

MiCA under review: ESMA's main proposals and the latest developments on stablecoins

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On 30 September 2026, the European Securities and Markets Authority (ESMA) published its response to the European Commission's public consultation on the review of Regulation (EU) 2023/1114 on markets in crypto-assets (MiCA). In its response, ESMA sets out its observations and regulatory policy proposals, drawn from the experience gained during the initial phase of MiCA's application, with a view to strengthening the effectiveness and overall consistency of the European Union's regulatory framework for crypto-assets.

The main matters addressed include crypto-asset marketing practices, staking, lending and borrowing services, the delimitation of the concept of full decentralisation, the strengthening of supervisory powers, the simplification of authorisation procedures, the harmonisation of prudential requirements, the creation of a framework for the tokenisation of securities and the treatment of non-compliant stablecoins.

In the following weeks, ESMA and the EBA issued two significant regulatory decisions concerning stablecoins that give effect to some of these concerns:

- i. ESMA's Opinion of 8 October 2026 on services relating to non-compliant stablecoins, and;
- ii. the EBA's classification, on 14 October 2026, of USDC as the first significant e-money token.

1. Strengthening investor protection: marketing, influencers, staking, lending and borrowing

a) Marketing

ESMA considers that MiCA's rules on marketing communications are worded in excessively general terms. This makes them difficult for national competent authorities to apply, particularly to promotional practices that, while not constituting false or misleading information, consist of recommendations or forecasts. In such cases, MiCA's market abuse provisions do not give supervisors adequate tools to intervene.

In this context, ESMA suggests that the European Commission consider prohibiting certain marketing techniques deemed particularly problematic, or limiting their use in relation to certain crypto-assets, following an approach similar to that adopted in the Markets in Financial Instruments Directive (MiFID II).

ESMA is also considering the introduction of obligations to disclose conflicts of interest and of greater transparency regarding previously issued recommendations, with the aim of enhancing legal certainty, facilitating supervisory action and improving the protection of retail investors.

b) Influencers and third parties

ESMA proposes that MiCA should lay down specific obligations for digital influencers and third parties who promote crypto-assets or related services on behalf of issuers or crypto-asset service providers (CASPs). To ensure compliance with these obligations, national competent authorities should have the powers needed to supervise and intervene in respect of such marketing practices.

c) Staking

ESMA recognises the technical importance of staking in Proof of Stake networks but warns of the risks these services may pose to investors. These include overly optimistic yield expectations, loss of assets through slashing (i.e. a penalty imposed when a validator fails to comply with the network's rules), liquidity restrictions resulting from lock-up periods, uncertainty as to the protection of assets in the event of the provider's insolvency, and the risks associated with the use of third-country entities.

To strengthen investor protection, ESMA proposes that MiCA lay down specific requirements for authorised CASPs providing staking services, particularly in terms of conduct, disclosure and safeguarding of assets. These requirements would make clear that such services should not automatically be treated as lending or investment management.

ESMA further proposes that the regulatory framework take into account the different forms of staking, namely:

- staking carried out directly by the investor, without the involvement of intermediaries;
- purely technical staking services;
- staking involving the pooling of assets or the provision of custody services; and
- liquid staking or yield-generating products, which may raise specific classification issues under MiCA, MiFID II or other applicable European regimes.

For services provided by CASPs, the information made available to clients should cover, among other things, rewards, lock-up and unbonding periods, slashing risks, validator selection, fees and the treatment of assets in the event of insolvency. ESMA also proposes additional governance, conflict-of-interest management and risk management requirements where providers exercise discretion in selecting validators, pool client assets, or rely on group entities or entities established in third countries.

The approach should, however, be proportionate. It should focus on CASPs that intermediate, pool or market staking services, and avoid creating a stand-alone and overly burdensome authorisation regime.

c) Lending

ESMA identifies a number of risks associated with crypto-asset lending. These include the risk of cascading failures and the loss of the protection afforded by MiCA's custody and asset segregation rules whenever assets are lent to third parties. A lack of transparency as to the identity and creditworthiness of borrowers, collateral, loan terms and the returns generated compounds these risks, exposing clients to potential losses and uncertain returns.

In this context, ESMA proposes that the European Commission clarify in MiCA the framework applicable to CASPs that provide or facilitate crypto-asset lending services. This would include a requirement for clients' express written consent and the introduction of specific disclosure requirements.

Specifically, the proposal does not seek to create a new regulated service subject to stand-alone authorisation and to the general conduct rules applicable to crypto-asset services. Rather, it seeks to establish specific requirements for these activities, notably regarding client information, collateral and limits on the share of returns that the CASP may retain.

e) Borrowing

ESMA identifies significant risks associated with crypto-asset borrowing, including the liquidation of positions, leverage, collateral volatility and collateral reuse, particularly as regards retail investors.

In this context, ESMA proposes that the European Commission clarify in MiCA the framework applicable to CASPs that provide or facilitate borrowing services. This would include specific conduct, disclosure and risk management requirements, especially where retail investors or leveraged services are involved.

The regime should be proportionate and focus on CASPs that intermediate or facilitate these transactions. It should distinguish between: (i) collateralised loans; (ii) margin loans or leverage linked to trading; (iii) borrowing through DeFi protocols accessed via a CASP; and (iv) more complex arrangements involving collateral reuse or recursive leverage.

Through this approach, ESMA aims to strengthen investor protection and to distinguish borrowing from custody and staking services, given the changes in clients' legal and economic position whenever their crypto-assets are pledged as collateral or reused.

2. Strengthening supervisory powers, including asset freezing, product intervention and cost transparency

ESMA proposes to strengthen the supervisory powers provided for in MiCA by giving national competent authorities express powers to order the removal of fraudulent websites or those of unauthorised providers. It further proposes that ESMA itself be granted direct powers to require CASPs to immediately freeze crypto-assets where there are reasonable grounds to suspect a link to market abuse, financial crime, money laundering or terrorist financing. The freeze would last for as long as necessary for the investigation and for the competent authorities to act.

As regards product intervention, ESMA advocates the possibility of adopting permanent measures at European level, in addition to the current temporary intervention powers. This change would avoid successive renewals of temporary measures and the need to replicate, at national level, restrictions already imposed by ESMA, ensuring a more uniform response to the risks identified.

Lastly, ESMA proposes to strengthen the cost transparency requirements applicable to CASPs providing order execution, reception and transmission of orders and crypto-asset exchange services. In particular, it seeks to ensure that clients receive complete information on transaction costs, including bid-ask spreads. This would prevent potentially misleading practices, such as advertising "zero-commission" trades that in fact build high costs into the prices charged.

Com esta abordagem, a ESMA pretende reforçar a proteção dos investidores e distinguir a obtenção de empréstimos dos serviços de custódia e de staking, atendendo às alterações da posição jurídica e económica dos clientes sempre que os seus criptoativos sejam dados em garantia ou reutilizados.

3. Criteria for identifying “fully decentralised” DeFi, a new regulated service for access to DeFi protocols, and binding opinions on token classification

a) The concept of “fully decentralised” DeFi

ESMA identifies divergent interpretations of the concept of “full decentralisation” set out in Recital 22 of MiCA. These divergences create legal uncertainty and increase the risk of decentralisation washing. This practice consists of identifiable operators using language associated with decentralised finance (DeFi) in order to avoid the obligations laid down in MiCA, and it also encourages regulatory arbitrage.

To overcome these difficulties, ESMA proposes that the European Commission introduce into MiCA a clear definition of DeFi, limiting the scope of the exemption to genuinely decentralised activities so that it cannot be used to circumvent the regulatory regime.

Alternatively, the Commission could empower ESMA to issue technical guidance on this matter. This solution would promote a more consistent application of MiCA across the European Union and enhance legal certainty, while retaining greater flexibility to keep pace with technological developments.

b) A new regulated service for access to DeFi protocols

During the initial phase of MiCA’s application, ESMA identified business models in which authorised CASPs facilitate client access to DeFi protocols and services, giving rise to consumer risks, operational risks and potential conflicts of interest.

To address these risks, ESMA proposes the creation of a new regulated service covering CASPs acting as intermediaries in client access to DeFi protocols. This could include the provision of technical interfaces, transaction routing, interaction with smart contracts or other forms of intermediation between clients and decentralised services.

CASPs providing this service would be subject to specific obligations. These would cover, in particular, disclosure of protocol risks, transparency as to protocol selection and routing practices, conflict-of-interest management, due diligence on the protocols made available, and operational and cybersecurity protection.

ESMA thereby seeks to enhance legal certainty and investor protection in models that combine centralised (CeFi) and decentralised (DeFi) finance, promoting consistent supervision across Member States. The obligations should, however, be proportionate to the degree of control the CASP exercises over the underlying protocols, so as to avoid disproportionate regulatory burdens and not to hinder innovation.

c) Binding opinions on token classification

Article 97(3) of MiCA allows competent authorities to request non-binding opinions on the classification of crypto-assets from ESMA, the European Banking Authority (EBA) or the European Insurance and Occupational Pensions Authority (EIOPA), as appropriate. This includes determining whether a crypto-asset falls outside the scope of MiCA and is therefore subject to MiFID II.

To date, ESMA has issued only one opinion following a request from a national competent authority. In ESMA's view, the non-binding nature of these opinions is insufficient to ensure supervisory convergence across the European Union.

For this reason, ESMA proposes that the European Commission introduce a mechanism enabling it to issue binding opinions on token classification, in consultation or jointly with the EBA. ESMA could do so on its own initiative, whenever recurring patterns are identified across different Member States.

The measure aims to enhance legal certainty and promote consistent application of MiCA. This applies in particular to innovative tokens, such as hybrid tokens, and to complex structures, such as fractionalised NFTs.

4. Simplification of authorisation and prudential harmonisation

The experience gained during the initial phase of MiCA's application has revealed overlaps between the requirements applicable to CASPs and those laid down in other European financial services regimes, creating additional regulatory burdens and legal uncertainty. To address these difficulties, ESMA proposes measures to simplify certain procedures and to ensure greater consistency between the requirements applicable to different market participants.

a) Simplification of authorisation procedures

ESMA proposes to simplify the white paper notification regime by clarifying the relevant requirements and centralising the procedure within ESMA itself, removing national competent authorities as intermediaries.

In addition, ESMA proposes to clarify the position of investment firms authorised under MiFID II that notify, under Article 60 of MiCA, their intention to provide certain crypto-asset services. Such firms should not need a separate CASP authorisation to provide crypto-asset transfer services equivalent to investment services for which they are already authorised.

b) Harmonisation of prudential requirements

ESMA considers that the own funds requirements applicable to CASPs should be more consistent with those laid down in other European regimes applicable to investment firms. This applies in particular to the Investment Firms Regulation (IFR) and Investment Firms Directive (IFD).

In ESMA's view, the current prudential framework may not adequately reflect the different risk profiles of the services provided by CASPs. It may also give rise to overlaps where an entity is subject to both MiCA and MiFID II.

In this context, ESMA proposes to align CASPs' own funds requirements with the IFR/IFD regime, notably as regards the calculation of fixed overheads and the deduction of certain variable costs. The measure aims to promote a more level playing field between entities subject to different regimes and to avoid unnecessary prudential divergences.

5. A framework for tokenised securities and on-chain settlement

ESMA considers it necessary to establish clearer rules for the tokenisation of existing securities and to develop reliable solutions for their on-chain settlement.

The expansion of tokenisation in the Single Market will depend both on legal and institutional reforms and on technological development. In this context, the legal framework should ensure interoperability between distributed ledger technology (DLT)-based systems and traditional infrastructures, promote asset portability and liquidity, and avoid replicating the current fragmentation of markets.

To this end, ESMA acknowledges that an optional EU-level regime, referred to as the "28th regime", could eventually be created to lay down common rules for the issuance, transfer and settlement of tokenised securities across Member States. Such a regime could facilitate cross-border transactions without requiring the immediate harmonisation of all matters governed by national law. It could also provide for the use of DLT within existing structures.

6. Stablecoins: services relating to non-compliant tokens and the first significant e-money token

a) Proposal for an express prohibition

MiCA lays down authorisation requirements for the offer to the public and admission to trading of stablecoins in the European Union. However, the existing restrictions do not expressly cover all the services that CASPs may provide in relation to these assets. As a result, non-compliant stablecoins can still be made available to investors through certain services. This may lead to supervisory divergence, undermine investor protection and encourage regulatory arbitrage.

To close this gap, ESMA proposes an amendment to MiCA expressly prohibiting CASPs from providing any crypto-asset services subject to authorisation in relation to asset-referenced tokens (ARTs) or e-money tokens (EMTs) that do not comply with the applicable requirements, irrespective of whether those services constitute an offer to the public or an admission to trading.

b) ESMA Opinion of 8 October 2026

Without waiting for the MiCA review, ESMA issued an Opinion addressed to national competent authorities on 8 October 2026. In it, ESMA considers that the provision of these services should be presumed incompatible with the duty to act in the best interests of clients, laid down in Article 66(1) of MiCA. This is because the risks arising from the absence of the safeguards required of issuers cannot be adequately mitigated by CASPs, even through risk warnings or by obtaining acknowledgements from clients. The Opinion covers all crypto-asset services provided for in MiCA, including the operation of trading platforms for crypto-assets, exchange services, execution and transmission of orders, placement of crypto-assets, advisory, transfer services, custody, and portfolio management.

In this context, ESMA expects national competent authorities to ensure that CASPs do not maintain, introduce or facilitate client access to these assets, through appropriate technical, contractual and organisational controls. Existing exposures should be wound down as soon as possible and, in any event, within a maximum of three months from the publication of the Opinion (i.e. by 8 January 2027). In the meantime, only the services necessary to close existing positions are permitted, on a transitional basis and under supervision. These include the liquidation, conversion, withdrawal, transfer or safekeeping of the assets, with no possibility of new purchases, promotion or trading ([link](#)).

c) USDC, the first significant e-money token

On 14 October 2026, the European Banking Authority (EBA) classified USDC, issued in the European Union by Circle Internet Financial Europe SAS, as a significant EMT under Articles 43 and 56 of MiCA and Delegated Regulation (EU) 2024/1506. It is the first EMT to receive this classification, out of the 45 notified in the European Union ([link](#)).

The classification entails a dual supervisory model from 12 November 2026:

- The EBA will directly supervise the issuer's own funds, reserve of assets, liquidity requirements and recovery and redemption plans.
- The French competent authority, the Autorité de contrôle prudentiel et de résolution (ACPR), retains supervision of corporate governance, qualifying holdings, fit and proper assessments, outsourcing and conflicts of interest.

The EBA has also entered into a memorandum of understanding with the New York State Department of Financial Services (NYDFS) to facilitate cooperation and the exchange of information on the issuer's cross-border activities.

For CASPs, electronic money institutions and banks that make EMTs available or provide custody services for EMTs in Portugal, the EBA classification decision and ESMA's Opinion should be read together. MiCA-compliant EMTs, including significant EMTs subject to enhanced requirements and EU-level supervision, may continue to be made available, provided the applicable requirements are met.



Non-compliant ARTs and EMTs should not be made available to clients, and existing positions should be remediated as soon as possible and, in any event, no later than three months after publication of ESMA's Opinion. These entities are therefore advised to identify the ARTs and EMTs covered by the services they provide, verify their regulatory status in ESMA's registers, and review their contractual terms and the information provided to clients.

Thinking about tomorrow? Let's talk today.



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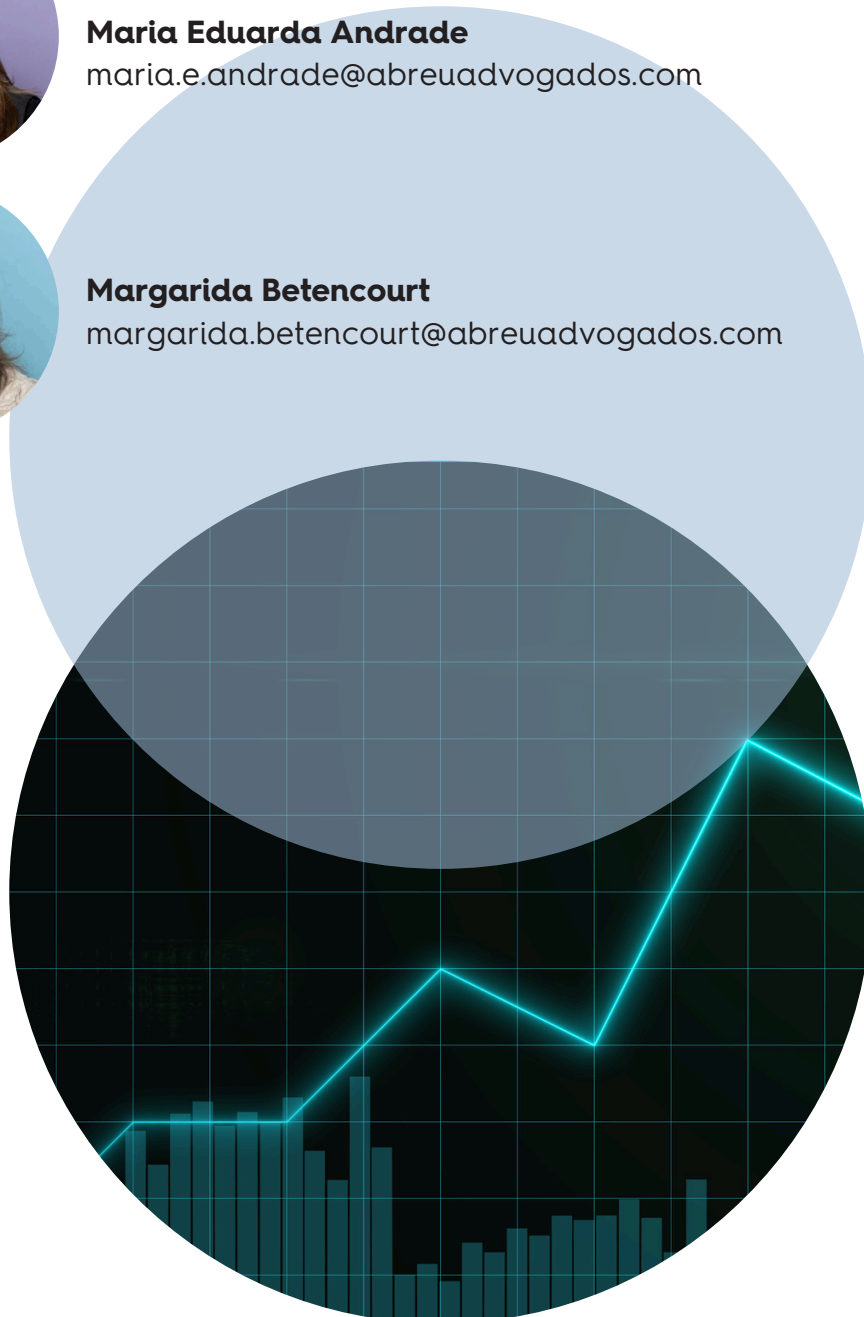
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