should allocate those functions explicitly.

8. Staking lending and borrowing attract different proposals

ESMA distinguishes self-directed staking without an intermediary, technical services, pooled or custodial arrangements, and liquid or yield-bearing products requiring their own classification. It proposes targeted conduct, disclosure and safeguarding duties for CASP staking, calibrated to intermediation, control, pooling and discretion. Staking would not automatically be treated as lending or portfolio management, or subjected to a generally heavy new authorisation regime.³³

Relevant disclosures include rewards, fees, validator selection, lock-up and unbonding periods, slashing risk, dependencies and insolvency treatment. A separate liquid-staking token needs independent analysis. Client terms should explain whether the client retains an asset interest, holds a repayment claim or bears exposure through a pool. The staking label does not resolve these questions.

For lending, ESMA proposes targeted requirements, including express written consent and disclosure, while expressly rejecting the creation of a newly authorised service. The EBA's approach leaves a wider perimeter choice open: it recommends a cost-benefit analysis of legislative changes that could add intermediated borrowing and lending to the list of CASP services. The Commission must therefore decide whether safeguards should sit within existing permissions or accompany an expanded service category. Firms should cost those outcomes separately from ESMA's new DeFi gateway proposal, and still assess other financial-services legislation applicable to their structure.³⁴

Borrowing would attract proportionate conduct, disclosure and risk-management requirements, particularly for retail leverage. ESMA identifies collateralised borrowing, trading leverage, CASP-mediated DeFi borrowing and collateral reuse or recursive leverage. These features may overlap. Lending or collateral reuse can move a client from custody to a materially different legal and credit-risk position; documentation should explain that change, liquidation and shortfalls.³⁵

The existing prohibition on interest and equivalent remuneration for ARTs and EMTs remains a separate constraint. The EBA and ESCB support retention, with the ESCB emphasising indirect remuneration. Platforms should test rewards and connected yield arrangements against that prohibition before relying on future lending or staking reforms.³⁶

9. Non-compliant stablecoins require current action

ESMA's September response proposes an explicit prohibition on all licensable MiCAR services involving non-compliant ARTs and EMTs. That legislative proposal addresses uncertainty under the present

³² ESMA Response, section 3.4, pp 6–7. Obligations would reflect CASP control; permissionless infrastructure and open-source development would not automatically be intermediation.

³³ ESMA Response, section 7.1, pp 13–14 (staking models, disclosures and governance).

³⁴ ESMA Response, section 7.2, printed p 14, distinguishes targeted lending requirements from a newly authorised service; EBA Response, pp 33–34, question 67, recommends cost-benefit analysis of extending the list of CASP services to intermediated borrowing and lending and of requirements for CASP access to DeFi lending. See also ESCB Response, printed pp 44–45. These are different proposed legislative routes.

³⁵ ESMA Response, section 7.2, pp 14–15 (borrowing). The legal effect on a client's asset or contractual claim requires transaction-specific and governing-law analysis.

³⁶ MiCAR arts 40 and 50; EBA Response, p 16; ESCB Response, pp 17–18. Existing interest prohibitions and proposed indirect-remuneration clarifications are distinct.

text.³⁷ Its subsequent opinion of 8 October adopts a broader supervisory position under Article 29(1)(a) of the ESMA Regulation: all MiCAR services involving such tokens are presumptively incompatible with Article 66(1), even where the service is not itself an offer or admission to trading. Warnings or client acknowledgements do not cure the concern. National competent authorities (**NCA**s) should require remediation promptly and within three months of publication, allowing only limited, time-bound residual services for orderly exit and client protection. This interprets existing duties rather than amending MiCAR.³⁸

A CASP should now review the token inventory against issuer compliance and the services through which clients can acquire, use or retain exposure. The September proposal and October opinion make different contributions: one requests express legislative wording; the other informs supervision of existing duties. Contractual changes, client communications and technical restrictions should be coordinated with the relevant NCA, including where holdings require an orderly wind-down.

ESMA's review response also proposes fuller costs information for execution, reception and transmission of orders, and exchange services. Zero-commission claims can obscure spread income. Its marketing proposals address problematic promotions, influencers and third parties, together with stronger powers against unauthorised firms soliciting EU investors.³⁹

Firms should reconcile published prices with spreads, mark-ups, routing income, affiliate payments and protocol fees. Promoter agreements should permit content review, conflict disclosure, correction and evidence retention. Those controls support existing compliance and preparation for more specific rules.

10. Supervisory powers and the Council position on MISP

ESMA seeks explicit national powers to remove scam or unauthorised websites and direct ESMA powers to require asset freezing where there are reasonable grounds to suspect market abuse or financial crime. It also proposes permanent EU product intervention, alongside temporary measures, regardless of whether CASP supervision transfers to ESMA. These are requests for additional powers.⁴⁰

The response links substantive MiCAR changes to MISP. Service definitions, conduct and prudential rules should fit the eventual allocation of responsibilities between ESMA and NCAs. The ESCB's group-supervision discussion provides wider context, including consolidated oversight and possible EU intermediate parent undertakings for significant third-country groups.⁴¹

On 9 October the Council politically agreed key elements of its MISP negotiating position. Its approach would transfer only "the most significant cross-border CASPs immediately to ESMA", replacing the Commission's proposed blanket transfer. The text still requires finalisation and formal Council adoption; negotiations with Parliament depend on its position. This is not enacted reallocation of supervision. Nevertheless, the Council's selective approach contrasts with the ESCB, which supports transferring authorisation, monitoring and enforcement for "all CASPs" to ESMA, with only market-abuse enforcement transferring for credit institutions.⁴²

³⁷ ESMA Response, section 3.2, pp 5–6, referring to Commission Q&A 2404 and the January 2025 ESMA statement. The express legislative restriction proposed here must now be read alongside the 8 October supervisory opinion.

³⁸ ESMA, Opinion on the provision of crypto asset services in relation to non-MiCAR-compliant asset-referenced tokens and e-money tokens, ESMA75-113276571-1742 (8 October 2026), paras 7, 11–14 and 19–28. Article 29(1)(a) of Regulation (EU) No 1095/2010 supplies the opinion power. The January date below is the calendar-month calculation from publication, subject to earlier remediation and NCA instructions.

³⁹ ESMA Response, section 3.5, pp 7–8, and section 6, p 12 (marketing, costs and solicitation).

⁴⁰ ESMA Response, sections 5.1–5.2, pp 11–12 (website removal, freezing and permanent product intervention, including a possible separate enforcement mandate).

⁴¹ ESMA Response, section 2, p 3; ESCB Response, pp 33–35 and 41–42; EBA Response, pp 29–31; ECB Opinion CON/2026/13 of 9 April 2026 [2026] OJ C/2026/2837 (28 May 2026).

⁴² Council of the EU, Savings and investments union — Council agrees key elements of crucial measures to deepen EU capital markets (9 October 2026), sections EU-level market supervision and Next steps.

Moreover, the SRB seeks timely access to material token linkages, operational dependencies and concentration data, including before a crisis. It favours sharing information already collected under a report-once approach rather than automatically adding another reporting stream. It also identifies a gap between consultation on redemption plans and notification when a plan is activated, especially where an EMI belongs to a banking group. The review should connect MiCAR supervisors with the resolution authorities responsible for the affected banks.⁴³

Group maps should show shared technology, treasury, outsourcing and client-asset functions, including entities outside a MiCAR licence. Changed supervisory allocation can affect reporting, investigations and cross-border incidents. Future binding classification, freezing or permanent intervention tools will also need clear procedures and safeguards for affected firms and clients.

11. AMLA adds the financial-crime and passporting analysis

AMLA recommends risk-specific treatment of staking, lending and borrowing, common DeFi control criteria, consistent treatment of unauthorised stablecoins, review of ART issuers' anti-money laundering and countering the financing of terrorism (**AML/CFT**) coverage, and clearer passporting information. Its contribution tests whether the entity issuing, distributing or redeeming a token is within the relevant financial-crime perimeter, and whether supervisors can identify its actual cross-border activity.⁴⁴

Its clearest perimeter concern is the pure ART issuer that issues and redeems directly without otherwise qualifying as an obliged entity or involving another obliged intermediary. AMLA asks whether the Anti-Money Laundering Regulation (**AMLR**) should be amended to capture that activity, or equivalent obligations imposed. This is a proposal to close a gap identified by AMLA; current duties still require examination under applicable national AML law. The AMLR generally applies from 10 July 2027. Issuers should identify who performs customer due diligence and transaction monitoring at issuance and redemption, rather than infer coverage from a MiCAR authorisation.⁴⁵

For existing arrangements, agreements should allocate checks, monitoring and evidence retention across issuance, distribution and redemption. Where an issuer and intermediary perform different functions, each party's obligations need their own legal basis. A counterparty's authorisation does not establish that every stage is covered or discharge the firm's own responsibilities.

AMLA's passporting proposal would distinguish establishment from freedom to provide services and identify reliance on host-state infrastructure. That information matters to host-state AML/CFT powers and decisions about central contact points. Firms should reconcile notifications with their actual personnel, infrastructure and service arrangements. A consistent operating record would make the effect of additional information requirements easier to assess.⁴⁶

AMLA also questions whether a unique crypto-asset account identifier will identify the wallet addresses needed for blockchain analytics, and highlights limited visibility over transaction histories in global multi-issuer arrangements. Firms should retain the links between customer records, accounts and relevant

⁴³ SRB Response, section 1, pp 2–3, and section 2.6, pp 8–9; MiCAR arts 47 and 55. The SRB proposes clearer information sharing and activation notification, applying the report-once principle.

⁴⁴ AMLA Response, sections 2–7, printed pp 3–8, covering services, DeFi control, unauthorised stablecoins, ART issuers and cross-border supervision. The proposed perimeter and information changes require the relevant legislative action.

⁴⁵ AMLA Response, section 5, printed p 6; Regulation (EU) 2024/1624 of 31 May 2024 on prevention of the use of the financial system for money laundering or terrorist financing (AMLR), arts 3 and 90. General application starts on 10 July 2027; the later exception concerns the football-sector entities specified in art 3(3)(n)–(o). AMLA's proposed ART-issuer expansion is not enacted by its response, and existing national obligations require separate assessment.

⁴⁶ AMLA Response, sections 6–7, printed pp 7–8, on establishment versus freedom to provide services, host-state infrastructure, central contact points, account/wallet identifiers and global transaction-history gaps. See Directive (EU) 2015/849, art 45(9), as amended, and Directive (EU) 2024/1640, arts 16 and 38, distinguishing the currently applicable and future frameworks.

addresses, while recording the limits of attribution. A visible ledger address does not itself establish residence, beneficial ownership or the source of funds.⁴⁷

12. Simplification targets specific duplication

ESMA proposes centralising Title II white-paper notification at ESMA and clarifying when a white paper has been duly notified. It would use register-based technical validation and remove NCAs' intermediary role. This concerns "crypto-assets other than ARTs and EMTs"; notification remains distinct from approval of a product's merits.⁴⁸

For MiFID II investment firms using Article 60, it proposes relief where transfer services are equivalent to investment services already authorised. Its concern is the separate CASP authorisation currently required for transfers despite the notification route for other equivalent services. Investment firms should not assume the proposal already expands their permissions.⁴⁹

Prudential proposals seek consistency with the Investment Firms Regulation (IFR) and Investment Firms Directive (IFD), including variable-cost deductions in fixed-overhead calculations. ESMA also identifies differences arising from service combinations and single versus multiple licences. Possible capital savings should be assessed separately from more risk-sensitive requirements for balance-sheet and group risks.⁵⁰

13. Tokenised capital markets need enforceable rights and settlement

ESMA seeks clearer securities-tokenisation rules and reliable on-chain settlement, addressing issuance, title, custody, finality and cross-border enforceability. It raises an optional EU 28th regime for native issuance and legacy arrangements, focused on legal building blocks for cross-border activity. This remains a policy option.⁵¹

The ESCB's private-law analysis identifies the same difficulty: a technically transferable token may have different third-party effects across legal systems. Pontes, launched on 21 September 2026, provides a route for wholesale tokenised transactions to settle in central bank money. Access does not itself resolve title, collateral or insolvency questions.⁵²

Infrastructures, custodians and institutional users should examine cash and asset legs together: authoritative records, finality, governing law, collateral perfection and enforcement, key control and intermediary insolvency. The Digital Operational Resilience Act (DORA) remains relevant, with the ESCB also identifying risks around keys, smart contracts and permissionless systems. Technical controls should connect to enforceable rights and remedies.⁵³

14. Other responses and related EU material

The Commission's Financial Services User Group (FSUG) provided additional review input through a position paper and an open-consultation response, both listed on the Commission website on 25

⁴⁷ AMLA Response, section 7, printed p 8, on crypto-asset account identifiers, wallet addresses, blockchain analytics and visibility over transaction histories in third-country multi-issuer arrangements. The suggested records and attribution checks are the practical implications drawn here from those concerns.

⁴⁸ ESMA Response, section 4.1, pp 8–9. Title II notification is distinct from product approval.

⁴⁹ ESMA Response, section 4.2, pp 9–10, referring to Commission Q&A 2071; MiCAR arts 59, 60, 63 and 82. Relief is specific to the investment-firm circumstances described.

⁵⁰ ESMA Response, section 4.3, p 10; EBA Response, pp 9–10; ESCB Response, pp 33–38; Regulation (EU) 2019/2033 (IFR) and Directive (EU) 2019/2034 (IFD).

⁵¹ ESMA Response, section 8, p 15 (optional 28th regime).

⁵² ESCB Response, section 6.4, pp 49–52; ECB, Eurosystem brings central bank money to tokenised finance (21 September 2026). Pontes launched on that date; Appia aims for a blueprint by 2028.

⁵³ Regulation (EU) 2022/2554 (DORA); ESCB Response, section 6.5, pp 52–55. Title, collateral and finality depend on applicable law and infrastructure.

September. FSUG is an advisory group, not a supervisory authority. Its contribution merits a separate consumer perspective rather than being counted as another authority’s response.⁵⁴

Further relevant material that warrants consideration includes:

EU body	Other relevant material	Status and relevance
Commission DG FISMA	Targeted review questionnaire 20 May 2026	Defines the consultation and statutory reporting exercise; it does not endorse the submitted recommendations. ⁵⁵
Joint ESAs including the European Insurance and Occupational Pensions Authority (EIOPA)	Classification guidelines 10 December 2024 and consumer warning 6 October 2025	Existing implementation and investor-protection material, distinct from a standalone 2026 review response. ⁵⁶
EIOPA separately	Crypto-asset capital advice 27 March 2025	Adjacent Solvency II prudential advice for insurers. ⁵⁷
ECB separately	Opinions CON/2026/13 and CON/2026/26	Legislative advice on EU integration/supervision and national crypto measures, distinct from the ESCB review contribution. ⁵⁸
ESRB earlier material	Recommendation ESRB/2025/9	Formal multi-issuer recommendation underlying its new response. ⁵⁹
ESMA and Council	Stablecoin opinion 8 October and MISP political agreement 9 October 2026	Current supervisory expectations and a developing legislative position, respectively; neither is another review response.

Given the above, the current direction of travel may trigger firms to review a number of practical considerations.

Practical considerations for firms

Legal, compliance, treasury, risk and product teams should separate immediate compliance from preparation and policy monitoring. The first priority is remediation of services involving non-compliant stablecoins under ESMA’s October opinion. Reserve access, client rights and crisis procedures should be tested against the firm’s existing arrangements. Proposed service categories, capital changes and

⁵⁴ European Commission, FSUG opinions 2026, listing the MiCAR review position paper and open-consultation response on 25 September 2026. The downloadable survey records submission on 28 September; listing and submission dates differ.

⁵⁵ European Commission, Targeted consultation on the review of MiCAR (20 May 2026).

⁵⁶ Joint ESAs, Guidelines on templates for explanations and opinions, and the standardised test for classification under Article 97(1) MiCAR (10 December 2024); Joint ESAs, Warning of risks and limited protection for certain crypto-assets and providers (6 October 2025).

⁵⁷ EIOPA, Technical advice on standard formula capital requirements for crypto assets, EIOPA-BoS-25-068 (27 March 2025).

⁵⁸ ECB Opinion CON/2026/13 of 9 April 2026 [2026] OJ C/2026/2837; ECB Opinion CON/2026/26 of 12 August 2026 on a crypto-activity ban and MiCAR application measures, recorded in the Governing Council decisions published 2 October 2026.

⁵⁹ ESRB/2025/9; ESRB, accompanying letter to Commissioner Maria Luís Albuquerque (30 September 2026).

supervisory transfers should be assessed as costed scenarios, with responsibility assigned to the teams below.

Stakeholder	Priority action and responsible teams
Bank issuing tokens or holding reserve deposits	Treasury, risk and legal teams: map funding, creditor ranking and reserve access; test moratoria and relevant bail-in treatment; include critical dependencies in liquidity and resolution scenarios.
EMI or non-bank issuer	Legal and treasury teams: verify safeguarding and account ownership; separate issuer failure from reserve-bank failure; test redemption and potential business-transfer options.
Global multi-issuer group	Group legal, treasury and risk teams: test reserve mobility, redemption responsibility and EU separability; prepare restructuring scenarios; monitor permissibility and equivalence decisions.
CASP or mixed-activity group	Compliance and legal teams: remediate non-compliant stablecoin services now; reconcile permissions with activities; cost service-perimeter, supervisory-allocation and capital scenarios.
DeFi interface or routing provider	Product, legal and compliance teams: identify control, protocol selection, routing and remuneration; prepare due-diligence records and contractual allocation for the proposed gateway duties.
Staking lending or borrowing provider	Product and legal teams: distinguish service models and client claims; review consent, reuse, slashing and liquidation; cost targeted safeguards and possible additional permissions separately.
Platform and distributors	Compliance, distribution and operations teams: implement token-status controls and supervised exit arrangements; reconcile costs with promotions; review promoter agreements and client communications.
Payment or dual-licensed firm	Payments, legal and compliance teams: reconcile EMT services with payment-law permissions; test safeguarding by activity; review agency, outsourcing and sub-custody.
Asset manager infrastructure or custodian	Legal and operations teams: test title, finality, collateral and insolvency together; confirm settlement access and operational dependencies; document governing-law assumptions.

Priority legal documents include issuer and redemption terms, reserve-custody and bank-deposit agreements, intra-group guarantees and liquidity commitments, staking and lending consents, protocol-access terms, fee schedules, promoter agreements and suspension or wind-down clauses. Each should identify the relevant entity, client right and operational dependency. Change provisions should reflect the uncertainty where reform remains only proposed.

A practical crisis exercise would combine a reserve bank becoming unavailable, increased token redemptions and delayed affiliate transfers. The issuer should demonstrate who takes decisions, which reserve can be accessed, how payments are made and how clients are informed. The bank should

assess funding outflows and the continuity of its services. This is a proposed firm-level exercise drawn from the identified dependencies, not a mandatory SRB scenario.⁶⁰

Firms with several digital-finance activities can organise this work as a Regulatory Digital Twin: a maintained mapping from product features and rights to permissions, rules, safeguarding, group dependencies and supervisory evidence. If classification changes or a reserve transfer fails, the firm should be able to identify affected services, clients, contracts and controls promptly.

What to watch next

- **Commission follow-up and the 30 June 2027 report.** Distinguish legislative proposals, technical standards and supervisory guidance, which follow different routes into the framework.
- **The ESRB's end-2026 recommendation.** Watch for a Commission position on multi-issuance, equivalence and review of existing authorisations. The recommended timetable does not guarantee enactment.
- **Stablecoin remediation.** The opinion's three-month outer limit runs from publication on 8 October 2026, pointing to 8 January 2027 on a calendar-month basis. Earlier remediation is expected; this is not a general permission to continue until then.
- **MISP negotiations.** Follow the Council's selective approach to CASP supervision and the eventual Parliament position, alongside group oversight and EU intervention powers.
- **Resolution and redemption interfaces.** Follow proposals on reserve-deposit treatment, creditor ranking, plan activation, information sharing and crisis options for significant non-bank issuers.
- **DeFi lending and staking.** Check whether final proposals preserve the distinction between a gateway service and targeted rules for adjacent activities.
- **Tokenised-deposit execution.** Assess identity records, transfer controls and the capacity to execute a legally applicable resolution action across the relevant systems.
- **Financial-crime controls.** Follow AMLA's perimeter and passporting proposals, especially responsibility at issuance and redemption and visibility over cross-border operations.
- **Securities law and infrastructure.** Monitor the 28th-regime debate, finality and collateral reform, along with Pontes and Appia. Technical availability and cross-border legal usability require separate checks.

Outlook

The responses agree on the need for clearer client rights, effective supervision and credible safeguards, but leave significant choices unresolved. ESMA and the EBA envisage different routes for lending regulation. The EBA and ESCB differ on reserve recalibration, while the Council's selective CASP supervision approach contrasts with the ESCB's broader position. The Commission's review

⁶⁰ SRB Response, section 2.3, p 6, and sections 2.5–2.6, pp 7–9. The combined exercise described in the text is the authors' practical application of these dependencies; it is not a prescribed regulatory test.

must reconcile those choices with AMLA's financial-crime concerns and the SRB's failure-management analysis.

Firms should assess the proposals against decisions their business can already explain: which services require permission, which entity owes the client, which reserves remain accessible under stress and which controls support distribution and redemption. Existing compliance gaps require action now; proposed changes require scenarios that can be updated as legislative and supervisory positions develop.

For banks, the SRB contribution makes token issuance, reserve-deposit funding and essential services part of the same resolvability assessment. For issuers and CASPs, the wider responses connect product design and market access with conduct, financial crime and enforceable rights. Preparing those assessments together allows clients to evaluate reform choices against their actual contractual and operating arrangements.



About us

PwC Legal assists financial services firms and market participants in preparing for legal and regulatory change. Our multidisciplinary and multijurisdictional teams combine sector expertise with practical implementation support and engagement with market stakeholders and regulators.

Our RegTech and SupTech capabilities include PwC Legal's Rule Scanner, supported by managed solutions from PwC Legal Business Solutions. These support horizon scanning and risk mapping of relevant legal and regulatory developments, sanctions and fines, drawing on multiple thousands of policymakers and other industry sources across more than 170 jurisdictions.

We also help clients digitise policies and procedures, establish a documentation inventory and hierarchy, and maintain a glossary and version history. Mapping dependencies between documents helps identify where regulatory developments or changes to one policy require amendments elsewhere.

The PwC Legal team behind Rule Scanner received ALM Law.com's 2024 Disruptive Technology of the Year Award and its 2025 Regulatory, Governance and Compliance Technology Award.

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](#).



Contact

Dr. Michael Huertas

Tel: +49 160 97375760

michael.huertas@pwc.com

Dr. Hagen Weiss

Tel: +49 1511 5708446

hagen.weiss@pwc.com

Fabian Joshua Schmidt, LL.M.

Tel: +49 151 41490437

fabian.joshua.schmidt@pwc.com

EU RegCORE Team

de_regcore@pwc.com

