EU RegCORE Client Alert

Financial Services

May 2026

Scope, stablecoins, CASPs and more – MiCAR's dual consultations chart the course for EU crypto regulation's next chapter

QuickTake

On 20 May 2026, the European Commission's Directorate-General for Financial Stability, Financial Services and Capital Markets Union (**DG FISMA**) launched a broad **Public Consultation on the review of the Markets in Crypto-Assets Regulation** (**MiCAR**)[1] aimed primarily at EU retail and non-expert users of digital assets, together with a **Targeted Consultation on the review of MiCAR**[2] addressed to market, industry and institutional stakeholders. Both consultations close on **31 August 2026** and will inform the Commission's reports and any legislative proposals pursuant to Articles 140 and 142 MiCAR, including potential adjustments to MiCAR's scope, stablecoin regime, crypto-asset service provider (**CASP**) framework, treatment of decentralised finance

Dr. Michael Huertas
Tel: +49 160 97375760
michael.huertas@pwc.com

EU RegCORE Team
de_regcore@pwc.com

[1] Available here.
[2] Available here.

(**DeFi**), staking, lending, non-fungible tokens (**NFTs**), tokenised deposits and the private-law treatment of tokens.

As set out across the consultation documents, the Commission is collecting evidence on whether MiCAR remains "fit for purpose" in light of market and international regulatory developments, and on issues left outside MiCAR's original scope — notably DeFi, staking/lending, NFTs, tokenised deposits, and legal/property-law questions around tokens. The public consultation focuses on user awareness, usage patterns, perceived risks and information needs; the targeted consultation seeks granular, data-backed feedback on MiCAR's operation and possible reforms.

- **What.** The Commission is collecting evidence on whether MiCAR remains "fit for purpose" in light of market and international regulatory developments, and on issues left outside MiCAR's original scope — including DeFi, staking/lending, NFTs, tokenised deposits, and legal/property-law questions around tokens. The public consultation focuses on user awareness, usage patterns, perceived risks and information needs; the targeted consultation seeks granular, data-backed feedback on MiCAR's operation and possible reforms.
- **When.** Responses to both online questionnaires must be submitted by 31 August 2026. The consultations will feed into (i) the Article 142 MiCAR report on latest market developments and gaps, and (ii) the Article 140 MiCAR review of the Regulation's application.
- **Who.** The **public consultation** is addressed to EU users of digital financial services, including current and potential users of crypto-assets, stablecoins, DeFi protocols, tokenised assets and NFTs. The **targeted consultation** is aimed at a wide range of stakeholders, including issuers, CASPs, traditional financial institutions active in tokenisation, national competent authorities (**NCAs**), the European Supervisory Authorities (**ESAs**), being the European Banking Authority (**EBA**), the European Securities and Markets Authority (**ESMA**) and the European Insurance and Occupational Pensions Authority (**EIOPA**), academics and other expert respondents.
- **Three biggest themes:**
  - **1. Scope and perimeter refinement** — whether MiCAR should remain limited to non-financial-instrument crypto-assets or move towards a more asset/technology-based perimeter; how to address DeFi, staking, lending, NFTs, prediction markets (platforms enabling users to wager on the outcome of future events), perpetual futures (derivative contracts without an expiry date, allowing indefinite holding of leveraged positions) and tokenised deposits.
  - **2. Stablecoin and CASP regimes** — calibration of own-funds, reserves, liquidity, redemption rights and significance criteria for asset-referenced tokens (**ARTs**) and e-money tokens (**EMTs**); treatment of global/multi-issuer stablecoins, an equivalence approach, and prudential, conduct and reporting requirements for CASPs.
  - **3. Legal certainty and cross-border structure** — private-law treatment of tokens (ownership, transfer, collateral, insolvency), possible EU-level harmonisation or conflict-of-laws rules, and interaction with the EU's economic security objectives and the international role of the euro.
- **Immediate action. Retail-facing firms** should consider responding to the public consultation to shape future consumer-protection, disclosure and information-provision standards. **Issuers, CASPs, banks and other financial institutions** should undertake an internal impact assessment against the targeted consultation's themes (stablecoins, CASPs, DeFi connectivity, tokenised deposits, legal treatment of tokens) and prepare data-driven responses, including examples and proposed solutions.

Overview of the consultations

The public consultation is a concise, individual-level questionnaire gauging how EU citizens perceive, use and understand digital assets — from cryptocurrencies and stablecoins through DeFi, tokenised financial instruments and NFTs — and what information and protections they consider necessary to engage with confidence. The targeted consultation is the weightier instrument: a four-part, narrative-driven questionnaire covering (i) scope, definitions and the Title II transparency regime for crypto-assets other than stablecoins; (ii) the prudential, reserve, liquidity and redemption framework for ARTs and EMTs under Titles III and IV; (iii) the CASP authorisation, conduct and reporting framework under Titles V and VI; and (iv) policy areas beyond MiCAR's current scope, including DeFi, staking, lending, NFTs, prediction markets, perpetual futures, tokenised deposits and the private-law treatment of tokens. This Client Alert analyses the key themes, questions and implications arising from both consultation documents. Supervision of CASPs is outside the scope of this consultation, as it is being addressed separately under the market integration and supervision package (**MIP**).[3]

Legislative context and review timeline

MiCAR (Regulation (EU) 2023/1114) has applied in part since 30 June 2024 and in full since 30 December 2024. However, in several Member States, full enforcement of the CASP regime will not commence until July 2026, reflecting transitional arrangements and the time required to operationalise national supervisory frameworks. NCAs, issuers and CASPs are accordingly still building operational experience with the framework as it currently stands. This consultation therefore arrives at an early stage in MiCAR's lifecycle — before the framework has been fully stress-tested — which has implications for how conclusions about its adequacy should be drawn.

The Regulation contains two distinct review mandates. Article 142 requires the Commission, after consulting the EBA and ESMA, to report on latest developments in crypto-assets — particularly matters not addressed by MiCAR — accompanied, where appropriate, by a legislative proposal. Article 140 requires a report on the application of the Regulation by 30 June 2027 again with the possibility of legislative proposals. The consultations published on 20 May 2026 serve both mandates simultaneously and represent the first formal step in the Article 140/142 review process.

At the same time, the regulatory and market environment around digital assets — particularly stablecoins — has shifted considerably since MiCAR was negotiated. Developments in third-country jurisdictions (notably the United States), the rapid growth of tokenised instruments, and unresolved interpretive questions within the existing MiCAR text have all accelerated the political conversation in Brussels. The consultation arrives in that context, seeking to address both operational experience under the existing framework and emerging policy questions that MiCAR did not originally anticipate.[4]

The MiCAR review sits alongside — and interacts with — several parallel EU legislative and political workstreams. The recently concluded review of the Payment Services framework, comprising the third Payment Services Directive (**PSD3**) and the Payment Services Regulation (**PSR**), has clarified the interplay between MiCAR and payment services legislation, including targeted exclusions from PSD3/PSR scope for specific types of EMT transactions and a streamlined authorisation pathway for CASPs requiring PSD3 authorisation. The MIP is separately addressing supervisory arrangements for CASPs and lies outside this

[3] See our coverage here as well as further wider thematic coverage on MIP from our EU RegCORE website.
[4] See our coverage here as well as further thematic coverage on payment services developments from our EU RegCORE website.

consultation's scope. The Commission has also framed this exercise within its broader simplification agenda, seeking to identify whether administrative or other burdens emanating from MiCAR can be simplified, reduced or dispensed with.

Beyond these legislative tracks, several parallel political workstreams are relevant to the MiCAR review's trajectory. The **Eurogroup digital finance workstream** — convened at finance minister level — is expected to issue recommendations by June 2026 on strategic questions including the role of digital assets in the EU financial system and the international competitiveness of the EU's regulatory framework. The **European Parliament** is progressing an own-initiative report on digital assets, which will set out the Parliament's political priorities ahead of any Commission legislative proposal. The sequencing and interaction between these tracks will shape the eventual legislative outcome. How the MiCAR review, the MIP, the Eurogroup workstream and the Parliament's report converge — or diverge — remains an open question, and the risk of fragmented or contradictory outcomes across these parallel processes is real.

The principal milestones for programme planning, calculated by reference to the legislative mandates, are as follows:

- **31 August 2026.** Deadline for responses to both the public and targeted consultations.
- **30 June 2027.** Full Article 140 report on the application of MiCAR and Article 142 report on latest market developments and gaps, each potentially accompanied by a legislative proposal.
- **H2 2027 onward.** Any accompanying legislative proposals would enter the co-legislative process, with trilogue negotiations potentially commencing in 2028.

Public and targeted consultations — at a glance

- The two consultations differ materially in audience, format and depth. The public consultation is addressed to individual EU users of digital financial services and is structured as a multiple-choice questionnaire focusing on awareness, usage patterns, risk/benefit perceptions and information needs. The targeted consultation is addressed to market participants, institutional stakeholders, NCAs, ESAs and academics, and is structured as a four-part, narrative-driven questionnaire requiring data-backed, free-text responses on MiCAR's operation and possible reforms.
- Both instruments close on 31 August 2026 and their results will feed directly into the Commission's Article 140 and Article 142 reports — and any legislative proposal that accompanies them. The sections below analyse each consultation in turn, followed by an assessment of the strategic implications for regulated firms and the outlook for the next legislative cycle.

Public Consultation – user awareness, experience and protection

The public consultation is structured as a questionnaire addressed to individuals, focusing on:

1. **Financial literacy and use of digital finance.** Respondents are asked to self-assess their knowledge of financial matters, and to indicate which digital financial services they use (mobile banking, payment apps, online investment platforms, crypto services, digital wallets, robo-advisors, buy-now-pay-later, etc.).

2. **Awareness and understanding of digital assets.** Whether respondents have heard of: cryptocurrencies (e.g. Bitcoin, Ethereum); stablecoins/EMTs/ARTs; DeFi; tokenised financial assets; and NFTs. A self-rating (1–5) of understanding for each asset type is also requested.

3. **Awareness of MiCAR.** Whether respondents have heard of the EU's Markets in Crypto-Assets Regulation (MiCAR) as a protective framework for European crypto-asset users.

4. **Usage patterns.** Frequency of personal use over the last 12 months of: cryptocurrency transactions; stablecoin payments; DeFi services; transactions in tokenised financial assets; and NFTs.

5. **Risk/benefit perceptions.** For each asset type (cryptocurrencies, stablecoins, DeFi, tokenised assets, NFTs), respondents rate whether risks outweigh benefits or vice versa (1–5) "for individuals in a similar situation".

6. **Information and protection needs.** For each asset/service category, respondents indicate which items are necessary to feel confident using them, including: clear presentation of benefits and use cases; simple explanatory guides on functionality; transparent risk disclosures; clear rules on permitted/prohibited uses; consumer protection in case of platform failure or transaction problems; investor protection if assets lose value or providers fail; access to secure and reliable platforms/apps; advice or recommendations from trusted sources (e.g. banks, advisors, reputable organisations); availability of crypto products from their own bank/payment institution; clear information on who supervises or regulates platforms and assets; and other aspects respondents deem important for safety and confidence. The results will inform the Commission's assessment of how MiCAR and related initiatives address user information gaps, risk perceptions and expectations of regulatory protection.

Targeted Consultation – MiCAR review and potential reforms

The targeted consultation is a detailed questionnaire structured into four main parts, designed to elicit narrative, data-supported responses from specialised stakeholders. The legislative context and review mandates under Articles 140 and 142 MiCAR are set out above. The four substantive parts of the consultation are analysed below.

PART 1 – Scope and definitions: Title II crypto-assets

This section focuses on crypto-assets other than ARTs and EMTs (Title II MiCAR) and on the boundary between MiCAR and other sectoral regimes. Key themes include the **perimeter between MiCAR and the Markets in Financial Instruments framework** — the consultation asks whether crypto-assets qualifying as financial instruments under the Markets in Financial Instruments Directive (**MiFID II**, Directive 2014/65/EU), and thus subject to the Markets in Financial Instruments Regulation (**MiFIR**), the Market Abuse Regulation (**MAR**) and the Prospectus Regulation, should continue to be governed by existing sectoral legislation, or whether all assets recorded and transacted on distributed ledger technology (**DLT**) that meet the definition of crypto-asset — and services on such assets — should be covered by MiCAR. It further asks whether the distinction between MiFID II financial instruments and MiCAR crypto-assets is sufficiently clear, taking account of ESMA guidelines, and what further clarifications or policy actions may be needed. This is a critical question for regulated firms, as any expansion of MiCAR's perimeter would

fundamentally alter the licensing, compliance and product structuring strategies of investment firms, banks and fund managers with digital asset exposure.

The consultation also tests views on **classification tools**, asking stakeholders to assess how far ESMA's MiCAR Article 2(5) guidelines and the joint ESA standardised classification test have reduced uncertainty and to identify remaining borderline cases. On the **transparency, conduct and liability regime under Title II**, respondents are asked to rate the adequacy and desired direction of change for: offer exemptions; white paper disclosure (the MiCAR-mandated disclosure document that issuers must publish before offering crypto-assets to the public or seeking admission to trading); marketing rules; the ex ante notification model (whereby issuers notify NCAs before publication of the white paper, without requiring prior regulatory approval); obligations to modify/update white papers; retail investors' withdrawal rights; conduct obligations; civil liability for inaccurate, misleading or incomplete white papers; and the overall balance of investor protection, market integrity and innovation under Title II. **Residual concerns and potential additional measures** are also canvassed, including: disclosure clarity; fraudulent/misleading offerings; enforceability of investor rights; issuer governance and post-offer use of funds; regulatory arbitrage and activity shifting outside the EU; social-media and influencer-driven promotions; post-issuance token value erosion or project failure; market manipulation (including wash trading, where entities simultaneously buy and sell the same asset to create artificial volume, and price manipulation); misaligned incentives; difficulty assessing issuer quality; and cross-border enforcement challenges. Possible additional tools canvassed include marketing restrictions for high-risk/speculative assets and founder/early-investor lock-up or vesting requirements (mechanisms restricting insiders from selling tokens for a specified period post-issuance). Stakeholders are also invited to propose burden-reduction and simplification measures for Title II and its technical standards.

PART 2 – Stablecoins (ARTs and EMTs): Titles III and IV

This part examines MiCAR's bespoke regime for ARTs (crypto-assets that purport to maintain a stable value by referencing multiple fiat currencies, commodities or other crypto-assets) and EMTs (crypto-assets that purport to maintain a stable value by referencing a single official fiat currency and that function similarly to electronic money) — including prudential, reserve, liquidity, redemption and crisis-management provisions — and whether recalibration is needed. On the **future role and use cases for stablecoins**, stakeholders are asked to assess likely roles in 5–10 years (e.g. mainstream retail/wholesale payment instruments, complements for specific cross-border use cases, core settlement layers for tokenised markets, niche/transitional products, or uncertain) and how beneficial stablecoins are for various use cases (international and intra-EU payments, crypto trading/liquidity, P2P/P2B/B2B retail payments, wholesale payments, settlement of tokenised instruments, corporate treasury, DeFi/smart-contract access, financial services in underserved EU regions). How firms position themselves in relation to stablecoins — whether as issuers, distributors or end users — will be materially shaped by the Commission's eventual conclusions on the direction of this framework.

On the **prudential regime and capital requirements**, the consultation tests views on the relevance and calibration of MiCAR's capital requirement structure for non-bank ART/EMT issuers (minimum EUR 350,000, 2% of average reserve assets, 25% of fixed overheads, and additional capital for "significant" tokens — those meeting quantitative thresholds such as customer base, market capitalisation or transaction volume that trigger enhanced prudential requirements). Stakeholders are asked to comment on the absence of licensed ARTs nearly two years after MiCAR's introduction, and whether this reflects low market interest or regulatory/licensing frictions. The absence of any licensed ART in the EU is a strong signal that recalibration may be forthcoming; firms contemplating ART issuance should track this discussion closely.

On **liquidity, reserves and custody**, separate sets of questions consider reserve composition and liquidity; minimum deposit requirements (e.g. 30% and 60% bands, referring to the proportion of reserve assets that

must be held in bank deposits); audit and custody rules; and enhanced liquidity management, stress-testing, monitoring and reporting for significant ARTs and EMTs. Stakeholders are also asked whether credit institutions issuing EMTs should be subject to reserve maintenance and segregation requirements (either on-balance-sheet or via a separate issuing entity) or whether the current MiCAR approach should be retained. This question is of direct relevance to credit institutions that have issued or are contemplating issuing EMTs, as any change would impose additional operational and prudential obligations beyond the existing Capital Requirements Directive (**CRD**) and Capital Requirements Regulation (**CRR**) framework.

The **interest prohibition and redemption framework** is one of the most commercially significant questions in the consultation. MiCAR currently prohibits interest-like remuneration on ARTs and EMTs by issuers, offerors or CASPs. Stakeholders are asked whether the prohibition should remain or whether remuneration should be allowed (fully or conditionally). If the interest prohibition were relaxed, it could materially alter the competitive positioning of EU-licensed stablecoin issuers relative to third-country competitors and reshape the economics of stablecoin distribution for CASPs. On redemption, the consultation tests whether ART/EMT redemption rights, timing, fee bans, transparency/conditions and supervisory intervention powers should be weakened, left unchanged or strengthened, and whether MiCAR requirements for recovery and redemption plans are adequate, particularly under stress.

The consultation devotes substantial attention to **global stablecoins and multi-issuer models**. Global stablecoins are stablecoins that have a wide existing or potential reach and use across multiple jurisdictions, often issued or offered by a network of affiliated entities in different countries (the **multi-issuer model**). The legality of multi-issuance arrangements under MiCAR has been the subject of an **open disagreement between EU institutions**, with financial stability and monetary sovereignty arguments on one side — emphasising the systemic risks of reserve fragmentation and the implications of euro-denominated stablecoins issued at scale by non-EU entities — and the Commission's interpretation of the existing framework on the other. Clarity on this question is needed, and the avenue through which it arrives (the MiCAR review, the MIP package, or supervisory guidance from the EBA or ESMA) remains an open question that the consultation does not definitively resolve.

The consultation explores potential benefits for EU users of accessing global stablecoins via EU-based and licensed issuers and CASPs, and identifies risks associated with multi-issuer arrangements (run and reserve depletion risks, unbalanced reserve distribution, cross-border reserve transfer restrictions, regulatory arbitrage arising from token fungibility, supervisory data-tracking challenges, and weaknesses in third-country regimes). It also explores whether there is merit in introducing an **equivalence regime** (a framework allowing the Commission to recognise that a third country's regulatory and supervisory framework achieves outcomes equivalent to EU rules, facilitating cross-border activity) for global stablecoins, what reliance should be placed on third-country frameworks, and what reciprocal rights/benefits should flow. For firms with international operations — particularly those involved in issuance or distribution of global stablecoins — this section signals a potential tightening of requirements that could impose additional compliance costs or restrict business models relying on cross-border fungibility.

PART 3 – Crypto-asset service providers (CASPs)

Part 3 reviews MiCAR's CASP framework against initial authorisation and supervisory experience. CASPs are legal persons whose occupation or business is the provision of one or more crypto-asset services to clients on a professional basis, encompassing activities such as custody and administration, operation of trading platforms, exchange services, execution, placing, reception/transmission, advice and portfolio management. Currently, approximately 170 CASPs are listed in the ESMA register across 18 different Member States.

On the **scope of CASP services**, stakeholders are invited to assess whether the Article 3(16) list of crypto-asset services adequately covers the market and provides legal certainty, and to propose additional services to be regulated or existing ones to be removed. The section also asks whether the introduction of an **appropriateness test** (a MiFID II-style assessment of whether a product or service is appropriate for a client based on their knowledge and experience) for certain services (reception/transmission, execution, placing) would enhance client — particularly retail — protection. The potential introduction of an appropriateness test is a significant development; it would bring CASP regulation materially closer to MiFID II standards and could impose meaningful operational requirements on firms distributing crypto-assets to retail clients.

On the **prudential regime and capital calibration** for CASPs, the consultation tests whether the current prudential safeguards (minimum capital or one-quarter of fixed overheads) appropriately capture CASP risks or whether a recalibration (e.g. closer alignment with investment firm regimes under the Investment Firms Regulation (**IFR**) and Investment Firms Directive (**IFD**), including K-factors — activity-based capital requirements that scale with a firm's risk profile based on assets under management, client orders handled and trading flow) is warranted. A shift towards K-factor-based requirements would represent a paradigm change for CASPs, requiring the build-out of risk-sensitive capital modelling capabilities currently expected only of investment firms.

On **CASP reporting**, beyond suspicious-transaction reporting for market abuse, CASPs currently have no routine MiCAR reporting obligations. The consultation canvasses whether CASPs should regularly report on:

(i) direct crypto-asset holdings;
(ii) large exposures to derivatives with crypto-assets as the underlying asset;
(iii) volumes of leveraged contracts and the extent to which leverage is actually used on trading platforms; and information on counterparty risk.

The introduction of formal, periodic reporting obligations would represent a significant operational uplift for CASPs, many of which currently lack the infrastructure typical of traditional investment firms.

PART 4 – Policy areas beyond the current scope of MiCAR

Part 4 addresses activities and asset categories not currently regulated — or only tangentially addressed — by MiCAR. This is arguably the most consequential section for forward-looking compliance planning, as it maps the likely contours of future regulatory expansion.

On **Decentralised finance (DeFi)**, MiCAR excludes from its scope crypto-asset services "provided in a fully decentralised manner without any intermediary" (Recital 22). DeFi refers to software programmes deployed on blockchains or other types of DLT that operate autonomously without intermediaries and offer financial functionalities such as trading, lending, borrowing or portfolio management through smart contracts (self-executing code that automatically enforces the terms of an agreement when pre-defined conditions are met). The consultation explores whether and how to complement MiCAR as regards DeFi, and asks stakeholders to identify which DeFi services present the greatest benefits and weaknesses relative to intermediated services. Stakeholders are asked to assess the main risks associated with DeFi (operational risk, anti-money laundering and countering the financing of terrorism (**AML/CFT**) risk, market abuse, investor protection risk, financial stability risk), and which criteria should be used to assess the degree of decentralisation (e.g. existence of an identifiable intermediary, presence of admin keys enabling protocol upgrades, concentration of governance power, custody of user assets, open-source code status, marketing by an identifiable entity). On CASPs and DeFi connectivity, the consultation tests whether CASPs should be able to connect clients to any decentralised DeFi application subject to warnings and risk disclosures;

CASPs should be liable for certain incidents where they facilitated access; CASPs should only connect clients to certified DeFi applications; CASPs should be required to discontinue connections to DeFi protocols associated with illicit activity; or CASPs should not facilitate DeFi connections at all.

Certification schemes for DeFi protocols and smart contracts are a significant development canvassed by the consultation (such schemes would verify that a protocol robustly mitigates smart contract vulnerabilities and operational risk, and functions in accordance with its publicised performance). For regulated firms engaging with DeFi — whether directly or by facilitating client access — these proposals signal material new obligations, potential liability exposure, and the need to develop robust DeFi protocol assessment frameworks.

On **staking, lending and borrowing of crypto-assets**, staking is the process of immobilising crypto-assets to support proof-of-stake blockchain consensus mechanisms (an alternative to energy-intensive proof-of-work mining, where validators are selected to create new blocks based on the quantity of tokens they have "staked" as collateral) in exchange for validator privileges that can generate block rewards. The provision of staking services is currently regulated indirectly through custody and administration requirements under Article 75 MiCAR, requiring CASPs to obtain explicit client consent and hold the relevant CASP authorisation. The consultation asks whether the current approach whereby staking services are not separately regulated is adequate, and if not, what specific requirements should apply. Crypto-asset lending and borrowing (arrangements where holders lend their crypto-assets to counterparties in exchange for interest or other remuneration, or borrow crypto-assets typically against collateral) are not currently regulated under MiCAR. The consultation asks whether they should be, and what the main elements of regulatory requirements should comprise. For firms already offering or planning to offer these services, this is a clear signal that dedicated licensing and conduct requirements may be forthcoming.

On **non-fungible tokens (NFTs)**, under MiCAR Article 2(3), crypto-assets that are unique and not fungible with other crypto-assets (i.e. not interchangeable on a one-for-one basis, unlike fungible tokens such as Bitcoin or EMTs) are out of scope. The consultation asks whether the current state of the NFT market and its associated risks and opportunities justify regulating providers of services related to these tokens.

On **prediction markets and perpetual futures**, one of the most marked developments in crypto markets since MiCAR's adoption is the emergence of DLT-based prediction markets and the volume of trading activity in perpetual futures on crypto-assets. The consultation asks whether prediction markets present opportunities or risks for EU consumers and investors; whether DLT-enabled prediction markets should be governed by MiFID or MiCAR; what substantive requirements should be considered for prediction market service providers; whether perpetual futures on crypto-assets should be governed by MiCAR or MiFID; and what substantive requirements should apply to perpetual futures service providers. The classification choice between MiFID and MiCAR for these instruments will have significant implications for the regulatory obligations and capital requirements applicable to service providers.

On **tokenised deposits**, for the purposes of the consultation, "tokenised deposits" are defined as digital representations of traditional commercial bank deposits recorded on a blockchain or DLT, allowing for programmable, instant 24/7 settlements. The consultation asks stakeholders to assess the potential relevance and benefit of tokenised deposits for various use cases, including: person-to-person payments; retail point-of-interaction payments; intra-EU and international payments and remittances; settlement of tokenised securities and other financial instruments; delivery-versus-payment (**DvP**) and atomic settlement (settlement mechanisms where the transfer of one asset occurs if, and only if, the transfer of another asset simultaneously occurs, eliminating settlement risk); intraday liquidity management; corporate treasury services; programmable payments and smart-contract-based use cases; on-chain collateral or margining; and improved settlement speed and operational efficiency. Further questions address what factors constrain

the development and uptake of tokenised deposits in the EU; what regulatory action is appropriate; whether tokenised deposits raise specific issues under the CRD/CRR framework; and whether tokenised deposits raise questions or challenges from a deposit insurance perspective. For credit institutions exploring DLT-based deposit products, the outcomes of this section could determine whether bespoke prudential or product-design requirements are layered onto the existing banking regulatory framework.

On the **legal treatment of tokens**, this is perhaps the most structurally consequential section of the entire consultation. Legal certainty in the treatment of tokens in the EU and Member States is described as "crucial in supporting predictable outcomes in financial markets in Europe and vital to avoid stifling innovation". The Commission identifies fundamental legal uncertainties including: whether tokens can be objects of property (capable of ownership and transfer under private law); which rules apply to the title and transfer of tokens; their treatment in insolvency (whether token holders have proprietary claims or merely personal claims against an insolvent custodian or issuer); custody relationships; and security rights in crypto-assets (including pledges, charges and other collateral arrangements). A key distinction is drawn between **native tokens** (assets existing only on-chain, without a physical or traditional paper-based equivalent, where the token itself constitutes the asset) and **non-native tokens** (on-chain representations of rights over assets legally constituted off-chain, such as tokenised securities or real-world assets). Non-native tokens raise particular difficulties because tokenisation often leads to the simultaneous existence of two assets: the token representing the asset and the asset itself — raising questions about which is the "true" asset and how ownership is determined.

The consultation then asks whether legal certainty should be increased through EU law, and if so, which approach would be most appropriate: a **28th regime** (a standalone EU-level legal framework that would exist alongside — rather than replace — the 27 Member States' national private laws, offering market participants a voluntary pan-European option) recognising legal effects of DLT registers, including good-faith acquisition rules (protecting purchasers who acquire in good faith from defects in the seller's title) and erga omnes effects (legal effects enforceable against all third parties, not merely between contracting parties); **full harmonisation** of private law treatment of tokens across Member States (replacing divergent national rules with a single EU standard); **partial harmonisation** of private law treatment (harmonising certain core aspects while leaving others to national law); or introduction of a **conflict-of-law regime** for tokens under EU law (rules determining which national law applies to cross-border token transactions, similar to Rome I for contracts or the Hague Securities Convention for intermediated securities). Different **ownership models** are explored, including: the token is the asset by law (ownership rights constituted directly by the ledger entry); the token replaces (immobilises) existing securities through entry into a DLT register; a functional approach whereby the law instructs on the legal consequences of entries in a DLT register, creating a uniform "digital entitlement" rule; and the token as a legal carrier of rights associated with a related (often off-chain) asset. The development of EU-level harmonisation on property law and conflict-of-law rules for tokens would be transformative for the digital securities market, providing the foundational legal infrastructure necessary for institutional-scale tokenisation, structured finance on-chain, and cross-border DLT-based capital markets activity.

Strategic implications for regulated firms

The breadth and depth of these consultations signal that significant amendments to MiCAR — and potentially to the broader financial services acquis — are under active consideration. For regulated firms,

this is not merely an exercise in regulatory monitoring: it is an opportunity to shape the framework that will govern digital asset markets in the EU for the next decade. Firms that engage substantively with the consultation process — with data, with operational experience, and with concrete proposals — will be better positioned to influence outcomes than those that wait passively for final legislative text. The following strategic implications warrant particular attention:

- **Scope expansion is probable.** The boundary between MiCAR and MiFID assets will likely be clarified, and currently unregulated activities (DeFi access, staking, lending, prediction markets) may come within scope, requiring new authorisations or compliance obligations.

- **Stablecoin regulation will evolve.** The interest prohibition, redemption mechanics, and prudential calibrations are all under active review, with direct implications for issuers and for CASPs handling stablecoins.

- **Prudential requirements may increase.** Both CASP minimum capital thresholds and the potential introduction of K-factor-style risk-sensitive requirements signal a direction towards more demanding prudential standards.

- **Global stablecoin operators face potential new constraints.** Equivalence frameworks, enhanced reporting, and additional EU-specific reserve requirements could reshape how international stablecoins are offered within the EU.

- **DeFi connectivity will carry compliance obligations.** CASPs providing access to DeFi protocols may face due diligence, certification and potential liability requirements, necessitating the development of protocol assessment frameworks.

- **Legal infrastructure for tokenisation may be built.** The exploration of EU-level harmonisation of property law treatment of tokens, ownership models, and conflict-of-law rules represents a potentially transformative development for digital securities markets and is of particular importance for credit institutions and investment firms planning tokenisation initiatives.

- **Simplification is also on the agenda.** In line with the Commission's competitiveness objectives, the consultation seeks feedback on reducing administrative burdens, which may benefit firms burdened by disproportionate Level 2 implementation measures.

Regulated firms — particularly those operating at the intersection of traditional financial services and digital assets — should not treat these consultations as a passive information-gathering exercise. The Commission is actively seeking input from market participants with operational experience, and the positions articulated in consultation responses will directly inform the legislative proposals that follow. Firms with the data, the use cases and the regulatory expertise to contribute substantively should do so — and should do so strategically, identifying the questions that most directly affect their business models and marshalling evidence accordingly.

Outlook

The breadth and ambition of these consultations leave little doubt that a significant legislative proposal amending MiCAR — and potentially adjacent instruments including MiFID II/MiFIR, the Prospectus

Regulation, the CRD/CRR framework and applicable private law instruments — is under active preparation. The Commission's dual mandate under Articles 140 and 142 MiCAR — covering both the application of the existing framework and the regulation of market developments not originally addressed — provides a wide legislative gateway, and the targeted consultation's granular, data-driven format suggests that the Commission services are already working towards concrete policy options rather than open-ended fact-finding.

Several directions of travel can be identified with reasonable confidence. The MiCAR/MiFID II perimeter will be clarified, most likely through a combination of legislative amendment and further ESMA guidance, and classification uncertainty for hybrid tokens (tokens with characteristics of multiple categories), wrapped tokens (tokens representing other tokens, often used to enable cross-chain interoperability) and governance tokens (tokens conferring voting or decision-making rights over a protocol or decentralised autonomous organisation) should diminish. The stablecoin regime will be recalibrated: the absence of any licensed ART in the EU nearly two years after MiCAR's full application is a powerful signal that the current prudential and licensing thresholds require adjustment, and the interest prohibition under Articles 40 and 50 MiCAR is likely to be relaxed or conditioned. The CASP prudential framework may move towards risk-sensitive, K-factor-style capital requirements, and new routine reporting obligations are likely, bringing CASPs closer to the supervisory expectations already applicable to investment firms.

The treatment of DeFi, staking, lending, prediction markets and perpetual futures will be the most politically and technically contested terrain. The consultation's detailed exploration of certification schemes for DeFi protocols, CASP liability for facilitated access, and the classification of prediction markets and perpetual futures under either MiFID or MiCAR suggests that legislative proposals in these areas are not a question of "if" but of "how" and "when". Firms that are already active in these spaces — or that connect clients to them — should anticipate new authorisation, conduct and liability obligations and begin assessing the operational implications now.

Perhaps the most structurally consequential outcome of this review cycle, however, may lie in the private law treatment of tokens. The Commission's willingness to explore a 28th regime, full or partial harmonisation of property law and dedicated conflict-of-law rules for digital assets signals that the foundational legal infrastructure for institutional-scale tokenisation — including ownership, transfer, collateral, insolvency treatment and good-faith acquisition — could be established at EU level within the next legislative cycle. This would be transformative for the digital securities market and would represent one of the most significant interventions in EU private law in decades.

The legislative timeline is tight. The Article 142 report on market developments and gaps is expected by 30 June 2027, alongside the Article 140 review of MiCAR's application. Any accompanying legislative proposals could enter the co-legislative process during the second half of 2027, with trilogue negotiations potentially commencing in 2028. Firms should not wait for the final legislative text to begin planning: the consultation themes — particularly on DeFi connectivity, stablecoin prudential calibration, CASP reporting and the legal treatment of tokens — are sufficiently detailed to support meaningful internal impact assessments and gap analyses today.

Three principles should, in our view, guide the review process as it unfolds — and should inform how firms frame their consultation responses:

1. **Evidence over urgency.** The review should draw on actual supervisory experience under MiCAR, not external pressure alone. Where enforcement has not yet begun — as is the case for the CASP regime in several Member States until July 2026 — conclusions about the framework's adequacy should be drawn carefully. Premature legislative intervention risks addressing problems that may resolve through operational maturity, or creating new inconsistencies before the existing framework has been properly

tested. Firms should advocate for evidence-based reform and resist calls for wholesale changes driven by developments in other jurisdictions or by political expediency.

2. **Coherence across tracks.** Multiple workstreams — the MiCAR review, the MIP, the Eurogroup digital finance workstream and the European Parliament's own-initiative report — address overlapping questions, and the risk of fragmented or contradictory outcomes is real. Clear sequencing between these tracks, and explicit coordination on cross-cutting issues such as multi-issuance, the MiCAR/MiFID II perimeter and supervisory architecture, would serve the framework better than parallel improvisation. Firms should use consultation responses to highlight where coherence is at risk and to propose sequencing that avoids regulatory uncertainty.

3. **Proportionality in scope.** Targeted clarifications where the MiCAR text has proven ambiguous — such as the classification of hybrid tokens or the treatment of multi-issuance — are not the same as a wholesale reopening of the framework. The review should distinguish between the two, focusing legislative energy on genuine gaps and interpretive uncertainties rather than revisiting settled policy choices that have not yet been tested in practice. Firms should advocate for surgical amendments where needed, while resisting scope creep that would undermine the stability and predictability that MiCAR was designed to provide.

Regulated firms should monitor the Commission's consultation outcomes closely, engage with the EBA and ESMA as technical standards and guidance develop in parallel, and ensure that their strategic planning for digital asset products, services and infrastructure reflects the direction of travel signalled by these consultations. The 31 August 2026 response deadline represents one of the most important opportunities this year to shape the next generation of EU crypto-asset regulation. Firms with the data and operational experience to contribute substantively should treat this as a strategic priority, not an administrative compliance task.

About us

PwC Legal is assisting a number of financial services firms and market participants in forward planning for changes stemming from these and related regulatory developments. We have assembled a multidisciplinary and multijurisdictional team of sector experts to support clients in navigating the challenges and seizing the opportunities presented by the evolving EU digital assets framework.

In relation to these MiCAR consultations specifically, PwC Legal is providing:

- **General analysis and horizon scanning.** Ongoing monitoring of consultation outcomes, Commission reports under Articles 140 and 142 MiCAR, ESA technical standards and guidance, and parallel political workstreams (MIP, Eurogroup, European Parliament), with regular briefings to keep clients ahead of regulatory developments.

- **Consultation drafting support.** Assistance in preparing data-driven, strategically framed responses to both the public and targeted consultations, including evidence gathering, position development, and drafting of submissions that articulate client perspectives in terms that resonate with policymakers.

- **Tailored impact assessments.** Bespoke analysis of how specific consultation questions and potential legislative outcomes affect individual clients' business models, product offerings, licensing structures and operational arrangements — enabling clients to identify which questions matter most to them and to allocate advocacy resources accordingly.

- **Advocacy strategy and positioning.** Advice on what positions to advocate in consultation responses and in direct engagement with policymakers, regulators and trade associations — including how to frame arguments, what evidence to marshal, and how to build coalitions with other stakeholders.

- **EU market structuring.** Guidance on how to structure EU operations — including entity selection, licensing pathways, supervisory relationships and cross-border arrangements — in light of the direction of travel signalled by the consultations and the likely shape of MiCAR 2.0.

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 more than 2,500 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.

Contact

Dr. Michael Huertas
Tel: +49 160 97375760
michael.huertas@pwc.com

Vorname Nachname
Tel: +49 123 4567890
vorname.nachname@pwc.com

EU RegCORE Team
de_regcore@pwc.com

www.pwc.de