Crypto Update

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MiCA, The Sequel: Brussels Reopens The EU's Crypto Rulebook

A CahillNXT Crypto Update on the European Commission's Targeted Consultation on the Review of MiCA

Introduction

Although the Markets in Crypto-Assets Regulation (MiCA) has been fully applicable for less than eighteen months, the question of what should succeed it is already being asked in Brussels. On 20 May 2026 a targeted consultation on the review of MiCA was published by the European Commission's Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA), with responses invited until 31 August 2026, and the exercise has become known informally as MiCA 2.[i] The review was provided for in MiCA itself: under Article 142 the Commission was to report by the end of 2024 on the matters left outside MiCA, and under Article 140 a fuller report on its application is due by 30 June 2027, in each case with a legislative proposal where appropriate. Both mandates are served by the present consultation.

The document is a consultation only, advancing no legislative proposal and committing the Commission to nothing, but it is not on that account a slight one: across eighty-six questions and four parts it works through almost the whole of the EU crypto rulebook, from the boundary between MiCA and securities law, through the much-debated stablecoin provisions, to a series of matters left outside the regime of MiCA in 2023. Among them one finds decentralized finance (DeFi), staking, lending and borrowing, non-fungible tokens (NFTs), prediction markets, perpetual futures, tokenized deposits, and the deceptively basic question of who owns a token.

Two primary considerations run through the text: the Commission's drive toward simplification and competitiveness, tending to favor lighter rules; and a concern for financial stability and monetary sovereignty, voiced most prominently by the European Central Bank (ECB), tending to favor additional safeguards, in particular against dollar-denominated stablecoins. For any party operating within the EU market, or preparing to enter it, the questions now being asked are the clearest available indication of what may later be proposed.

1. Background and Current Status

MiCA, formally Regulation (EU) 2023/1114, was adopted on 31 May 2023 and entered into force in June 2023, although its substantive provisions became applicable only later. It was the first attempt in any jurisdiction at a single, comprehensive rulebook for crypto-assets, intended to give the EU a passportable framework that would support innovation while addressing the investor-protection, market-integrity, and stability risks exposed by the events of 2022. Crypto-assets are sorted into three categories, e-money tokens (EMTs), asset-referenced tokens (ARTs), and the residual class of crypto-assets other than ARTs or EMTs governed by Title II; the issuer of each is regulated

whenever conducting offers to the public or seeking admission to trading, and a separate licensing and conduct regime applies to the intermediaries known as crypto-asset service providers (CASPs).[ii]

MiCA became applicable in two stages, the stablecoin titles from 30 June 2024 and the remainder, including the CASP regime, from 30 December 2024, supplemented by a substantial body of technical standards and guidance from the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA). The transitional grandfathering window closes across the EU on 1 July 2026, only days after the consultation opened, so any firm still relying on transitional status should already hold full authorization or be close to it in order to operate in compliance with MiCA post July 2026. Two figures capture the present position. The service-provider regime is plainly working: the consultation recorded around 170 providers on the ESMA register, authorized CASPs and entities that had notified an intention to provide services alike, across 18 Member States, and by spring 2026 the authorized total had risen to close to 200.[iii] No ART, by contrast, has yet been authorized in close to two years. Euro stablecoins have begun to appear under the EMT regime, though in modest and concentrated volumes, and it is this contrast, a functioning service-provider regime beside an unused ART regime, that appears to underlie much of Part 2, where the question is, in substance, whether the ART requirements are more demanding than issuers are presently prepared to meet.

2. Overview of Key Issues

The table below sets out a preliminary assessment of the direction in which each part of the review may be leaning, in advance of the more detailed discussion that follows. The indications are necessarily tentative, since the consultation asks questions rather than proposing rules.

Theme	Direction the questions suggest	Who should engage
MiCA / MiFID boundary (Part 1)	Sharper classification, and potentially the absorption of tokenized financial instruments into MiCA	Token issuers, trading venues, tokenization projects
Title II conduct (Part 1)	Tighter marketing rules and founder/early-investor lock-ups, set against some simplification for small-size offerings	Issuers, listing venues, marketers
ART regime (Part 2)	Recalibration to address the absence of any ART authorization to date	Prospective ART issuers
Stablecoin interest ban (Part 2)	Relaxation, whether in full or under defined conditions	EMT/ART issuers, CASPs, distributors/offerors
Multi-issuance / global stablecoins (Part 2)	Additional safeguards, or restriction of the model; EU redemption potentially confined to EU-CASP clients, excluding self-custody wallets	Global USD and EUR stablecoin issuers, exchanges
Euro and monetary sovereignty (Part 2)	Measures favoring Euro stablecoins and EU payment autonomy, aligned with the digital Euro	Euro stablecoin issuers, banks, payment firms
CASP scope and prudential (Part 3)	An appropriateness test, and closer alignment of capital with the investment-firm regime	All CASPs
Offshore / unauthorized access (Part 3)	Stronger tools against non-EU providers serving EU clients	Non-EU exchanges and brokers
Multi-function groups (Part 3)	Enhanced oversight through group reporting, supervisory colleges, or consolidated supervision	Crypto conglomerates

Decentralized finance (Part 4)	A narrower "fully decentralized" carve-out; gateway due-diligence by CASPs; certification of protocols, smart contracts, and wallets	DeFi protocols, front-ends, wallet developers, CASPs
Staking, lending and borrowing (Part 4)	Dedicated staking requirements, with lending and borrowing drawn into scope	Staking providers, lending and borrowing platforms
NFTs (Part 4)	Regulation of NFT service providers, particularly for series-issued or fractionalized tokens	NFT marketplaces and issuers
Prediction markets and perpetual futures (Part 4)	Captured under either MiFID or MiCA	Derivatives venues, prediction-market operators
Tokenized deposits (Part 4)	Clarification under the bank prudential and deposit-guarantee frameworks	Banks, settlement infrastructures
Legal certainty / conflicts of law (Part 4)	Private-law and conflict-of-law harmonization for tokens (including ownership)	Custodians, tokenization issuers, funds
Supervision (parallel track, MISP)	Direct ESMA supervision of large cross-border CASPs, under a separate proposal	Large and cross-border CASPs

3. The Scope and Content of the Consultation

The document is divided into four parts, the last of which assembles the topics originally left outside MiCA before concluding with an open invitation for any further matter to be raised.

By Part 1 the long-standing question of the boundary between a crypto-asset governed by MiCA and a financial instrument governed by the Markets in Financial Instruments Directive (MiFID), the Market Abuse Regulation, and the Prospectus Regulation is reopened, and the question is put directly: whether crypto-assets that constitute financial instruments should remain under securities law, or whether everything recorded and transacted on a ledger that meets the definition of a crypto-asset should in principle be brought within MiCA instead. The consultation inquires whether the uncertainty has in fact been reduced by ESMA's classification guidance, and which assets continue to resist clear categorization, the recurring examples being hybrid and wrapped tokens, tokenized fund and money-market interests, governance tokens, synthetic exposures, and NFTs issued in series. Title II's disclosure and conduct rules are then examined, including the white paper, the notification model that operates without prior regulatory approval, the fourteen-day retail withdrawal right, and civil liability for defective disclosure. Several further measures are raised for consideration as well, among them restrictions on the gamified promotion of speculative tokens to retail investors and lock-ups for founder and early-investor allocations.

Part 2 forms the core of the consultation and may prove the most contentious. Stablecoins are addressed throughout: the role they may come to play, capital and reserve requirements, the significance thresholds by which more demanding treatment is triggered, the interest prohibition, redemption, and crisis planning, and the more sensitive questions concerning global stablecoins and the euro. Two questions carry particular weight: whether the prohibition on the payment of interest, or of anything equivalent to it, on EMTs and ARTs should be relaxed; and whether MiCA should remain open to the multi-issuance model. Under that model, one and the same fungible stablecoin is issued by affiliated entities in more than one jurisdiction, with an EU-licensed issuer subject to MiCA operating alongside one or more non-EU issuers subject to their own regimes, and the tokens remaining interchangeable across borders.

By Part 3 attention is turned to the CASP regime, although the supervision of CASPs is deliberately reserved to the separate reform discussed below. It is asked whether the list of regulated services is complete, whether an

appropriateness test should be introduced for the reception and transmission and the execution of orders, and by what means unlicensed offshore platforms might be prevented from continuing to serve EU customers. It is further asked whether the capital required of CASPs should be increased so as to track the regime applicable to investment firms, and whether the multi-function groups by which crypto services are combined with other activities should be made subject to group-level reporting, supervisory colleges, or consolidated supervision.

Part 4 is the part in which genuinely new ground is sought, and it is likely to be of most immediate interest to any business whose current position depends upon remaining outside MiCA, since it proceeds in turn through DeFi, staking, lending and borrowing, NFTs, prediction markets and perpetual futures, tokenized deposits, and the private-law treatment of tokens, each of which was either carved out in 2023 or not addressed, and in respect of each of which it is now asked whether, and how, it might be brought within the regime.

4. The Potential Direction of Reform

The direction in which a consultation may be moving can sometimes be inferred from the options it raises and the concerns to which it returns, though any such inference should remain provisional. On that basis, a number of tentative observations may be offered, the most apparent of which concern DeFi. The consultation uses the term “DeFi” broadly; in its narrow sense, DeFi means software deployed on a distributed ledger that runs autonomously, without any intermediary, to provide functions such as trading, lending or borrowing. The consultation, however, expressly extends the term to any blockchain-based application, including one over which an identifiable person does in fact exercise control. That breadth is deliberate: services provided “in a fully decentralized manner without any intermediary” are at present excluded from MiCA, yet that phrase is nowhere defined with precision, and by casting DeFi widely the Commission is able to examine everything marketed as decentralized and then to ask which of it genuinely is.

Rather than setting a fixed test, the consultation canvasses, and invites views on, a set of criteria for that assessment: the existence of an identifiable intermediary, control exercised through admin keys or rights of upgrade, the concentration of governance, the custody of user assets, the use of closed-source code, and marketing by a named entity. The implication seems to be that an arrangement possessing a genuine point of control would, precisely because it is not genuinely decentralized, fall outside the exclusion and be treated as a regulated service, with a CASP license required of whoever holds that control.

For those protocols over which no control is genuinely exercised, the alternative apparently under consideration is to regulate the point of access rather than the protocol itself, whether by requiring CASPs to conduct due diligence on the protocols to which clients are connected, by rendering them liable in certain cases where those protocols fail, or by permitting connection only to protocols that have been certified. Certification recurs throughout the section, being contemplated for protocols, for smart contracts, and even for non-custodial wallet software, in some instances as an alternative to a full license and in others only where a protocol has grown sufficiently large as measured by total value locked. Taken as a whole, the approach would appear to reflect an instinct different from that currently informing policy in the United States. Whereas non-custodial developers are afforded protection under the current draft of the CLARITY Act as advanced in the United States, and projects are given a route by which to grow out of regulation as decentralization progresses, the course apparently under contemplation in Europe is the opposite, reaching decentralized activity through the regulated firms and certifiers situated around it.

Several features of this approach may, with respect, warrant careful consideration. Certification directed at the integrity of smart-contract code, while of value, would address only one of the channels through which losses have arisen. A considerable proportion of the more serious incidents affecting DeFi in recent years have originated not in defects in on-chain code but in social engineering, the compromise of administrative keys, and attacks on front-end interfaces and other off-chain infrastructure, against which a code audit offers limited protection. A certification regime may accordingly convey a degree of assurance that is not altogether warranted.

The suggestion that CASPs might be made responsible, or even liable, for the decentralized protocols to which they merely provide access raises a further concern, since it would depart materially from the established principle that responsibility attaches to those in control of an activity, would be difficult to apply given the autonomous character of the protocols in question, and might in practice discourage EU-licensed firms from facilitating access at all, to the disadvantage of EU users. It is also notable that, while considerable attention is devoted to bringing controlled arrangements within the perimeter, the consultation offers comparatively little by way of protection or safe harbor for projects and developers that are genuinely decentralized, an omission that stands in contrast to the protections recently extended to non-custodial developers in the United States and that may bear upon the willingness of such projects to be developed within the EU.

A more strategic consideration may also be offered. The current MiCA perimeter, anchored in the Title V definition of a crypto-asset service provider, already draws a workable line between intermediated activity, which is regulated, and genuinely disintermediated activity, which is not, and there may be real value in preserving the clarity that line provides. Any widening of the definition to capture decentralized arrangements would, beyond the practical difficulties already noted, bear most directly on the part of the market in which Europe has so far been most successful. Several of the most significant DeFi protocols, among them Sky (formerly MakerDAO), Aave, Morpho, Gnosis, and Curve, have grown out of or are closely associated with European teams, so that decentralized finance is among the clearest European success stories in the sector. Given the review's own emphasis on competitiveness, there would seem to be much to be said for proceeding carefully here, and for weighing whether a lighter-touch approach to genuinely decentralized activity might better support the innovation that Europe has shown itself well placed to produce.

Staking, together with lending and borrowing, may be moving from a position of being tolerated to one of being regulated. Staking is already treated by the Commission as an extension of custody, for which a CASP custody license and the explicit consent of the client are required, and it is now asked whether that treatment is sufficient or whether staking-as-a-service should be made subject to dedicated rules; as to lending and borrowing, which are not at present addressed by MiCA, the broader question of whether they should be regulated is raised, and, having regard to certain incidents of retail losses in those activities internationally in recent years, an affirmative answer would not be unexpected.[iv]

In relation to stablecoins the indications run in both directions. The interest prohibition appears to be open to reconsideration, the question whether remuneration should be "allowed, fully or under defined conditions" having placed the possibility of relaxation in view, perhaps because some form of remuneration is already permitted in competing jurisdictions; the questions concerning global stablecoins, by contrast, would appear to point toward greater caution. The Commission asks directly whether multi-issuance should be prohibited and, should it not be, sets out a range of possible safeguards. These extend from the preferential treatment of the redemption rights of tokens genuinely circulating within the EU over those issued abroad but moved into the EU during a period of market stress in order to take advantage of MiCA's protections (in particular its guaranteed redemption rights), through the confinement of direct EU redemption to the customers of EU-licensed CASPs, by which a holder retaining a token in a self-custody wallet might not enjoy a guaranteed EU redemption right, to EU-specific liquidity buffers, more frequent reserve reporting, and an equivalence regime for foreign frameworks assessed as comparable. The connecting thread would appear to be the euro, it being asked more than once whether the international role of the Euro is constrained by the current rules and whether Europe's payment autonomy might instead be supported by euro stablecoins.

Prediction markets and perpetual futures attract a narrower but notable question, for they are identified as among the more significant market developments since MiCA was drafted, and it is asked, in respect of each, whether they fall to be governed by MiFID or by MiCA; the framing may itself be telling, in that it appears to assume that some form of regulation will follow, leaving open principally the choice of regime. NFTs, which are exempt under MiCA as the law stands, are addressed in similar terms, the question being whether the state of the market now warrants the regulation of NFT service providers, with series-issued and fractionalized NFTs apparently in contemplation. It may

respectfully be observed, however, that trading in NFTs has receded considerably from its earlier peak, so that the case for a dedicated NFT regime appears rather less pressing than it might once have been. A measured response, confined to those tokens that function in substance as financial or fractionalized instruments, would seem preferable to the introduction of a broad new framework for a market segment that has materially contracted.

Tokenized deposits, by contrast, attract a more exploratory set of questions concerning the manner in which bank-issued tokens are to be accommodated within the prudential and deposit-guarantee frameworks. In what is perhaps the most ambitious passage of the document, the private law of tokens is opened up. It is asked whether the holding of a token amounts to ownership of it, how transfer, insolvency, custody, and security interests are to operate, and whether a common conflict-of-law rule is required, questions that would reach well beyond MiCA and into the property law of the Member States.

5. The Significance and Wider Context

The review's importance turns above all on multi-issuance, since the answer will determine how the world's largest dollar stablecoins operate in Europe if they are subject to MiCA. Currently, they reach EU users through EU-licensed entities whose tokens remain interchangeable with non-EU issuance. The ECB's non-paper of April 2025 suggested that this arrangement might allow EU reserves to be applied to non-EU redemptions and large foreign-currency stablecoins to escape the limits MiCA was intended to impose. The European Systemic Risk Board has separately noted the run risk were EU holders to redeem through the EU entity at once. Were the model restricted, or EU redemption confined to the customers of EU-licensed CASPs with self-custody wallets excluded, the largest issuers might need to reconsider how Europe is served.[v]

Beneath that question, and the DeFi questions, lies the harder one of reconciling competitiveness with control, the review being conducted under a simplification mandate even as further safeguards and a faster digital euro are encouraged by the ECB. The tension deserves candid acknowledgment. Several of the measures canvassed, gateway liability for CASPs, the certification of protocols and smart contracts, restriction of the multi-issuance model, and tighter conduct requirements, would, if adopted, add cost and friction of the kind competing jurisdictions are presently seeking to reduce, and might encourage issuers, protocols, and liquidity to locate elsewhere. It would be unfortunate were measures introduced in the name of stability to operate against the very competitiveness the review is also intended to advance.

The consultation does not stand alone. Supervision is reserved to a separate measure, the Market Integration and Supervision Package (MISP) brought forward in December 2025, under which direct oversight of the largest cross-border participants, significant CASPs among them, would be conferred upon ESMA in Paris. The package has been supported by the ECB (Opinion CON/2026/13, April 2026) but resisted by Ireland, Luxembourg, and Malta, where much of the EU's crypto licensing is conducted, so that the substance of MiCA and the structure of its enforcement are being reconsidered at once.[vi] The same sovereignty concern animates the ECB's digital-euro project, presented as Europe's response to the prominence of dollar stablecoins, with a first issuance possible around 2029 should the enabling legislation be adopted in 2026.[vii] The review further intersects with the revised payment-services rules, the DLT Pilot Regime, the operational-resilience regime, the bank and investment-firm capital frameworks, and the anti-money-laundering package, as well as the foreign regimes against which the Commission increasingly measures itself, foremost the GENIUS Act and CLARITY Act (in its proposed form) in the United States. Firms active across the EU, the United States, and the United Kingdom may therefore expect competitive positioning to weigh as heavily as domestic considerations.

The opportunity to shape the outcome is open only briefly. Responses are required through the Commission's online questionnaire by 31 August 2026, and no other form of response is taken into account; the Commission has indicated that specific and evidenced answers, with concrete examples and drafting suggestions rather than general position statements, would be of most assistance, and any eventual proposal will be informed by that record. The consultation

is, accordingly, better approached as an opportunity for considered engagement than as a matter of routine, and a response would merit early preparation by any party with a material interest in the interest prohibition, the multi-issuance model, the perimeter of DeFi, staking and lending, or the boundary between MiCA and MiFID.

Conclusion

The consultation is only the opening stage of a process likely to run for some years and to produce the EU's second-generation crypto framework. Its provisional shape is already discernible: welcome relief where the first calibration proved too demanding, the as-yet-unused ART rules and the much-discussed interest prohibition being the clearest candidates, set against a more expansive posture toward the activities MiCA formerly left alone, decentralized finance among them. One could argue that the direction is therefore a mixed bag: while it may ease the position of issuers and intermediaries already within the perimeter, it points toward a heavier burden for the decentralized sector, in the very area where Europe has arguably been most successful. Reconciling that tension, between the review's competitiveness objective and the weight it would place on DeFi, is perhaps the most important task ahead, and one on which stakeholders would do well to make their views known over the coming months.

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The CahillNXT team is advising issuers, exchanges, funds, banks, and DeFi projects on the implications of the review and on the preparation of consultation responses, and would be glad to discuss the manner in which any of the questions addressed above may bear upon a particular business. If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email author Jonathan Galea (partner) at +44.20.7947.9315 or jgalea@cahill.com, or email publicationscommittee@cahill.com.

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[ii] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 [2023] OJ L150/40.

[iii] See Endnote 1.

[iv] See, in particular, the collapses in 2022 and 2023 of major centralized crypto lending and borrowing platforms, including Celsius Network, Voyager Digital, BlockFi, and Genesis Global Capital, each of which resulted in substantial retail losses.

[v] Judith Arnal, 'Multi-Issuance Stablecoins and MiCA's First Real Credibility Test' (CEPS/ECRI In-Depth Analysis, September 2025) <https://cdn.ceps.eu/2025/09/ECRI-In-depth-analysis_Stablecoins-and-MiCA.pdf> accessed 15 June 2026.

[vi] 'ECB Backs EU Plan to Centralize Crypto Supervision under Paris-Based ESMA Watchdog' (The Block, 2026) <https://www.theblock.co/post/397121/ecb-backs-eu-plan-to-centralize-crypto-supervision-under-paris-based-esma-watchdog-reuters> accessed 15 June 2026; 'ECB Opinion CON/2026/13: What It Means for Crypto Supervision,

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[vii] 'ECB's Lagarde Warns Tether and Circle Stablecoins Risk Digital Dollarisation in Europe' (CoinDesk, 8 May 2026) <https://www.coindesk.com/business/2026/05/08/ecb-s-lagarde-warns-tether-and-circle-stablecoins-risk-digital-dollarisation-in-europe> accessed 15 June 2026; 'Digital Euro Is Key to Counter Stablecoin Risks, Says ECB's Schnabel' (The Block, 2026) <https://www.theblock.co/amp/post/403142/digital-euro-stablecoin-risks-ecb> accessed 15 June 2026.