



**Cardano
Foundation**

Response

to the European Commission's
targeted consultation on the
review of Regulation on the
Markets in Crypto-Assets (MiCAR)

30 September 2026

This response document generally follows the structure of the consultation questionnaire and aims at providing additional context and substantive input on areas that the Cardano Foundation considers particularly relevant to the review of MiCAR. Rather than addressing every question individually, the document focuses on selected themes and issues raised throughout the consultation, acting as a complementing document to the answers provided in the online questionnaire.

The response is structured along the following sections: (1) Regulatory perimeter and asset classification, (2) ART and EMT (stablecoin) regimes, (3) Environmental and sustainability disclosures, (4) DeFi, staking and direct participation in public infrastructure, (5) Non-fungible tokens and related services, (6) Prediction markets and perpetual futures, (7) Legal treatment of tokens, and (8) Regulatory fragmentation, supervisory convergence and third-country access.

1 Regulatory perimeter and asset classification

(Questionnaire Part 1)

1.1 Preserving the MiCAR/MiFID II regulatory perimeter

The Cardano Foundation is of the opinion that the current regulatory perimeter is, in principle, adequate: crypto-assets that qualify as financial instruments should continue to be governed by the relevant sectoral legislation, including MiFID II, MiFIR, MAR, the Prospectus Regulation and others, as applicable. Conversely, MiCAR should continue to apply to those crypto-assets that are not already regulated as financial instruments or another sectoral regime.

Classification of an instrument should follow the legal rights, obligations, functions, and economic substance of the relevant asset or arrangement rather than the technology used to issue, record, or transfer it. A tokenized share, for example, should not be subject to a different regulatory framework merely because ownership and transfers are recorded on a distributed ledger rather than through conventional market infrastructure. Conversely, technical characteristics, such as the use of a particular token standard, should not determine classification where the substantive characteristics of the asset indicate otherwise. Maintaining this principle is important to preserve a coherent regulatory perimeter between MiCAR and MiFID II and to avoid parallel or divergent treatment of economically equivalent instruments. Classification should therefore continue to be based on what an asset represents and the rights and economic exposure it confers, rather than how it is technically implemented.

1.2 Fragmented interpretation at the MiCAR/MiFID II boundary

The Foundation recognizes that ESMA's Guidelines on the qualification of crypto-assets as financial instruments and the joint ESA standardized classification test provide an important common framework for market participants and competent authorities. Their express objective is to promote convergence and a common approach to classification under MiCAR. Nevertheless, classification remains challenging in cases where crypto-assets combine characteristics associated with different regulatory categories or where the relevant concepts under existing financial-services legislation do not produce a sufficiently clear outcome.

This is particularly relevant at the boundary between MiCAR and MiFID II. The classification of a crypto-asset as a financial instrument necessarily depends on the interpretation of the relevant MiFID II categories, including the concept of a transferable security. While the ESMA Guidelines provide criteria for applying these concepts to crypto-assets, the underlying legal concepts were not developed specifically for crypto-assets and may retain elements that depend on their implementation or interpretation at Member State level. The resulting uncertainty is significant because classification determines the applicable regulatory framework and, consequently, the relevant authorization, disclosure, and conduct requirements. Relatively limited differences in an asset's rights, governance, custody, or redemption arrangements may therefore result in materially different regulatory treatment.

Classification should consequently not be regarded merely as an initial procedural step. It is a central determinant of the regulatory treatment of a crypto-asset and requires a sufficiently predictable and consistent methodology across the EU. Where materially similar structures remain susceptible to different interpretations, market participants face duplicated legal analysis and uncertainty when making an asset available across Member States, undermining the objective of a harmonized EU framework.

1.3 Hybrid characteristics and classification over time

Classification becomes particularly challenging where a crypto-asset combines rights, functions, or economic characteristics that point toward different regulatory categories. A token may, for example, provide functional access to a network or service while also conferring governance, redemption, or revenue-related rights, or provide exposure to a pool of assets without clearly constituting a direct interest in those assets. While the existing ESMA Guidelines and joint ESA standardized classification test provide useful criteria for assessing crypto-assets, there remains limited guidance on how such overlapping or potentially conflicting characteristics should be weighed against each other in determining the applicable classification. As a result, the classification of hybrid or multi-functional crypto-assets can remain difficult even where their individual characteristics are readily identifiable. This limits the market's potential to innovate within a clear regulatory framework.

Greater clarity is also needed as to how classification should be assessed where the characteristics or use of a crypto-asset evolve over its lifecycle. Crypto-assets and the arrangements surrounding them are not necessarily static: rights attached to a token may be amended; functionality may be added or

removed; governance arrangements may change; an initially closed application may become transferable or interoperable; or the economic use of an asset may develop in ways that were not anticipated at issuance. MiCAR itself recognizes that the classification of a crypto-asset may be challenged by competent authorities over its lifetime.

The issue is particularly important in open and composable ecosystems because changes in how an asset can be used may occur without any action by, or control of, the original issuer, offeror, or person responsible for the crypto-asset white paper. An NFT originally issued as a unique in-game asset or digital collectible could, for example, subsequently be integrated by independent developers into another game, used as an access credential, or accepted as collateral in a third-party application. Such subsequent uses do not necessarily change the rights inherent in the NFT or its underlying uniqueness. While the new application or arrangement may require a separate regulatory assessment, its creation should not change the classification of the underlying asset or retroactively affect the regulatory position of persons that neither introduced nor control the additional functionality (i.e. typically the issuer). This distinction is particularly relevant for permissionless infrastructure, where composability enables functionality to be built around existing assets by independent participants.

A substance-over-form approach must therefore be capable of accommodating both multiple characteristics at a given point in time and material changes over the lifecycle of an asset. At the same time, uncertainty as to whether incremental technical or functional developments, including developments outside the control of the original issuer or offeror, could cause an asset to move between MiCAR, MiFID II, or another regulatory regime creates legal and operational uncertainty and may discourage legitimate innovation and interoperability. Relatively limited differences in design, governance, custody, or redemption mechanics can result in materially different regulatory treatment, while divergent interpretations may produce inconsistent supervisory expectations across Member States.

1.4 Recommendations

Against this background, the Foundation considers that the existing regulatory perimeter would benefit from further guidance to improve the consistency and predictability of crypto-asset classification, including where different rights or arrangements interact or an asset evolves over time.

Accordingly, the Foundation would suggest preserving the existing MiCAR/MiFID II perimeter while improving the predictability of its application. Further guidance should: (i) reaffirm that technical form alone is not determinative and clarify the substantive characteristics relevant to classification; (ii) promote consistent application of relevant MiFID II concepts across Member States where they determine whether a crypto-asset falls outside MiCAR; (iii) clarify that the underlying crypto-asset and separate arrangements or rights created around it should be assessed on their respective substance, including for wrapped assets, liquid staking tokens, and comparable structures; (iv) establish a materiality threshold for reassessment where the substantive characteristics of an asset change over its lifecycle; (v) distinguish changes to the asset itself from uses or functionality independently

developed by third parties; and (vi) clarify the consequences of a genuine reclassification, including proportionate transitional arrangements.

The latter is particularly important where an asset is already held by users, integrated into applications, or admitted to trading when its classification changes. Taken together, these measures would preserve the flexibility and technology neutrality of the existing substance-over-form approach while reducing uncertainty at the MiCAR/MiFID II perimeter and providing greater legal certainty for market participants and developers.

2 ART and EMT (stablecoin) regimes

(Questionnaire Part 2)

In the context of MiCAR's ART and EMT (Stablecoin) regimes, the Foundation considers that the review should focus in particular on areas where evolving market structures and interaction with other EU legislation create legal uncertainty or overlapping requirements. This is particularly relevant for global and multi-issuer stablecoin arrangements involving third-country issuers and for the interaction between MiCAR and EU payment-services legislation in relation to EMTs. Addressing these issues would provide greater regulatory clarity while allowing the framework to accommodate different stablecoin structures and uses.

2.1 Global and multi-issuer stablecoins

The treatment of stablecoins jointly issued by EU-authorized and third-country entities remains an area where greater legal certainty would be beneficial. Cross-border multi-issuance can raise legitimate prudential concerns, particularly where fungible tokens circulate freely between jurisdictions and an EU issuer may depend on liquidity or reserve transfers from a third-country co-issuer during periods of stress. However, these risks depend primarily on the design of the arrangement and the allocation and transferability of liabilities, reserves, liquidity, and losses, rather than on multi-issuance as such. From the Cardano Foundation's perspective, this distinction is particularly relevant for stablecoins issued on public permissionless blockchains, where tokens can be transferred globally and the underlying infrastructure generally records blockchain addresses rather than the jurisdiction or residence of individual holders. Consistent with a technology-neutral approach, MiCAR should therefore expressly accommodate multi-issuance arrangements subject to appropriate safeguards, including a clearly accountable EU co-issuer without making it responsible for the entire global supply, an enforceable allocation of liabilities and reserves, uniform redemption rights across fungible units, adequate information sharing and stress testing, and arrangements ensuring timely access to liquidity where required. EU exposure should similarly be determined through a practicable and standardized methodology rather than requirements dependent on information that the underlying infrastructure does not provide. This would address the specific risks associated with global multi-issuance while providing greater legal certainty for EU-regulated entities seeking to participate in such arrangements.

2.2 Interaction between MiCAR and PSD3/PSR

The interaction between MiCAR and payment-services legislation remains particularly important for EMTs. EMTs are regulated as crypto-assets under MiCAR while also being treated as electronic money, meaning that certain services involving EMTs can additionally constitute payment services. The developing PSD3/PSR framework addresses part of this overlap through targeted exclusions and a streamlined authorization route for MiCAR-authorized CASPs providing payment services involving EMTs. Nevertheless, the underlying dual-regime structure remains.

The objective should be to ensure that additional payment-services requirements apply where an activity creates payment-specific risks that are not already adequately addressed under MiCAR, rather than requiring duplicative authorization and compliance solely because an EMT is involved. In particular, custody of an EMT should be distinguished from the execution of a payment transaction, and the use of an EMT as one leg of a crypto-asset trade should not in itself determine whether a payment service is being provided. Implementation of PSD3/PSR should also ensure that information and assessments already provided under MiCAR are reused to the greatest extent possible.

More fundamentally, the Commission should consider integrating EMTs directly into the electronic money and payment-services framework, rather than maintaining a separate regime under MiCAR, thereby reducing regulatory complexity while retaining safeguards addressing the specific characteristics of DLT-based electronic money.

2.3 Recommendations

The Foundation would therefore recommend targeted clarification of the existing framework in two areas: (i) MiCAR should expressly accommodate global and multi-issuer stablecoin arrangements, including arrangements involving EU and third-country co-issuers, subject to clear and enforceable allocation of responsibilities, reserves, redemption obligations, and liquidity arrangements. The framework should reflect the characteristics of globally transferable tokens issued on public permissionless blockchains and should not make an EU co-issuer responsible for the entire global supply merely because fungible units can circulate across jurisdictions. (ii) The interaction between MiCAR and PSD3/PSR should minimize duplicative authorization and compliance requirements, with additional payment-services obligations applying where the relevant activity creates payment-specific risks not already addressed under MiCAR. As a more fundamental alternative, the Commission should consider a more fundamental consolidation of the EMT regime within the electronic money and payment-services framework to eliminate the underlying regulatory overlap.

These clarifications would address identifiable regulatory risks and overlaps without unnecessarily restricting viable issuance models or imposing parallel regulatory requirements on the same activities.

3 Environmental and sustainability disclosures

(Questionnaire Part 3, 3.5.)

The Foundation is a strong proponent of transparency, accountability and sustainability. Cardano was an early adopter of the MiCAR environmental and sustainability disclosure requirements, with relevant sustainability indicators made openly available to support regulatory compliance across the ecosystem and provide users of the technology with a neutral and reliable information basis.

3.1 Methodological and practical limitations

Through the Foundation's early work on environmental and sustainability disclosures, we identified certain practical limitations in the current framework. In particular, while the disclosure requirements pursue a legitimate transparency objective, their effectiveness is constrained where the underlying metrics depend heavily on methodological assumptions, are not consistently comparable across different blockchain architectures, or are calculated independently by multiple market participants for the same underlying network.

Measuring the environmental footprint of a public, permissionless blockchain necessarily involves estimation, as there is generally no single operator with complete information on all nodes, their hardware, geographic location, electricity sources or utilization. Reported figures may therefore vary depending on the methodology, system boundaries, data sources and assumptions used. Greater methodological standardization can improve comparability, but may come at the expense of accuracy where materially different blockchain architectures are assessed using uniform assumptions or metrics. Sustainability disclosures should therefore seek an appropriate balance between comparability and an accurate representation of the characteristics of the relevant network, supported by transparent disclosure of the methodology and its limitations.

This is particularly relevant for architecture-dependent indicators such as energy consumption per transaction. Where the energy required to maintain consensus and ledger integrity does not increase proportionally with transaction volume, such a metric may reflect network utilization as much as the efficiency of the underlying infrastructure. Requiring multiple issuers, offerors and CASPs to apply standardized metrics to the same network can consequently produce comparable figures without necessarily producing the most meaningful ones, while alternative methodologies may generate different results that more accurately reflect the relevant architecture. Methodological differences should therefore not be discouraged as such, provided that they are transparent, appropriately substantiated and allow users to understand the basis for the resulting figures.

3.2 Recommendations

The sustainability disclosure framework should be retained, but further developed to strike an appropriate balance between comparability and an accurate representation of different blockchain architectures. The Foundation would recommend: (i) standardizing methodologies and assumptions

where this supports meaningful comparison without imposing metrics that are unsuitable for materially different architectures; (ii) reviewing architecture-dependent indicators, such as energy consumption per transaction, to ensure that they provide meaningful and technologically neutral information; and (iii) allowing alternative methodologies where these provide a more accurate assessment of the relevant network, provided that the methodology, underlying assumptions and material limitations are transparently explained and sufficiently substantiated.

The objective should be to provide users with reliable, consistent and relevant information on the environmental characteristics of different blockchain infrastructures, without creating artificial comparability or precision where the underlying architectures and available data require different methodological approaches.

4 DeFi, staking and direct participation in public infrastructure

(Questionnaire Part 4, 4.1. and 4.2.)

4.1 DeFi should not constitute a separate regulatory category

The Foundation does not consider that the scope of MiCAR should be extended to create a separate regulatory regime for DeFi. DeFi encompasses materially different technological and organizational arrangements, ranging from applications operated by identifiable persons with substantial control over user assets and key functionality to immutable smart contracts and decentralized protocols that operate without an intermediary capable of performing regulatory obligations. Introducing a dedicated DeFi regime would require drawing regulatory boundaries around inherently fluid concepts of decentralization, introducing an entirely new taxonomy and associated borderline cases that risk adding further ambiguity and legal uncertainty to an already complex regulatory framework.

The appropriate starting point should remain functional and technology-neutral. Where an identifiable person provides a regulated crypto-asset or financial service through a decentralized or partially decentralized arrangement, the use of smart contracts or decentralized infrastructure should not, in itself, remove that activity from the applicable regulatory framework. Conversely, the mere availability of software or infrastructure that enables users to transact without an intermediary should not result in that infrastructure, its developers, or other participants being treated as providers of the services that users or applications perform through it. The regulatory analysis should focus on the person actually performing the relevant function and exercising control over it.

4.2 Distinguishing infrastructure from applications and services

This distinction is particularly important for public permissionless blockchain infrastructure. A blockchain network provides general-purpose functionality for recording and validating transactions and executing software. Smart contracts and protocols deployed on that infrastructure may, in turn,

provide functionality on which further applications and user interfaces are built. These layers should not be treated as a single regulated service merely because they interact technically.

Regulatory analysis should therefore distinguish between the underlying infrastructure, protocols or smart contracts, and persons providing applications or services around them. For example, an identifiable operator may provide a managed interface, select liquidity pools, route transactions, custody user assets, or retain discretionary control over key functionality. Such activities can be assessed under existing regulatory frameworks on their own terms. This should not result in the underlying blockchain, autonomous software, or persons merely developing or maintaining that infrastructure being attributed the regulated activity of the application.

This separation is also important because permissionless infrastructure is inherently composable. Independent parties can deploy applications and combine existing protocols without the involvement or permission of the developers of the underlying infrastructure. Regulation that attributes downstream applications to infrastructure providers or protocol developers would therefore impose obligations on persons who may have neither control over the relevant activity nor the practical ability to comply with those obligations.

4.3 Decentralization and functional control

The assessment of decentralization should be multi-factor and focus primarily on functional control and intermediation. Relevant factors may include whether an identifiable person or coordinated group can custody or control user assets; determine or intervene in transactions; materially alter, pause, or upgrade key functionality; control access; determine material fees; or otherwise exercise ongoing discretionary control over the service. Concentration of governance power may similarly be relevant where it results in effective control.

Other factors identified in the consultation, such as open-source status or marketing by an identifiable person, may contribute to the assessment but should not, in isolation, determine whether an arrangement is sufficiently decentralized. The analysis should ultimately identify whether there is an identifiable person performing the relevant service and having sufficient control to bear the corresponding regulatory obligations.

4.4 Staking as participation in blockchain infrastructure

Particular care is required in relation to staking. The consultation describes staking as involving the immobilization of crypto-assets and notes that staking services often involve custody of the relevant crypto-assets or private keys. On that basis, it observes that staking services may be ancillary to custody services already regulated under MiCAR. While this describes certain custodial staking models, it does not capture the full range of staking mechanisms used by proof-of-stake networks.

Staking is fundamentally a component of the consensus and security mechanism of proof-of-stake blockchain infrastructure. Depending on the protocol, holders may participate directly or delegate

participation without transferring ownership or control of their crypto-assets to another person. On the Cardano blockchain, for instance, ADA holders may delegate their stake to a stake pool while retaining full control of their ADA; the assets remain available to the holder and are not transferred to the stake pool operator. They are also not locked or limited in their disposability. Rewards arise programmatically under the protocol rules in connection with participation in the network's consensus mechanism.

It is therefore important to distinguish protocol-native staking from the provision of an intermediated staking service. A person taking custody of clients' crypto-assets, exercising discretion over their deployment, pooling assets, or undertaking contractual obligations toward clients may already perform activities to which existing regulatory requirements apply. Those arrangements should be assessed according to the functions actually performed. By contrast, direct staking by a holder, non-custodial delegation, operation of validator infrastructure, or the programmatic distribution of protocol rewards should not in themselves constitute a separately regulated crypto-asset service.

Extending MiCAR to staking as such would risk treating participation in the operation and security of public blockchain infrastructure as a financial service. The more appropriate distinction is whether an intermediary provides a service to a client and assumes custody, discretion, or other responsibilities giving rise to risks that warrant regulation. The Foundation therefore considers that the current approach of not separately regulating staking should be maintained, while guidance could more clearly distinguish custodial or otherwise intermediated staking services from protocol-level participation and non-custodial delegation.

4.5 Self-custody and direct interaction with public blockchain infrastructure

The same distinction should apply to self-custody and direct interaction with public blockchain networks. The ability of a person to hold its own private keys and interact directly with a blockchain, smart contract, or protocol is a fundamental characteristic of public permissionless infrastructure and should not itself constitute the provision or receipt of a regulated crypto-asset service.

Self-custody should therefore be clearly distinguished from custody provided "on behalf of clients". Similarly, software that enables a user to create or manage keys, submit transactions, or interact directly with a public blockchain should not automatically be treated as an intermediary merely because it facilitates technical access to the network. Regulation should attach to the regulated function actually performed and the degree of control exercised over another person's assets or transactions, rather than to technical connectivity to public blockchain infrastructure.

4.6 Lending and borrowing of crypto-assets

The Foundation does not consider that lending and borrowing should be introduced as separate crypto-asset services under MiCAR solely because the relevant transaction concerns crypto-assets. Lending and borrowing are established economic activities whose regulatory treatment depends on the nature of the arrangement, the parties involved, and the functions performed. Depending on its structure, a lending arrangement may already fall within existing European or national regulation, in

particular banking regulation and consumer-credit legislation. Conversely, certain lending arrangements may not constitute a regulated financial service under the existing framework. The use of a crypto-asset as the asset lent, borrowed, or provided as collateral should not, by itself, change that regulatory analysis.

This distinction is particularly relevant given the diversity of crypto-asset lending models. A centralized party that takes control of clients' assets, pools them, manages counterparty exposure, and lends them onward presents materially different legal and risk considerations from a bilateral loan between sophisticated parties or direct interaction with an autonomous lending protocol. Those arrangements should be assessed according to their respective substance rather than brought within a single regulatory category of "crypto-asset lending". EBA and ESMA similarly recognize that lending and borrowing are not currently crypto-asset services under MiCAR and identify materially different business models and risks within this area.

For decentralized lending protocols, the infrastructure/application distinction described above should continue to apply. Where an identifiable party operates or controls a lending service, its activities should be assessed under the regulatory framework applicable to the functions actually performed. Where users transact directly through autonomous smart contracts without an intermediary exercising control over the transaction or taking custody of assets, the existence of lending functionality should not automatically result in entity-based licensing requirements being attributed to the protocol, its developers, or the underlying blockchain infrastructure.

Accordingly, any identified regulatory gaps should first be assessed by reference to the particular activity and risk concerned. Where a genuine gap exists (for example, in relation to consumer protection, custody of client assets, or intermediary counterparty risk) a targeted response may be appropriate. The Foundation would not, however, support bringing lending and borrowing generally within MiCAR merely because the relevant activity concerns crypto-assets.

4.7 Addressing risks without extending MiCAR

The absence of specific MiCAR regimes for certain activities does not mean that associated risks should be disregarded. Smart-contract vulnerabilities, governance concentration, oracle and bridge dependencies, liquidity risks, and risks arising from intermediation may require appropriate risk management. However, the objective should be to apply and enforce existing regulatory regimes and supervisory tools coherently to the activities and persons they are intended to address, instead of creating additional regulation or extending the scope of MiCAR merely because crypto-assets are involved.

Certification or independent technical assurance may provide useful information on matters such as smart-contract security but should remain voluntary. Certification is necessarily limited to its defined scope and the circumstances existing at the time of assessment; it cannot guarantee future governance decisions, liquidity conditions, oracle behavior, or interactions with other protocols.

4.8 Recommendations

The Foundation would therefore recommend not extending the scope of MiCAR to establish separate regulatory regimes for DeFi, staking, or other forms of direct participation in public blockchain infrastructure. Existing regulatory frameworks should continue to apply where an identifiable party performs a regulated activity, irrespective of whether that activity is delivered through centralized or decentralized technology.

With respect to lending and borrowing, these activities should not be introduced as separate crypto-asset services under MiCAR solely because they concern crypto-assets. Their regulatory treatment should continue to depend on the substance of the relevant arrangement and the functions performed, including the application of other EU or national regulatory frameworks where their respective conditions are met. Any residual regulatory gaps should first be specifically identified and assessed before additional measures are considered.

This approach would preserve a technology-neutral and function-based regulatory framework, while allowing identified risks to be addressed through the coherent application and enforcement of existing regulation and targeted measures.

5 Non-fungible tokens and related services

(Questionnaire Part 4, 4.3.)

5.1 The existing exclusion should be maintained

The Foundation does not consider that the current exclusion of genuinely unique and non-fungible crypto-assets from MiCAR should be narrowed or that a separate regulatory regime should be introduced for providers of services relating to such assets. As recognized in the consultation, Article 2(3) MiCAR excludes crypto-assets that are unique and not fungible with other crypto-assets. This distinction should be maintained and, where necessary, clarified to provide greater certainty as to its application.

More fundamentally, the treatment of NFTs illustrates an important principle for the scope of MiCAR: the fact that an asset is created, represented, held, or transferred using distributed ledger technology does not, in itself, make that asset financial in nature or justify subjecting services relating to it to financial-market regulation. Regulatory treatment should instead follow the substantive characteristics and function of the asset and the activity performed in relation to it.

An NFT may, for example, represent a unique in-game item, a digital collectible, a trading card, an event ticket, a membership or access credential. The same or economically comparable items may exist in conventional digital databases or physical form. The use of a blockchain to establish provenance, ownership, transferability, or interoperability does not change their underlying economic nature. A digital trading card should not become subject to financial-services regulation merely

because its ownership is recorded on a public blockchain rather than in the database of, for instance, a game publisher or closed-loop marketplace.

The same principle should apply to services relating to such assets. A marketplace facilitating transactions in digital collectibles or in-game items should not become a regulated financial intermediary solely because those items are implemented as NFTs. Similarly, software enabling users to hold or transfer NFTs should not become a regulated custody or transfer service merely because the relevant digital object meets the broad technical definition of a crypto-asset. Extending MiCAR on that basis would make the choice of technical infrastructure, rather than the substance of the underlying activity, the determining factor for regulation.

5.2 Substance rather than the NFT label

At the same time, the NFT designation should not provide a means of avoiding otherwise applicable financial regulation. An asset described or technically implemented as an NFT may nevertheless represent a financial instrument, a fractional interest, or another regulated product. Such arrangements should continue to be assessed according to their substantive characteristics under the relevant sectoral legislation.

However, particular caution is required when using an NFT's issuance as part of a series or collection as an indicator that it should fall within MiCAR. While this may be relevant to the assessment in certain circumstances, an asset being part of a collection does not, in itself, establish fungibility or demonstrate characteristics warranting financial-market regulation. The concept of a "collection" is exceptionally broad in digital environments and may describe assets that remain substantively distinct in their characteristics, functionality, scarcity, or use.

For example, a game may contain a collection or set of individually distinguishable weapons, armor, characters, or other items. Those items may use the same technical standard, form part of the same release or "set", and be traded through the same marketplace. None of those characteristics necessarily makes the individual items fungible or economically equivalent. Similar considerations arise for digital art, collectibles, event-related items, and other categories where assets may naturally be organized or designated as collections.

Using the inclusion of an asset in a series or collection as a significant proxy for fungibility can therefore produce an unnecessarily broad and potentially disproportionate regulatory perimeter. Developers and businesses may be unable to determine with sufficient confidence whether issuing several related digital items transforms an otherwise non-financial product into a MiCAR-regulated crypto-asset. This is particularly problematic for innovative applications of DLT outside financial markets, as developers may need to undertake a financial-regulatory classification analysis merely because digital items are issued on-chain as part of a broader product or collection. The resulting legal uncertainty and potential compliance burden may discourage the use of public blockchain infrastructure for gaming, digital identity, ticketing, collectibles, intellectual property, and other non-financial applications without a corresponding financial-market or investor-protection rationale.

The Foundation therefore considers that the weight attributed to issuance as part of a series or collection should be reconsidered. The decisive question should remain whether the assets are substantively fungible or interchangeable and what rights and economic characteristics they confer. Collection size, common issuance, use of a common technical standard, common branding, or the existence of a secondary market may provide contextual information, but should not independently or presumptively bring otherwise unique assets within the scope of MiCAR.

5.3 Subsequent use and composability

Particular care is also required where NFTs acquire additional uses after issuance. As discussed in relation to asset classification, public blockchain infrastructure allows third parties to build applications around existing assets without involvement of the original issuer or creator. An NFT initially representing a collectible may subsequently be used by an independent application as an access credential, accepted as collateral by a lending protocol, or incorporated into another digital service.

Such downstream use should not automatically alter the classification of the underlying NFT. The analysis should distinguish between the asset itself and a separate arrangement created around it. For example, if a third party creates fungible tokens representing fractional economic interests in a valuable NFT, the resulting fractionalized instrument may require a separate regulatory assessment. That does not necessarily mean that the underlying NFT itself has ceased to be unique and non-fungible.

Reassessment should therefore be warranted where there is a material change to the rights or economic characteristics of the asset itself, rather than merely because third parties develop additional uses for it. This distinction is particularly important for public, permissionless and composable infrastructure, where neither the original creator nor the holder of an NFT necessarily controls the applications through which other persons subsequently choose to use it.

5.4 NFT-related services should not become a separate MiCAR category

Against this background, the Foundation does not consider that providers of services relating to NFTs should be brought within MiCAR as a separate category. Such an approach would effectively extend financial-services regulation based on the technical representation of the relevant asset rather than the economic substance of the service.

This does not imply that NFT-related activities should be exempt from other applicable legislation or compliance obligations. Depending on the activity and circumstances, consumer protection, intellectual property, contractual, data protection, anti-money laundering, gambling, or other rules may apply. The relevant question is therefore not whether an activity involves an NFT, but what the asset represents and what activity the service provider actually performs.

The introduction of a dedicated MiCAR regime for NFT service providers would also create an artificial distinction between functionally equivalent activities. A service facilitating transactions in digital game items, collectibles, tickets, or similar assets could face materially different regulatory treatment

depending solely on whether the relevant items are recorded in a conventional database or represented on a distributed ledger. Such an outcome would be inconsistent with a technology-neutral regulatory approach and hinder respective innovation.

5.5 Recommendations

The Foundation would therefore recommend maintaining the existing exclusion for genuinely unique and non-fungible crypto-assets and not extending MiCAR to providers of services relating to NFTs as a separate regulated category.

The application of the NFT exclusion should instead be clarified and made more predictable. In particular, the role attributed to issuance as part of a series or collection should be reconsidered. Inclusion in a collection, common issuance, use of the same technical standard, common branding, or availability on the same marketplace should not independently or presumptively determine fungibility. The assessment should focus on the substantive interchangeability of the assets and the rights and economic characteristics they confer.

Guidance should also distinguish changes to an NFT itself from independent downstream uses or arrangements created by third parties. Where an NFT is fractionalized, wrapped, or incorporated into another arrangement, that separate arrangement should be assessed on its own characteristics rather than automatically changing the classification of the underlying asset.

More broadly, the treatment of NFTs should reinforce a central principle for the future scope of MiCAR: the use of DLT should neither remove a financial product from otherwise applicable financial regulation nor transform a non-financial asset into a financial product. Where an NFT or NFT-related arrangement has the substantive characteristics of a financial instrument or another regulated product, the relevant sectoral regulation should apply. Where it represents a non-financial digital or physical item, its representation and transfer as a crypto-asset does not, in itself, provide a sufficient basis for subjecting the asset or related service providers to MiCAR. This distinction is important both for a proportionate regulatory perimeter and to foster an open and innovation-friendly environment in the EU.

6 Prediction markets and perpetual futures

(Questionnaire Part 4, 4.4.)

6.1 Existing regulatory frameworks should determine the treatment

The Foundation does not consider that prediction markets or perpetual futures warrant an extension of the scope of MiCAR. Both categories illustrate the importance of distinguishing the underlying activity or product from the technological infrastructure through which it is implemented.

Prediction markets can take materially different forms depending on their structure and subject matter. In particular, an arrangement may constitute gambling or betting, a derivative or other financial

instrument, or potentially fall under other applicable legal frameworks. The use of DLT, smart contracts, or crypto-assets to facilitate participation or settlement should not alter that analysis. Where an activity constitutes gambling under applicable law, the relevant gambling framework should apply; where an instrument constitutes a derivative or other financial instrument, the applicable financial-services framework should apply.

Recent developments in the United States illustrate the importance of this distinction. Prediction markets and event contracts have generated significant questions concerning the boundary between derivatives regulation and state gambling laws, while the CFTC regulates event contracts falling within its federal derivatives jurisdiction. These developments demonstrate that the relevant regulatory question concerns the substantive nature of the particular activity or contract and the applicable regulatory perimeter, rather than whether the market happens to operate using blockchain infrastructure.

The same principle applies to perpetual futures. Perpetual contracts are derivative instruments notwithstanding that crypto-assets may constitute the underlying reference asset or that trading and settlement may use DLT. In a recent example from May 2026, the CFTC approved a bitcoin perpetual contract as a futures contract under the existing derivatives framework and separately confirmed the treatment of certain crypto-asset perpetuals as foreign futures in the United States. The EU would do well to similarly clarify treatment of such arrangements under existing regulation in place of creating new regulatory categories based on the underlying technology.

6.2 Recommendations

The Foundation would therefore recommend not extending MiCAR to prediction markets or perpetual futures as separate categories. Their regulatory treatment should follow their substantive legal and economic characteristics under existing gambling, financial-services, derivatives, consumer-protection, or other applicable legislation.

In particular, the use of DLT, smart contracts, or crypto-assets should neither determine the regulatory classification of the activity nor bring the underlying public blockchain infrastructure within scope. Any identified enforcement gaps should primarily be addressed through effective application and enforcement of the relevant existing legal framework rather than through an expansion of MiCAR.

7 Legal treatment of tokens

(Questionnaire Part 4, 4.6. and 4.7.)

7.1 Targeted harmonization through conflict-of-law amendments

The Foundation supports improving legal certainty regarding the cross-border treatment of tokens, but does not consider that this requires extensive harmonization of Member States' property law concepts or legal traditions. The principal objective should be to establish clear and harmonized conflict-of-laws

rules determining which national law applies to ownership, transfer, third-party effects, security interests, and related proprietary questions. This would address an important source of uncertainty in cross-border transactions while allowing the substantive consequences to continue to be determined under the applicable national law.

Where a token has an identifiable issuer or other relevant counterparty, the applicable law should, as far as practicable, follow a predictable connecting factor associated with that issuer, counterparty, or the governing terms of the asset. This is preferable to connecting factors based primarily on the technical location of a distributed ledger or individual network participants, which may be difficult or impossible to determine for public and decentralized networks.

The same principle should apply to tokenized assets and claims. Where a token represents or evidences rights in an underlying asset or against an issuer or other counterparty, tokenization should not displace the law otherwise governing those rights. The applicable law should continue to determine the existence, nature, and enforceability of the underlying right, while harmonized conflict-of-laws rules could clarify the legal effect of holding and transferring its on-chain representation.

7.2 Recommendations

The Foundation would therefore favor a targeted EU conflict-of-laws framework rather than substantive harmonization of national property law. Such an approach could materially improve cross-border legal certainty while respecting Member States' established private-law systems and avoiding the creation of a separate property-law regime solely because an asset or right is represented using DLT.

8 Regulatory fragmentation, supervisory convergence and third-country access

(Questionnaire Part 4, 4.8.)

8.1 Ensuring regulatory coherence across the EU

A central objective of MiCAR is to establish a harmonized regulatory framework for crypto-assets across the EU. The effectiveness of that framework therefore depends not only on harmonized Level 1 requirements, but also on their consistent interpretation, authorization, supervision, and enforcement across Member States.

Initial implementation has demonstrated the potential for differences in supervisory interpretation and practice between national competent authorities. This is particularly relevant where MiCAR relies on concepts requiring substantive or fact-specific assessments, including asset classification, authorization requirements, and the regulatory treatment of novel business models. Differences in interpretation, authorization processes, or supervisory expectations can undermine the benefits of a

harmonized framework and create incentives to select jurisdictions based on regulatory or supervisory practice, promoting forum shopping and regulatory arbitrage.

Such fragmentation also has a direct impact on compliance costs and market competitiveness. Where market participants must accommodate different interpretations, supervisory expectations, or administrative practices across Member States, the resulting costs are likely to affect smaller and emerging businesses disproportionately. Large established firms may be better positioned to maintain extensive legal, compliance, and regulatory functions and absorb the costs associated with divergent national practices. Smaller and innovative businesses may instead face a material barrier to entering or scaling within the EU market. This can inadvertently favor established market participants, reduce competition, and discourage innovation, notwithstanding MiCAR's objective of creating a common European framework.

The Foundation therefore considers continued supervisory convergence an important priority. ESMA and national competent authorities should seek consistent interpretations, authorization expectations, and supervisory outcomes across Member States, while avoiding additional national requirements that effectively recreate fragmentation within the Single Market.

8.2 Third-country access, reverse solicitation and consumer choice

A related consideration is the treatment of third-country service providers. Article 61 MiCAR establishes a narrowly framed exception where an EU client seeks a service from a third-country firm at its own exclusive initiative, while excluding reliance on that exception where the firm has solicited the client in the EU. ESMA has subsequently issued guidelines intended to promote consistent application and prevent circumvention.

The Foundation supports effective safeguards against attempts to circumvent MiCAR through artificial reliance on reverse solicitation. At the same time, the framework should preserve meaningful consumer and investor choice where an EU user genuinely seeks access to a third-country service on its own initiative. In globally integrated crypto-asset markets, users may have legitimate reasons to access services, assets, functionality, or liquidity that are not available through EU providers. Protecting users should not equate to preventing them from making such choices.

The objective should therefore be to maintain an appropriate balance between market access, consumer choice, and regulatory control. Genuine reverse solicitation should remain practically available, while clear requirements and effective enforcement should prevent third-country providers from using the exception to actively target the EU market without complying with applicable requirements.

More generally, the review should consider whether the current framework provides sufficiently proportionate routes for interaction with appropriately regulated third-country providers. An equivalence or other structured third-country access regime, potentially differentiated according to client type and the services concerned, could provide greater regulatory control and legal certainty than reliance on reverse solicitation alone. Such mechanisms are already established features of

traditional EU financial-services regulation and could provide a useful reference point for developing an appropriately tailored approach under MiCAR. Such a framework could establish appropriate conditions regarding regulatory equivalence, supervision, cooperation, disclosures, and other safeguards while allowing EU users access to global services and liquidity where those conditions are satisfied.

8.3 Recommendations

The Foundation would therefore encourage the Commission to prioritize consistent application of the existing MiCAR framework. Greater supervisory convergence, common guidance, and consistent authorization and enforcement practices would help realize the intended benefits of EU-wide harmonization, reduce unnecessary and duplicative compliance costs, and limit the risk that regulatory fragmentation disproportionately favors larger established market participants at the expense of competition and innovation.

For third-country access, the objective should be to combine effective regulatory safeguards with meaningful user choice and access to global markets. Genuine reverse solicitation should remain available, accompanied by effective enforcement against circumvention. The Commission should further consider whether a proportionate equivalence or other third-country access framework could provide a more structured route for appropriately regulated non-EU providers, while retaining appropriate EU oversight and safeguards.