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Public consultation an EU framework for markets in crypto-assets

Fields marked with * are mandatory.

Introduction

This consultation is also available in German and French.

Background for this public consultation

As stated by President von der Leyen in her political guidelines for the new Commission, it is crucial that Europe grasps all the potential of the digital age and strengthens its industry and innovation capacity, within safe and ethical boundaries. Digitalisation and new technologies are significantly transforming the European financial system and the way it provides financial services to Europe's businesses and citizens. Almost two years after the Commission adopted the Fintech action plan in March 2018[1], the actions set out in it have largely been implemented.

In order to promote digital finance in Europe, while adequately regulating its risks, in light of the mission letter of Executive Vice-President Dombrovskis the Commission services are working towards a new Digital Finance Strategy for the EU. Key areas of reflection include deepening the Single Market for digital financial services, promoting a data-driven financial sector in the EU while addressing its risks and ensuring a true level playing field, making the EU financial services regulatory framework more innovation-friendly, and enhancing the digital operational resilience of the financial system.

This public consultation, and the parallel public consultation on digital operational resilience, are first steps to prepare potential initiatives which the Commission is considering in that context. The Commission may consult further on other issues in this area in the coming months.

As regards blockchain, the European Commission has a stated and confirmed policy interest in developing and promoting the uptake of this technology across the EU. Blockchain is a transformative technology along with, for example, artificial intelligence. As such, the European Commission has long promoted the exploration of its use across sectors, including the financial sector.

Crypto-assets are one of the major applications of blockchain for finance. Crypto-assets are commonly defined as a type of private assets that depend primarily on cryptography and distributed ledger technology as part of their inherent value[2]. For the purpose of this consultation, they will be defined as "a digital asset that may depend on cryptography and exists on a distributed ledger". Thousands of crypto-assets, with different features and serving different functions, have been issued since Bitcoin was launched in 2009[3]. There are many ways to classify the different types of crypto

assets[4]. A basic taxonomy of crypto-assets comprises three main categories: 'payment tokens' that may serve as a means of exchange or payment, 'investment tokens' that may have profit-rights attached to it and 'utility tokens' that may enable access to a specific product or service. The crypto-asset market is also a new field where different actors - such as the wallet providers that offer the secure storage of crypto-assets, exchanges and trading platforms that facilitate the transactions between participants – play a particular role

Crypto-assets have the potential to bring significant benefits to both market participants and consumers. For instance, initial coin offerings (ICOs) and security token offerings (STOs) allow for a cheaper, less burdensome and more inclusive way of financing for small and medium-sized companies (SMEs), by streamlining capital-raising processes and enhancing competition. The 'tokenisation' of traditional financial instruments is also expected to open up opportunities for efficiency improvements across the entire trade and post-trade value chain, contributing to more efficient risk management and pricing[5]. A number of promising pilots or use cases are being developed and tested by new or incumbent market participants across the EU. Provided that platforms based on Digital Ledger Technology (DLT) prove that they have the ability to handle large volumes of transactions, it could lead to a reduction in costs in the trading area and for post-trade processes. If the adequate investor protection measures are in place, crypto-assets could also represent a new asset class for EU citizens. Payment tokens could also present opportunities in terms of cheaper, faster and more efficient payments, by limiting the number of intermediaries.

Since the publication of the FinTech Action Plan in March 2018, the Commission has been closely looking at the opportunities and challenges raised by crypto-assets. In the FinTech Action Plan, the Commission mandated the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) to assess the applicability and suitability of the existing financial services regulatory framework to crypto-assets. The advice[6] received in January 2019 clearly pointed out that while some crypto-assets fall within the scope of EU legislation, effectively applying it to these assets is not always straightforward. Moreover, there are provisions in existing EU legislation that may inhibit the use of certain technologies, including DLT. At the same time, EBA and ESMA have pointed out that most crypto-assets are outside the scope of EU legislation and hence are not subject to provisions on consumer and investor protection and market integrity, among others. Finally, a number of Member States have recently legislated on issues related to crypto-assets which are currently not harmonised.

A relatively new subset of crypto-assets – the so-called "stablecoins" - has emerged and attracted the attention of both the public and regulators around the world. While the crypto-asset market remains modest in size and does not currently pose a threat to financial stability[7], this may change with the advent of "stablecoins", as they seek a wide adoption by consumers by incorporating features aimed at stabilising their 'price' (the value at which consumers can exchange their coins). As underlined by a recent G7 report[8], if those global "stablecoins" were to become accepted by large networks of customers and merchants, and hence reach global scale, they would raise additional challenges in terms of financial stability, monetary policy transmission and monetary sovereignty.

Building on the advice from the EBA and ESMA, this consultation should inform the Commission services' ongoing work on crypto-assets[9]: (i) For crypto-assets that are covered by EU rules by virtue of qualifying as financial instruments under the Markets in financial instruments Directive – MiFID II – or as electronic money/e-money under the Electronic Money Directive – EMD2 – the Commission services have screened EU legislation to assess whether it can be effectively applied. For crypto-assets that are currently not covered by the EU legislation, the Commission services are considering a possible proportionate common regulatory approach at EU level to address, inter alia, potential consumer/investor protection and market integrity concerns.

Given the recent developments in the crypto-asset market, the President of the Commission, Ursula von der Leyen, has stressed the need for "a common approach with Member States on crypto-currencies to ensure we understand how to make the most of the opportunities they create and address the new risks they may pose"[10]. Executive Vice-president Valdis Dombrovskis has also indicated his intention to propose a new legislation for a common EU approach on crypto-assets, including "stablecoins". While acknowledging the risks they may present, the Commission and the Council have also jointly declared that they "are committed to put in place the framework that will harness the potential opportunities that some crypto-assets may offer"[11].

Responding to this consultation and follow up to the consultation

In this context and in line with Better regulation principles, the Commission is inviting stakeholders to express their views on the best way to enable the development of a sustainable ecosystem for crypto-assets while addressing the major risks they raise. This consultation document contains four separate sections.

First, the Commission seeks the views of all EU citizens and the consultation accordingly contains a number of more general questions aimed at gaining feedback on the use or potential use of crypto-assets.

The three other parts are mostly addressed to public authorities, financial market participants as well as market participants in the crypto-asset sector:

- **The second section seeks feedback from stakeholders on whether and how to classify crypto-assets**. This section concerns both crypto-assets that fall under existing EU legislation (those that qualify as 'financial instruments' under MiFID II and those qualifying as 'e-money' under EMD2) and those that do not.
- **The third section invites views on the latter, i.e. crypto-assets that currently fall outside the scope of the EU financial services legislation. In that first section, the term 'crypto-assets' is used to designate all the crypto-assets that are not regulated at EU level[12]. At certain point in that part, the public consultation makes further distinction among those crypto-assets and uses the terms 'payment tokens', "stablecoins" 'utility tokens', 'investment tokens'.**. The aim of these questions is to determine whether an EU regulatory framework for those crypto-assets is needed. The replies will also help identify the main risks raised by unregulated crypto-assets and specific services relating to those assets, as well as the priorities for policy actions.
- **The fourth section seeks views of stakeholders on crypto-assets that currently fall within the scope of EU legislation, i.e. those that qualify as 'financial instruments' under MiFID II and those qualifying as 'e-money' under EMD2. In that section and for the purpose of the consultation, those regulated crypto-assets are respectively called 'security tokens' and 'e-money tokens'**. Responses will allow the Commission to assess the impact of possible changes to EU legislation (such as the Prospectus Regulation , MiFID II, the Central Security Depositaries Regulation, ...) on the basis of a preliminary screening and assessment carried out by the Commission services. This section is therefore narrowly framed around a number of well-defined issues related to specific pieces of EU legislation. Stakeholders are also invited to highlight any further regulatory impediments to the use of DLT in the financial services.

To facilitate the reading of this document, a glossary and definitions of the terms used is available at the end.

The outcome of this public consultation should provide a basis for concrete and coherent action, by way of a legislative action if required.

This consultation is open until 19 March 2020.

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[1] Commission's Communication: "FinTech Action Plan: For a more competitive and innovative European financial sector" (March 2018)

[2] EBA report with advice for the European Commission on 'crypto-assets", January 2019

[3] ESMA, "Advice on initial coin offerings and Crypto-Assets", January 2019;

[4] See: ESMA Securities and Markets Stakeholder Group, Advice to ESMA, October 2018

[5] Increased efficiencies could include, for instance, faster and cheaper cross-border transactions, an ability to trade beyond current market hours, more efficient allocation of capital (improved treasury, liquidity and collateral management), faster settlement times and reduce reconciliations required. See: Association for Financial Markets in Europe, 'Recommendations for delivering supervisory convergence on the regulation of crypto-assets in Europe', November 2019.

[6] ESMA, "Advice on initial coin offerings and Crypto-Assets", January 2019; EBA report with advice for the European Commission on 'crypto-assets", January 2019

[7] FSB Chair's letter to G20 Finance Ministers and Central Bank Governors, Financial Stability Board, 2018

[8] G7 Working group on "stablecoins", Report on 'Investigating the impact of global stablecoins', October 2019

[9] Speech by Vice-President Dombrovskis at the Bucharest Eurofi High-level Seminar, 4 April 2019

[10] Mission letter of President-elect Von der Leyen to Vice-President Dombrovskis, 10 September 2019

[11] Joint Statement of the European Commission and Council on "stablecoins", 5 December 2019

[12] Those crypto-assets are currently unregulated at EU level, except those which qualify as 'virtual currencies' under the AML/CFT framework (see section I.C. of this document).

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-crypto-assets@ec.europa.eu.

More information:

- on this consultation
- on the consultation document
- on the protection of personal data regime for this consultation

About you

* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- (•) English
- Estonian
- Finnish
- French
- Gaelic
- German
- Greek
- Hungarian
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese

- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

* First name

Jeppe

* Surname

Conradsen

* Email (this won't be published)

jesu@ftnet.dk

* Scope

- International
- Local
- National
- Regional

* Country of origin

Please add your country of origin, or that of your organisation.

- Afghanistan
- Åland Islands
- Albania
- Algeria
- American Samoa
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- Libya
- Liechtenstein
- Lithuania
- Luxembourg
- Macau
- Saint Martin
- Saint Pierre and Miquelon
- Saint Vincent and the Grenadines
- Samoa
- San Marino

- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar /Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo

- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena Ascension and Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

* Organisation name

255 character(s) maximum

Danish Ministry of Industry, Business and Financial Affairs

* Organisation size

- ○ Micro (1 to 9 employees)
- ○ Small (10 to 49 employees)
- ○ Medium (50 to 249 employees)
- ◉ Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making.

* Field of activity or sector (if applicable):

at least 1 choice(s)

- ☐ Asset management
- ☐ Banking
- ☐ Crypto-asset exchange
- ☐ Crypto-asset trading platforms
- ☐ Crypto-asset users
- ☐ Electronic money issuer
- ☐ FinTech
- ☐ Investment firm
- ☐ Issuer of crypto-assets
- ☐ Market infrastructure (e.g. CCPs, CSDs, Stock exchanges)
- ☐ Other crypto-asset service providers
- ☐ Payment service provider
- ☐ Technology expert (e.g. blockchain developers)
- ☐ Wallet provider
- ☐ Other
- ☑ Not applicable

* Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- ○ **Anonymous**
  Only your type of respondent, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.

- **Public**
  Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

☑ I agree with the personal data protection provisions

I. Questions for the general public

As explained above, these general questions aim at understanding the EU citizens' views on their use or potential use of crypto-assets.

Question 1. Have you ever held crypto-assets?

- Yes
- No
- Don't know / no opinion / not relevant

Question 3. Do you plan or expect to hold crypto-assets in the future?

- Yes
- No
- Don't know / no opinion / not relevant

II. Classification of crypto-assets

There is not a single widely agreed definition of 'crypto-asset'[13]. In this public consultation, a crypto-asset is considered as "*a digital asset that may depend on cryptography and exists on a distributed ledger*". This notion is therefore narrower than the notion of '*digital asset*'[14] that could cover the digital representation of other assets (such as scriptural money).

While there is a wide variety of crypto-assets in the market, there is no commonly accepted way of classifying them at EU level. This absence of a common view on the exact circumstances under which crypto-assets may fall under an existing regulation (and notably those that qualify as 'financial instruments' under MiFID II or as 'e-money' under EMD2 as transposed and applied by the Member States) can make it difficult for market participants to understand the obligations they are subject to. Therefore, a categorisation of crypto-assets is a key element to determine whether crypto-assets fall within the current perimeter of EU financial services legislation.

Beyond the distinction 'regulated' (i.e. 'security token', 'e-money token') and unregulated crypto-assets, there may be a need for differentiating the various types of crypto-assets that currently fall outside the scope of EU legislation, as they may pose different risks. In several Member States, public authorities have published guidance on how crypto-assets should be classified. Those classifications are usually based on the crypto-asset's economic function and usually makes a distinction between 'payment tokens' that may serve as a means of exchange or payments, 'investment tokens' that may have profit-rights attached to it and 'utility tokens' that enable access to a specific product or service. At the same time, it should be kept in mind that some 'hybrid' crypto-assets can have features that enable their use for more than one purpose and some of them have characteristics that change during the course of their lifecycle.

[13] This section concerns both crypto-assets that fall under existing EU legislation (those that qualify as 'financial instruments' under MiFID II and those qualifying as 'e-money' under EMD2) and those falling outside.

[14] Strictly speaking, a digital asset is any text or media that is formatted into a binary source and includes the right to use it.

Question 5. Do you agree that the scope of this initiative should be limited to crypto-assets (and not be extended to digital assets in general)?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

5.1 Please explain your reasoning for your answers to question 5:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Extending the scope to cover digital assets could have residual impact on various technical processes.

Question 6. In your view, would it be useful to create a classification of crypto-assets at EU level?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

6.1 If you think it would be useful to create a classification of crypto-assets at EU level, please indicate the best way to achieve this classification (non-legislative guidance, regulatory classification, a combination of both, ...).

Please explain your reasoning:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Having a uniform taxonomy is important when discussing complex matters such as crypto-assets. However, a classification of crypto-assets for regulatory purposes can lead to a simplified assessment of the assets. Most crypto-assets have hybrid features of a varying degree.

If a classification is made for regulatory purposes, it is important that it takes factors such as degree of decentralization, autonomy, front- and backend functionality and usability into account.

Question 7. What would be the features of such a classification?

When providing your answer, please indicate the classification of crypto-assets and the definitions of each type of crypto-assets in use in your jurisdiction (if applicable).

Please explain your reasoning:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See answer to question 6.1.

Question 8. Do you agree that any EU classification of crypto-assets should make a distinction between 'payment tokens', 'investment tokens', 'utility tokens' and 'hybrid tokens'?

- ○ Yes
- ○ No
- ◉ Don't know / no opinion / not relevant

8.2 Please explain your reasoning for your answers to question 8:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See answer to question 6.1.

The Deposit Guarantee Scheme Directive (DGSD) aims to harmonise depositor protection within the European Union and includes a definition of what constitutes a bank 'deposit'. Beyond the qualification of some crypto-assets as 'e-money tokens' and 'security tokens', the Commission seeks feedback from stakeholders on whether other crypto-assets could be considered as a bank 'deposit' under EU law.

Question 9. Would you see any crypto-asset which is marketed and/or could be considered as 'deposit' within the meaning of Article 2(3) DGSD?

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

III. Crypto-assets that are not currently covered by EU legislation

This section aims to seek views from stakeholders on the opportunities and challenges raised by crypto-assets that currently fall outside the scope of EU financial services legislation[15] (**A.**) and on the risks presented by some service providers related to crypto-assets and the best way to mitigate them (**B.**). This section also raises horizontal questions concerning market integrity, Anti-Money laundering (AML) and Combatting the Financing of Terrorism (CFT), consumer /investor protection and the supervision and oversight of the crypto-assets sector (**C.**).

[15] Those crypto-assets are currently unregulated at EU level, except those which qualify as 'virtual currencies' under the AML /CFT framework (see section I.C. of this document).

A. General questions: Opportunities and challenges raised by crypto-assets

Crypto-assets can bring about significant economic benefits in terms of efficiency improvements and enhanced system resilience alike. Some of those crypto-assets are 'payment tokens' and include the so-called "stablecoins" (see below) which hold the potential to bridge certain gaps in the traditional payment systems and can allow for more efficient and cheaper transactions, as a result of fewer intermediaries being involved, especially for cross-border payments. ICOs could be used as an alternative funding tool for new and innovative business models, products and services, while the use of DLT could make the capital raising process more streamlined, faster and cheaper. DLT can also enable users to 'tokenise" tangible assets (cars, real estate) and intangible assets (e.g. data, software, intellectual property rights, ...), thus improving the liquidity and tradability of such assets. Crypto-assets also have the potential to widen access to new and different investment opportunities for EU investors. The Commission is seeking feedback on the benefits that crypto-assets could deliver.

Question 10. In your opinion, what is the importance of each of the potential benefits related to crypto-assets listed below?

Please rate from 1 (not important at all) to 5 (very important)

	1					Don't know /

	(not important at all)	2	3	4	5 (very important)	no opinion / not relevant
Issuance of utility tokens as a cheaper, more efficient capital raising tool than IPOs	○	◉	○	○	○	○
Issuance of utility tokens as an alternative funding source for start-ups	○	◉	○	○	○	○
Cheap, fast and swift payment instrument	○	○	◉	○	○	○
Enhanced financial inclusion	○	○	○	◉	○	○
Crypto-assets as a new investment opportunity for investors	◉	○	○	○	○	○
Improved transparency and traceability of transactions	○	○	○	◉	○	○
Enhanced innovation and competition	○	○	○	○	○	◉
Improved liquidity and tradability of tokenised 'assets'	○	○	○	○	○	◉
Enhanced operational resilience (including cyber resilience)	○	○	◉	○	○	○
Security and management of personal data	○	○	○	◉	○	○
Possibility of using tokenisation to coordinate social innovation or decentralised governance	○	○	○	○	○	◉

10.1 Is there any other potential benefits related to crypto-assets not mentioned above that you would foresee? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

10.2 Please explain your reasoning for your answers to question 10:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Raising capital through issuance of utility tokens is fundamentally the same as rewardbased crowdfunding in the vast majority of use-cases.

The cost of raising capital through the issuance of utility tokens is not that different from raising capital through rewardbased crowdfunding that do not leverage blockchain through the issuance of tokenized proof by issuing utility tokens.

Although, there is technological difference and especially in blockchainbased business models it would be an unnecessary detour to leave the blockchainsphere to create a textbased proof of owed reward in e.g. a mail. Oppositely, it would rarely be of any benefit for a non-blockchainbased company to issue a utility token as mean of raising capital.

Despite the significant benefits of crypto assets, there are also important risks associated with them. For instance, ESMA underlined the risks that the unregulated crypto-assets pose to investor protection and market integrity. It identified the most significant risks as fraud, cyber-attacks, money-laundering and market manipulation[16]. Certain features of crypto-assets (for instance their accessibility online or their pseudo-anonymous nature) can also be attractive for tax evaders. More generally, the application of DLT might also pose challenges with respect to protection of personal data and competition[17]. Some operational risks, including cyber risks, can also arise from the underlying technology applied in crypto-asset transactions. In its advice, EBA also drew attention to the energy consumption entailed in some crypto-asset activities. Finally, while the crypto-asset market is still small and currently pose no material risks to financial stability[18], this might change in the future.

[16] ESMA, "Advice on initial coin offerings and Crypto-Assets", January 2019.

[17] For example when established market participants operate on private permission-based DLT, this could create entry barriers.

[18] FSB Chair's letter to G20 Finance Ministers and Central Bank Governors, Financial Stability Board, 2018.

Question 11. In your opinion, what are the most important risks related to crypto-assets?

Please rate from 1 (not important at all) to 5 (very important)

	1 (not important at all)	2	3	4	5 (very important)	Don't know / no opinion / not relevant
Fraudulent activities	○	○	○	○	◉	○
Market integrity (e.g. price, volume manipulation, ...)	○	○	○	○	◉	○
Investor/consumer protection	○	○	○	○	◉	○

Anti-money laundering and CFT issues	○	○	○	○	◉	○
Data protection issues	○	○	○	◉	○	○
Competition issues	◉	○	○	○	○	○
Cyber security and operational risks	○	◉	○	○	○	○
Taxation issues	○	○	○	◉	○	○
Energy consumption entailed in crypto-asset activities	○	○	○	◉	○	○
Financial stability	○	◉	○	○	○	○
Monetary sovereignty/monetary policy transmission	○	◉	○	○	○	○

11.1 Is there any other important risks related to crypto-assets not mentioned above that you would foresee? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

11.2 Please explain your reasoning for your answers to question 11:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We rate the risks related to financial stability and monetary policy relatively low, since these factors mainly relate to the network effects that can occur when a crypto-asset becomes widely adopted in the market. That would happen if bigtechs or social media companies enter financial markets by introducing a means of payment that can compete with currency issued by a central bank.

The risks related to Energy consumption is rated medium, due to the existence of different types of consensus mechanisms which have very different energy consumption levels, and due the fact that the technology is not fully matured yet and advances in energy consumption are expected in the (re)design of (new) chains.

“Stablecoins” are a relatively new form of payment tokens whose price is meant to remain stable through time. Those “stablecoins” are typically asset-backed by real assets or funds (such as short-term government bonds, fiat currency, commodities, real estate, securities, ...) or by other crypto-assets. They can also take the form of algorithmic “stablecoins” (with algorithm being used as a way to stabilise volatility in the value of the coin). While some of these “stablecoins” can qualify as ‘financial instruments’ under MiFID II or as e-money under EMD2, others may fall outside

the scope of EU regulation. A recent G7 report on 'investigating the impact of global stablecoins' analysed "stablecoins" backed by a reserve of real assets or funds, some of which being sponsored by large technology or financial firms with a large customer base. The report underlines that "stablecoins" that have the potential to reach a global scale (the so-called "global stablecoins") are likely to raise additional challenges in terms of financial stability, monetary policy transmission and monetary sovereignty, among others. Users of "stablecoins" could in principle be exposed, among others, to liquidity risk (it may take time to cash in such a "stablecoin"), counterparty credit risk (issuer may default) and market risk (if assets held by issuer to back the "stablecoin" lose value).

Question 12. In our view, what are the benefits of 'stablecoins' and 'global stablecoins'? Please explain your reasoning.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There is no particular or bespoke benefit of stablecoins or GSCs. The benefits of stablecoins relate to the evaluation of the societal benefits of decentralized business models. If the benefits are positively evaluated then stablecoins are beneficial.

Question 13. In your opinion, what are the most important risks related to "stablecoins"?

Please rate from 1 (factor not relevant at all) to 5 (very relevant factor)

	1 (factor not relevant at all)	2	3	4	5 (very relevant factor)	Don't know / no opinion / not relevant
Fraudulent activities	○	○	◉	○	○	○
Market integrity (e.g. price, volume manipulation...)	○	◉	○	○	○	○
Investor/consumer protection	○	○	◉	○	○	○
Anti-money laundering and CFT issues	○	○	○	◉	○	○

Data protection issues	○	○	○	○	○	◉
Competition issues	○	○	○	○	○	◉
Cyber security and operational risks	○	○	◉	○	○	○
Taxation issues	○	○	◉	○	○	○
Energy consumption	○	○	◉	○	○	○
Financial stability	○	○	○	◉	○	○
Monetary sovereignty/monetary policy transmission	○	○	○	◉	○	○

13.1 Is there any other important risks related to “stablecoins” not mentioned above that you would foresee? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We note some promise on stablecoins, but also potential risks, especially if these, or similar, projects reach global scale. See below.

13.2 Please explain in your answer potential differences in terms of risks between “stablecoins” and ‘global stablecoins’:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The above-mentioned risks connect to the different activities of crypto-assets, and not, as the question suggests, the specific category of ´stablecoins´. Risk factors include the degree of decentralization, the potential for mass adoption, the underlying type of blockchain, the underlying type of stabilization-mechanism and so forth.

The Danish government finds that a risk assessment of crypto-assets should be based on the above-mentioned factors rather than an arbitrary categorisation of certain subtypes of crypto-assets. See also question 16.

It might be relevant not only to distinguish between "stablecoins" and "global stablecoins", but also between "decentralized" stablecoins (e.g. MakerDAO) and centralised stablecoins (e.g Tether, Libra).

Some EU Member States already regulate crypto-assets that fall outside the EU financial services legislation. The following questions seek views from stakeholders to determine whether a bespoke regime on crypto-assets at EU level could be conducive to a thriving crypto-asset market in Europe and on how to frame a proportionate and balanced regulatory framework, in order support legal certainty and thus innovation while reducing the related key risks. To reap

the full benefits of crypto-assets, additional modifications of national legislation may be needed to ensure, for instance, the enforceability of token transfers.

Question 14. In your view, would a bespoke regime for crypto-assets (that are not currently covered by EU financial services legislation) enable a sustainable crypto-asset ecosystem in the EU (that could otherwise not emerge)?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

14.1 Please explain your reasoning for your answer to question 14:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Depending on the type of regulation it could help legitimize crypto asset service providers. This could help the creation of a healthy crypto asset ecosystem. But it is important to differentiate crypto assets that are asset-like and crypto assets that are used as backend - or rails - for a service. Rails should not be regulated.

Question 15. What is your experience (if any) as regards national regimes on c r y p t o - a s s e t s ?

Please indicate which measures in these national laws are, in your view, an effective approach to crypto-assets regulation, which ones rather not.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We strongly believe that supranational regulation is the only feasible way to regulate crypto-assets, since the phenomenon in its nature cuts across borders.

In Denmark, as well as the rest of the EU, payment institutions have the right to create and access a payment account with a bank that can be used to carry out transactions. This rule is implemented in Section 63 of the Danish Payment Act. Payment institutions' access to a payment account is a prerequisite for operators to offer their services, as their business consists of transferring money from a customer's account to a business account. Through its oversight, the Danish Competition and Consumer Authority has seen examples where banks,
allegedly to minimize the risk of money laundering and terrorist financing, state as a reason for a refusal under section 63 of the Payment Act that they do not want to enter into customer relationships with payment institutions that have customers whose business is related to crypto assets.
A regulation of crypto assets can [perhaps] help ensure that banks can clarify their concerns about money laundering and terrorist financing in relation to crypto assets. As a result, fewer payment institutions may be denied the creation of a payment account on the grounds that there is a risk of money laundering and terrorist financing associated with making payments on behalf of companies whose business is related to crypto assets.

Question 16. In your view, how would it be possible to ensure that a bespoke regime for crypto-assets and crypto-asset service providers is proportionate to induce innovation, while protecting users of crypto-assets?

Please indicate if such a bespoke regime should include the above-mentioned categories (payment, investment and utility tokens) or exclude some of them, given their specific features (e.g. utility tokens).

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As stated in our response to question 13; categorization of crypto-assets in subgroups such as 'payment', 'investment' and 'utility tokens', serve well to create a basis of understanding for probable use-cases for a given token, but it is not well suited for regulatory purposes, as it does not consider, in a regulatory context, important features of the token, such as:

- type of blockchain
- degree of decentralization
- hybrid functionality
- underlying mechanism (stabilization mechanisms, creation of subassets through mining, minting etc.)

These deciding factors and their complexity are not met by simple regulatory taxonomy.

Question 17. Do you think that the use of crypto-assets in the EU would be facilitated by greater clarity as to the prudential treatment of financial institutions' exposures to crypto-assets (See the discussion paper of the Basel Committee on Banking Supervision (BCBS))?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

If you answered yes to question 17, please indicate how this clarity should be provided (guidance, EU legislation, ...):

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A combination of regulatory and supervisory guidance and EU legislation.

17.1 Please explain your reasoning for your answer to question 17:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It stands to reason that clarity regarding the prudential treatment of crypto assets would facilitate the use hereof in the financial sector, in part because it could provide institutions with clear legal boundaries within which to operate and assess the relevant risks, thereby decreasing litigation and conduct risk etc.

Such clarity would necessarily need to be provided through appropriate legislation at the EU level, however, the fast changing nature of crypto assets and the like along with the often time consuming nature of amending existing regulation highlights the need for appropriate guidelines on the treatment of crypto assets within different areas of legislation as well as bespoke legislation.

Question 18. Should harmonisation of national civil laws be considered to provide clarity on the legal validity of token transfers and the tokenisation of tangible (material) assets?

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

B. Specific questions on service providers related to crypto-assets

The crypto-asset market encompasses a range of activities and different market actors that provide trading and/or intermediation services. Currently, many of these activities and service providers are not subject to any regulatory framework, either at EU level (except for AML/CFT purposes) or national level. Regulation may be necessary in order to provide clear conditions governing the provisions of these services and address the related risks in an effective and proportionate manner. This would enable the development of a sustainable crypto-asset framework. This could be done by bringing these activities and service providers in the regulated space by creating a new bespoke regulatory approach.

Question 19. Can you indicate the various types and the number of service providers related to crypto-assets (issuances of crypto-assets, exchanges, trading platforms, wallet providers, ...) in your jurisdiction?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Exchange service providers between fiat and VA: app. 10.
Custodian wallet providers: 2.
Exchange service providers between VC and VA: 1.
Providers of collateral debt positions: 1.
Issuers of VC: app. 5.
Decentralized trading platforms: 1.

1. Issuance of crypto-assets

This section distinguishes between the issuers of crypto-assets in general (1.1.) and the issuer of the so-called "stablecoins" backed by a reserve of real assets (1.2.).

1.1. Issuance of crypto-assets in general

The crypto-asset issuer or sponsor is the organisation that has typically developed the technical specifications of a crypto-asset and set its features. In some cases, their identity is known, while in some cases, those promoters are unidentified. Some remain involved in maintaining and improving the crypto-asset's code and underlying algorithm while other do not (study from the European Parliament on "Cryptocurrencies and Blockchain", July 2018). Furthermore, the issuance of crypto-assets is generally accompanied with a document describing crypto-asset and the ecosystem around it, the so-called 'white papers'. Those 'white papers' are, however, not standardised and the quality, the transparency and disclosure of risks vary greatly. It is therefore uncertain whether investors or consumers who buy crypto-assets understand the nature of the crypto-assets, the rights associated with them and the risks they present.

Question 20. Do you consider that the issuer or sponsor of crypto-assets marketed to EU investors/consumers should be established or have a physical presence in the EU?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

20.1 Please explain your reasoning for your answer to question 20:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In order to create level playing field among EU- and non-EU issuers or sponsors of crypto-assets all issuers or sponsors of crypto-assets should be established or have a physical presence in the EU in order to market its crypto-assets to EU investors/consumers.

It is unclear how this would be enforced for fully decentralized crypto assets.

Question 21. Should an issuer or a sponsor of crypto-assets be required to provide information (e.g. through a 'white paper') when issuing crypto-assets?

- Yes
- No
- This depends on the nature of the crypto-asset (utility token, payment token, hybrid token, ...)
- Don't know / no opinion / not relevant

Question 21.1 Please indicate the entity that, in your view, should be responsible for this disclosure (e.g. the issuer/sponsor, the entity placing the crypto-assets in the market) and the content of such information (e.g. information on the crypto-asset issuer, the project, the rights attached to the crypto-assets, on the secondary trading, the underlying technology, potential conflicts of interest, ...):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 22. If a requirement to provide the information on the offers of crypto-assets is imposed on their issuer/sponsor, would you see a need to clarify the interaction with existing pieces of legislation that lay down information requirements (to the extent that those rules apply to the offers of certain crypto-assets, such as utility and/or payment tokens)?

Please rate from 1 (completely irrelevant) to 5 (highly relevant)

	1 (completely irrelevant)	2	3	4	5 (highly relevant)	Don't know / no opinion / not relevant
The Consumer Rights Directive	○	○	○	○	◉	○
The E-Commerce Directive	○	○	○	○	◉	○
The EU Distance Marketing of Consumer Financial Services Directive	○	○	○	○	◉	○

22.1 Is there any other existing piece of legislation laying down information requirements with which the interaction would need to be clarified? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No.

22.2 Please explain your reasoning and indicate the type of clarification (legislative/non legislative) that would be required:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 23. Beyond any potential obligation as regards the mandatory incorporation and the disclosure of information on the offer, should the crypto-asset issuer or sponsor be subject to other requirements?

Please rate from 1 (completely irrelevant) to 5 (highly relevant)

	1 (completely irrelevant)	2	3	4	5 (highly relevant)	Don't know / no opinion / not relevant
The managers of the issuer or sponsor should be subject to fitness and probity standards	○	○	○	○	○	◉
The issuer or sponsor should be subject to advertising rules to avoid misleading marketing/promotions	○	○	○	○	○	◉

Where necessary, the issuer or sponsor should put in place a mechanism to safeguard the funds collected such as an escrow account or trust account	○	○	○	○	○	◉

23.1 Is there any other requirement not mentioned above to which the crypto-asset issuer should be subject? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As crypto assets as a concept covers everything from financial instruments, monetary value, any given right or contractual agreement, it is not possible to create generalised requirements for the issuers.

23.2 Please explain your reasoning for your answers to question 23:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

1.2. Issuance of “stablecoins” backed by real assets

As indicated above, a new subset of crypto-assets – the so-called “stablecoins” – has recently emerged and present some opportunities in terms of cheap, faster and more efficient payments. A recent G7 report makes a distinction between “stablecoins” and “global stablecoins”. While “stablecoins” share many features of crypto-assets, the so-called “global stablecoins” (built on existing large and cross-border customer base) could scale rapidly, which could lead to additional risks in terms of financial stability, monetary policy transmission and monetary sovereignty. As a consequence, this section of the public consultation aims to determine whether additional requirements should be imposed on both “stablecoin” and “global stablecoin” issuers when their coins are backed by real assets or funds. The reserve (i.e. the pool of assets put aside by the issuer to stabilise the value of a “stablecoin”) may be subject to risks. For instance, the funds of the reserve may be invested in assets that may prove to be riskier or less liquid than expected in stressed market circumstances. If the number of “stablecoins” is issued above the funds held in the reserve, this could lead to a run (a large number of users converting their “stablecoins” into fiat currency).

Question 24. In your opinion, what would be the objective criteria allowing for a distinction between “stablecoins” and “global stablecoins” (e.g. number and value of “stablecoins” in circulation, size of the reserve, ...)? Please explain your reasoning.

5000 character(s) maximum

We generally disagree with the use of the term ‘stablecoin’ or ‘global stablecoin’. The term ‘stable’ sends a wrong message to consumers and other users that these crypto assets are better or more safe than other assets (crypto or real). We would thus prefer to avoid the use of the term ‘stablecoins’ and instead focus on the activities being carried out and degree of centralization, as described in our answers above.

Certain examples of so-called ‘stable coins’ have to a large degree driven the discussion on the regulation of crypto assets. We believe that it is important to ensure that a future common EU-regulation is not driven by specific examples of a so-called ‘stable coin’, but rather by the nature of the activities being carried out.

So-called ‘stablecoins” or ‘global stablecoins’ are to a large degree comparable to e-money and payment services in the need that they aim to address and service for European consumers and businesses. In that regard regulation should be devised to address the same risks, especially regarding consumer protection and financial stability, including adequate safeguarding/reserve requirements. It should take the degree of centralization into account, as it could be difficult to establish safeguarding/reserve requirements for truly decentralized crypto assets. However, there is a need to ensure that these requirements do not get prohibitive for future innovation. It could therefore be considered to apply proportionality in terms of the expected use of the so-called ‘stablecoin’.

Question 25.1 To tackle the specific risks created by “stablecoins” and “global stablecoins”, what are the requirements that could be imposed on their issuers and/or the manager of the reserve?

Please indicate for “stablecoins” if each is proposal is relevant.

	Relevant	Not relevant	Don’t know / no opinion
The reserve of assets should only be invested in safe and liquid assets (such as fiat-currency, short term-government bonds, ...)	○	○	○
The issuer should contain the creation of “stablecoins” so that it is always lower or equal to the value of the funds of the reserve	○	○	○
The assets or funds of the reserve should be segregated from the issuer’s balance sheet	○	○	○
The assets of the reserve should not be encumbered (i.e. not pledged as collateral)	○	○	○
The issuer of the reserve should be subject to prudential requirements rules (including capital requirements)	○	○	○

The issuer and the reserve should be subject to specific requirements in case of insolvency or when it decides to stop operating			
Obligation for the assets or funds to be held in custody with credit institutions in the EU			
Periodic independent auditing of the assets or funds held in the reserve			
The issuer should disclose information to the users on (i) how it intends to provide stability to the “stablecoins”, (ii) on the claim (or the absence of claim) that users may have on the reserve, (iii) on the underlying assets or funds placed in the reserve			
The value of the funds or assets held in the reserve and the number of stablecoins should be disclosed periodically			
Requirements to ensure interoperability across different distributed ledgers or enable access to the technical standards used by the issuer			

Question 25.1 To tackle the specific risks created by “stablecoins” and “global stablecoins”, what are the requirements that could be imposed on their issuers and/or the manager of the reserve?

Please indicate for “stablecoins” if each is proposal is relevant.

	Relevant	Not relevant	Don’t know / no opinion
The reserve of assets should only be invested in safe and liquid assets (such as fiat-currency, short term-government bonds, ...)			
The issuer should contain the creation of “stablecoins” so that it is always lower or equal to the value of the funds of the reserve			
The assets or funds of the reserve should be segregated from the issuer’s balance sheet			
The assets of the reserve should not be encumbered (i.e. not pledged as collateral)			
The issuer of the reserve should be subject to prudential requirements rules (including capital requirements)			

The issuer and the reserve should be subject to specific requirements in case of insolvency or when it decides to stop operating			
Obligation for the assets or funds to be held in custody with credit institutions in the EU			
Obligation for the assets or funds to be held for safekeeping at the central bank			
Periodic independent auditing of the assets or funds held in the reserve			
The issuer should disclose information to the users on (i) how it intends to provide stability to the “stablecoins”, (ii) on the claim (or the absence of claim) that users may have on the reserve, (iii) on the underlying assets or funds placed in the reserve			
The value of the funds or assets held in the reserve and the number of stablecoins should be disclosed periodically			
Obligation for the issuer to use open source standards to promote competition			

25.1 a) Is there any other requirements not mentioned above that could be imposed on “stablecoins” issuers and/or the manager of the reserve? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See answer to question 24.

25.1 b) Please Please illustrate your responses to question 25.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 25.2 To tackle the specific risks created by "stablecoins" and "global stablecoins", what are the requirements that could be imposed on their issuers and/or the manager of the reserve?

Please indicate for "global stablecoins" if each is proposal is relevant.

	Relevant	Not relevant	Don't know / no opinion
The reserve of assets should only be invested in safe and liquid assets (such as fiat-currency, short term-government bonds, ...)	○	○	○
The issuer should contain the creation of "stablecoins" so that it is always lower or equal to the value of the funds of the reserve	○	○	○
The assets or funds of the reserve should be segregated from the issuer's balance sheet	○	○	○
The assets of the reserve should not be encumbered (i.e. not pledged as collateral)	○	○	○
The issuer of the reserve should be subject to prudential requirements rules (including capital requirements)	○	○	○
The issuer and the reserve should be subject to specific requirements in case of insolvency or when it decides to stop operating	○	○	○
Obligation for the assets or funds to be held in custody with credit institutions in the EU	○	○	○
Periodic independent auditing of the assets or funds held in the reserve	○	○	○
The issuer should disclose information to the users on (i) how it intends to provide stability to the "stablecoins", (ii) on the claim (or the absence of claim) that users may have on the reserve, (iii) on the underlying assets or funds placed in the reserve	○	○	○
The value of the funds or assets held in the reserve and the number of stablecoins should be disclosed periodically	○	○	○

25.2 a) Is there any other requirements not mentioned above that could be imposed on "stablecoins" issuers and/or the manager of the reserve? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See answer to question 24.

25.2 b) Please Please illustrate your responses to question 25.2:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See answer to question 24.

"Stablecoins" could be used by anyone (retail or general purpose) or only by a limited set of actors, i.e. financial institutions or selected clients of financial institutions (wholesale). The scope of uptake may give rise to different risks. The G7 report on "investigating the impact of global stablecoins" stresses that "*Retail stablecoins, given their public nature, likely use for high-volume, small-value payments and potentially high adoption rate, may give rise to different risks than wholesale stablecoins available to a restricted group of users*".

Question 26. Do you consider that wholesale "stablecoins" (those limited to financial institutions or selected clients of financial institutions, as opposed to retail investors or consumers) should receive a different regulatory treatment than retail "stablecoins"?

- Yes
- No
- Don't know / no opinion / not relevant

26.1 Please explain your reasoning for your answer to question 26:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See answer to question 24.

2. Trading platforms

Trading platforms function as a market place bringing together different crypto-asset users that are either looking to buy or sell crypto-assets. Trading platforms match buyers and sellers directly or through an intermediary. The business model, the range of services offered and the level of sophistication vary across platforms. Some platforms, so-called 'centralised platforms', hold crypto-assets on behalf of their clients while others, so-called decentralised platforms, do

not. Another important distinction between centralised and decentralised platforms is that trade settlement typically occurs on the books of the platform (off-chain) in the case of centralised platforms, while it occurs on DLT for decentralised platforms (on-chain). Some platforms have already adopted good practice from traditional securities trading venues[19] while others use simple and inexpensive technology.

[19] Trading venues are a regulated market, a multilateral trading facility or an organised trading facility under MiFID II

Question 27. In your opinion and beyond market integrity risks (see section III. C. 1. below), what are the main risks in relation to trading platforms of crypto-assets?

Please rate from 1 (completely irrelevant) to 5 (highly relevant)

	1 (completely irrelevant)	2	3	4	5 (highly relevant)	Don't know / no opinion / not relevant
Absence of accountable entity in the EU	○	○	○	◉	○	○
Lack of adequate governance arrangements, including operational resilience and ICT security	○	○	○	◉	○	○
Absence or inadequate segregation of assets held on the behalf of clients (e.g. for 'centralised platforms')	○	○	○	◉	○	○
Conflicts of interest arising from other activities	○	○	◉	○	○	○
Absence/inadequate recordkeeping of transactions	○	○	○	○	◉	○
Absence/inadequate complaints or redress procedures are in place	○	○	◉	○	○	○
Bankruptcy of the trading platform	○	○	○	○	◉	○
Lacks of resources to effectively conduct its activities	○	○	○	○	○	◉
Losses of users' crypto-assets through theft or hacking (cyber risks)	○	○	○	○	◉	○
Lack of procedures to ensure fair and orderly trading	○	○	○	○	◉	○

Access to the trading platform is not provided in an undiscriminating way	○	○	◉	○	○	○
Delays in the processing of transactions	○	○	○	○	○	◉
For centralised platforms: Transaction settlement happens in the book of the platform and not necessarily recorded on DLT. In those cases, confirmation that the transfer of ownership is complete lies with the platform only (counterparty risk for investors vis-à-vis the platform)	○	○	○	○	◉	○
Lack of rules, surveillance and enforcement mechanisms to deter potential market abuse	○	○	○	○	◉	○

27.1 Is there any other main risks posed by trading platforms of crypto-assets not mentioned above that you would foresee? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

27.2 Please explain your reasoning for your answer to question 27:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Question 28. What are the requirements that could be imposed on trading platforms in order to mitigate those risks?

Please rate from 1 (completely irrelevant) to 5 (highly relevant)

	1 (completely irrelevant)	2	3	4	5 (highly relevant)	Don't know / no opinion / not relevant
Trading platforms should have a physical presence in the EU	○	◉	○	○	○	○
Trading platforms should be subject to governance arrangements (e.g. in terms of operational resilience and ICT security)	○	○	○	○	◉	○
Trading platforms should segregate the assets of users from those held on own account	○	○	○	○	◉	○
Trading platforms should be subject to rules on conflicts of interest	○	○	○	○	◉	○
Trading platforms should be required to keep appropriate records of users' transactions	○	○	○	○	◉	○
Trading platforms should have an adequate complaints handling and redress procedures	○	○	◉	○	○	○
Trading platforms should be subject to prudential requirements (including capital requirements)	○	○	○	◉	○	○
Trading platforms should have adequate rules to ensure fair and orderly trading	○	○	○	◉	○	○
Trading platforms should provide access to its services in an undiscriminating way	○	○	○	◉	○	○
Trading platforms should have adequate rules, surveillance and enforcement mechanisms to deter potential market abuse	○	○	○	○	◉	○
Trading platforms should be subject to reporting requirements (beyond AML/CFT requirements)	○	○	○	◉	○	○
Trading platforms should be responsible for screening crypto-assets against the risk of fraud	○	○	○	◉	○	○

28.1 Is there any other requirement that could be imposed on trading platforms in order to mitigate those risks? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

28.2 Please indicate if those requirements should be different depending on the type of crypto-assets traded on the platform and explain your reasoning for your answers to question 28:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

3. Exchanges (fiat-to-crypto and crypto-to-crypto)

Crypto-asset exchanges are entities that offer exchange services to crypto-asset users, usually against payment of a certain fee (i.e. a commission). By providing broker/dealer services, they allow users to sell their crypto-assets for fiat currency or buy new crypto-assets with fiat currency. It is important to note that some exchanges are pure crypto-to-crypto exchanges, which means that they only accept payments in other crypto-assets (for instance, Bitcoin). It should also be noted that many cryptocurrency exchanges (i.e. both fiat-to-crypto and crypto-to-crypto exchanges) operate as custodial wallet providers (see section III.B.4 below). Many exchanges usually function both as a trading platform and as a form of exchange (study from the European Parliament on “Cryptocurrencies and Blockchain”, July 2018).

Question 29. In your opinion, what are the main risks in relation to crypto-to-crypto and fiat–to-crypto exchanges?

Please rate from 1 (completely irrelevant) to 5 (highly relevant)

	1 (completely irrelevant)	2	3	4	5 (highly relevant)	Don’t know / no opinion /

						not relevant
Absence of accountable entity in the EU	○	○	◉	○	○	○
Lack of adequate governance arrangements, including operational resilience and ICT security	○	○	◉	○	○	○
Conflicts of interest arising from other activities	◉	○	○	○	○	○
Absence/inadequate recordkeeping of transactions	○	○	◉	○	○	○
Absence/inadequate complaints or redress procedures are in place	○	◉	○	○	○	○
Bankruptcy of the exchange	○	○	◉	○	○	○
Inadequate own funds to repay the consumers	○	○	◉	○	○	○
Losses of users' crypto-assets through theft or hacking	○	○	○	◉	○	○
Users suffer loss when the exchange they interact with does not exchange crypto-assets against fiat currency (conversion risk)	○	◉	○	○	○	○
Absence of transparent information on the crypto-assets proposed for exchange	◉	○	○	○	○	○

29.1 Is there any other main risks in relation to crypto-to-crypto and fiat–to-crypto exchanges not mentioned above that you would foresee? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There is a very big difference on crypto-to-fiat and crypto-to-crypto exchanges. Crypto-to-crypto exchanges can make a large reduction on counter party risk to the exchange, if the trades are conducted by the use of a smart-contract. This means there is no or very little risk for hacking, however, the consequences might be big. The is also little or no risk, for the customers in case of bankruptcy when smart contracts are used. However, the risks are then moved to a technical level, which can be audited by regulators, customers etc. (fully transparent on the blockchains). The risk of hacking might be mitigated by applying technical audits of the code and requiring cold storage (or similar), when possible.

29.2 Please explain your reasoning for your answer to question 29:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There is a very large difference in the listed risks depending on the type of exchange – crypto to crypto or fiat to crypto. The questions does not fit to be shared for both types of exchanges, so the answers are given by having with risks associated with both companies/business models in mind.

Question 30. What are the requirements that could be imposed on exchanges in order to mitigate those risks?

Please rate from 1 (completely irrelevant) to 5 (highly relevant)

	1 (completely irrelevant)	2	3	4	5 (highly relevant)	Don't know / no opinion / not relevant
Absence of accountable entity in the EU	○	○	◉	○	○	○
Exchanges should be subject to governance arrangements (e.g. in terms of operational resilience and ICT security)	○	○	◉	○	○	○
Exchanges should segregate the assets of users from those held on own account	○	○	○	○	◉	○
Exchanges should be subject to rules on conflicts of interest	○	○	◉	○	○	○
Exchanges should be required to keep appropriate records of users' transactions	○	○	○	○	◉	○
Exchanges should have an adequate complaints handling and redress procedures	○	◉	○	○	○	○
Exchanges should be subject to prudential requirements (including capital requirements)	○	◉	○	○	○	○
Exchanges should be subject to advertising rules to avoid misleading marketing/promotions	○	○	◉	○	○	○
Exchanges should be subject to reporting requirements (beyond AML/CFT requirements)	○	◉	○	○	○	○

Exchanges should be responsible for screening crypto-assets against the risk of fraud	○	○	○	◉	○	○

30.1 Is there any other requirement that could be imposed exchanges in order to mitigate those risks? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It could be required for the the crypto-to-crypto exchanges to publish the code/smart contract to the regulators, to conduct audits or require it to be open source (this is maybe taking it too far). It could be required from the fiat to crypto exchanges to use multisig (the digital signature of several employees as a requirement to conduct certain activities), if the company has a certain size (many employees).
The crypto to fiat exchanges can also be required to keep a certain amount of the virtual currency they store in cold storage (away from hackers).

30.2 Please indicate if those requirements should be different depending on the type of crypto-assets available on the exchange and explain your reasoning for your answers to question 30:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Again, it is very important to differentiate between crypto exchanges holding funds and crypto exchanges not holding funds (by the use of smart contracts), the risks are different. Requiring the exchanges to publish their code to the FSA/relevant regulator may only be needed for crypto to crypto exchanges.

4. Provision of custodial wallet services for crypto-assets

Crypto-asset wallets are used to store public and private keys[20] and to interact with DLT to allow users to send and receive crypto-assets and monitor their balances. Crypto-asset wallets come in different forms. Some support multiple crypto-assets/DLTs while others are crypto-asset/DLT specific[21]. DLT networks generally provide their own wallet functions (e.g. Bitcoin or Ether).

There are also specialised wallet providers. Some wallet providers, so-called custodial wallet providers, not only provide wallets to their clients but also hold their crypto-assets (i.e. their private keys) on their behalf. They can also provide an overview of the customers' transactions. Different risks can arise from the provision of such a service.

[20] DLT is built upon a cryptography system that uses pairs of keys: public keys, which are publicly known and essential for identification, and private keys, which are kept secret and are used for authentication and encryption.

[21] There are software/hardware wallets and so-called cold/hot wallets. A software wallet is an application that may be installed locally (on a computer or a smart phone) or run in the cloud. A hardware wallet is a physical device, such as a USB key. Hot wallets are connected to the internet while cold wallets are not.

Question 31. In your opinion, what are the main risks in relation to the custodial wallet service provision?

Please rate from 1 (completely irrelevant) to 5 (highly relevant)

	1 (completely irrelevant)	2	3	4	5 (highly relevant)	Don't know / no opinion / not relevant
No physical presence in the EU	○	○	◉	○	○	○
Lack of adequate governance arrangements, including operational resilience and ICT security	○	○	◉	○	○	○
Absence or inadequate segregation of assets held on the behalf of clients	○	○	○	○	◉	○
Conflicts of interest arising from other activities (trading, exchange)	◉	○	○	○	○	○
Absence/inadequate recordkeeping of holdings and transactions made on behalf of users	○	○	○	◉	○	○
Absence/inadequate complaints or redress procedures are in place	○	○	◉	○	○	○
Bankruptcy of the custodial wallet provider	○	○	○	○	◉	○
Inadequate own funds to repay the consumers	○	○	○	○	◉	○
Losses of users' crypto-assets/private keys (e.g. through wallet theft or hacking)	○	○	○	◉	○	○
The custodial wallet is compromised or fails to provide expected functionality	○	○	○	◉	○	○
The custodial wallet provider behaves negligently or fraudulently	○	○	◉	○	○	○
No contractual binding terms and provisions with the user who holds the wallet	○	○	◉	○	○	○

31.1 Is there any other risk in relation to the custodial wallet service provision not mentioned above that you would foresee? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The risks associated with custodial wallet providers are covered in the above listed questions.

31.2 Please explain your reasoning for your answer to question 31:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Question 32. What are the requirements that could be imposed on custodial wallet providers in order to mitigate those risks?

Please rate from 1 (completely irrelevant) to 5 (highly relevant)

	1 (completely irrelevant)	2	3	4	5 (highly relevant)	Don't know / no opinion / not relevant
Custodial wallet providers should have a physical presence in the EU	○	○	◉	○	○	○
Custodial wallet providers should be subject to governance arrangements (e.g. in terms of operational resilience and ICT security)	○	○	◉	○	○	○
Custodial wallet providers should segregate the asset of users from those held on own account	○	○	○	○	◉	○

Custodial wallet providers should be subject to rules on conflicts of interest	○	○	◉	○	○	○
Custodial wallet providers should be required to keep appropriate records of users' holdings and transactions	○	○	○	○	◉	○
Custodial wallet providers should have an adequate complaints handling and redress procedures	○	○	○	◉	○	○
Custodial wallet providers should be subject to capital requirements	○	◉	○	○	○	○
Custodial wallet providers should be subject to advertising rules to avoid misleading marketing/promotions	○	○	◉	○	○	○
Custodial wallet providers should be subject to certain minimum conditions for their contractual relationship with the consumers/investors	○	○	○	◉	○	○

32.1 Is there any other requirement that could be imposed on custodial wallet providers in order to mitigate those risks? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A requirement of multisig (the digital signature of additional employees in the company, avoiding one person to make big decisions alone)

32.2 Please indicate if those requirements should be different depending on the type of crypto-assets kept in custody by the custodial wallet provider and explain your reasoning for your answer to question 32:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It is the same. It is not the assets that make the difference, but the way it is stored, as this includes counter party risk. Holding privacy coins may, however, cause extra AML-risks, which must be addressed by the company in its risk assessment, policy, SOP's etc. The AML-legislation is sufficient in this sense.

Question 33. Should custodial wallet providers be authorised to ensure the custody of all crypto-assets, including those that qualify as financial instruments under MiFID II (the so-called 'security tokens', see section IV of the public consultation) and those currently falling outside the scope of EU legislation?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

33.1 Please explain your reasoning for your answer to question 33:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

To ensure consumer protection, there is less risk for the user to lose his or her key.
To ensure transparence, the regulators know, where the tokens are stored, if it is banned, the tokens will be stored privately in non-custodial wallets.
To ensure liquidity, it will be a limitation of the technological opportunities the blockchain technology brings.

Question 34. In your opinion, are there certain business models or activities /services in relation to digital wallets (beyond custodial wallet providers) that should be in the regulated space?

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

VASP's that offer financial services, as we know them, are covered elsewhere in the legislation. If a VASP offers lottery-activities, have sufficient legislation for that. If a VASP offers remittance, we have sufficient legislation for that etc.

5. Other services providers

Beyond custodial wallet providers, exchanges and trading platforms, other actors play a particular role in the crypto-asset ecosystem. Some bespoke national regimes on crypto-currency regulate (either on an optional or mandatory basis) other crypto-assets related services, sometimes taking examples of the investment services listed in Annex I of MiFID II. The following section aims at assessing whether some requirements should be required for other services.

Question 35. In your view, what are the services related to crypto-assets that should be subject to requirements?

(When referring to execution of orders on behalf of clients, portfolio management, investment advice, underwriting on a firm commitment basis, placing on a firm commitment basis, placing without firm commitment basis, we consider services that are similar to those regulated by Annex I A of MiFID II.)

Please rate from 1 (completely irrelevant) to 5 (highly relevant)

	1 (completely irrelevant)	2	3	4	5 (highly relevant)	Don't know / no opinion / not relevant
Reception and transmission of orders in relation to crypto-assets	○	○	○	◉	○	○
Execution of orders on crypto-assets on behalf of clients	○	○	○	◉	○	○
Crypto-assets portfolio management	○	○	○	◉	○	○
Advice on the acquisition of crypto-assets	○	○	○	◉	○	○
Underwriting of crypto-assets on a firm commitment basis	○	○	○	◉	○	○
Placing crypto-assets on a firm commitment basis	○	○	○	◉	○	○
Placing crypto-assets without a firm commitment basis	○	○	○	◉	○	○
Information services (an information provider can make available information on exchange rates, news feeds and other data related to crypto-assets)	○	○	○	◉	○	○
Processing services, also known as 'mining' or 'validating' services in a DLT environment (e.g. 'miners' or validating 'nodes' constantly work on verifying and confirming transactions)	○	○	○	◉	○	○

Distribution of crypto-assets (some crypto-assets arrangements rely on designated dealers or authorised resellers)	○	○	○	◉	○	○
Services provided by developers that are responsible for maintaining/updating the underlying protocol	○	○	○	◉	○	○
Agent of an issuer (acting as liaison between the issuer and to ensure that the regulatory requirements are complied with)	○	○	○	◉	○	○

35.1 Is there any other services related to crypto-assets not mentioned above that should be subject to requirements? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

35.2 Please illustrate your response to question 35 by underlining the potential risks raised by these services if they were left unregulated and by identifying potential requirements for those service providers:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Crypto-asset resembles financial instrument in many ways and in other ways not at all. Due to the digital and dematerialized nature of crypto-assets the MiFID II-rules can prove difficult to apply. Further supervisors can have difficulties to impose sanctions, as the supervisor might not know whom to address the rules and sanctions to due to the cyper nature of the crypto-assets.

Accordingly, the Danish government finds that a bespoke regime for crypto-assets should be developed.

Such a regime should be technology neutral and ensure that new technologies such as DLT can be applied in the financial sector in a way that balance consideration to innovation and growth as well as investor /consumer protection, orderly markets and financial stability.

Further, the regulation must ensure level playing field among traditional providers of financial services and providers of financial services using new technology such as DLT. The regulation must account for the multiple risks connected to crypto-assets investments. This includes among others the risk of money laundering and investor/consumer protection. Special consideration should also be given to the cross-border nature of crypto-assets.

However a bespoke regime should only cover the features of crypto- assets that are currently known, and regulatory feasible to supervise for the competent authorities.

Crypto-assets are offered on the internet and are as such cross-border in nature. Therefore, the Danish government finds that the regulation of crypto-assets should be set out on at least EU-level.

Crypto-assets are not banknotes, coins or scriptural money. For this reason, crypto-assets do not fall within the definition of 'funds' set out in the Payment Services Directive (PSD2), unless they qualify as electronic money. As a consequence, if a firm proposes a payment service related to a crypto-asset (that do not qualify as e-money), it would fall outside the scope of PSD2.

Question 36. Should the activity of making payment transactions with crypto-assets (those which do not qualify as e-money) be subject to the same or equivalent rules as those currently contained in PSD2?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

36.1 Please explain your reasoning for your answer to question 36:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Generally, payment transactions require a transfer of funds. In cases where a crypto-asset transaction has the intent and purpose of transferring funds; level playing field should be secured by subjecting the transaction to equivalent rules as traditional payment transactions. In these cases, the crypto-asset transaction should be regarded as a technological mean to make a transaction of funds as we know it.

C. Horizontal questions

Those horizontal questions relate to four different topics: Market integrity (1.), AML/CFT (2.), consumer protection (3.) and the supervision and oversight of the various service providers related to crypto-assets (4).

1. Market Integrity

Many crypto-assets exhibit high price and volume volatility while lacking the transparency and supervision and oversight present in other financial markets. This may heighten the potential risk of market manipulation and insider dealing on exchanges and trading platforms. These issues can be further exacerbated by trading platforms not having adequate systems and controls to ensure fair and orderly trading and protect against market manipulation and insider dealing. Finally there may be a lack of information about the identity of participants and their trading activity in some crypto-assets.

Question 37. In your opinion, what are the biggest market integrity risks related to the trading of crypto-assets?

Please rate from 1 (completely irrelevant) to 5 (highly relevant)

	1 (completely irrelevant)	2	3	4	5 (highly relevant)	Don't know / no opinion / not relevant
Price manipulation	○	○	○	○	◉	○
Volume manipulation (wash trades…)	○	○	○	◉	○	○
Pump and dump schemes	○	○	○	○	◉	○
Manipulation on basis of quoting and cancellations	○	○	○	○	○	◉
Dissemination of misleading information by the crypto-asset issuer or any other market participants	○	○	○	○	◉	○
Insider dealings	○	○	○	○	○	◉

37.1 Is there any other big market integrity risk related to the trading of crypto-assets not mentioned above that you would foresee? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

37.2 Please explain your reasoning for your answer to question 37:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

While market integrity is the key foundation to create consumers' confidence in the crypto-assets market, the extension of the Market Abuse Regulation (MAR) requirements to the crypto-asset ecosystem could unduly restrict the development of this sector.

Question 38. In your view, how should market integrity on crypto-asset markets be ensured?

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Market integrity should either be ensured trough a classical "catch-all"-provision, that qualifies security tokens as financial instruments and consequently enables the existing rules on market abuse etc. to be applicable or efforts should be made to ensure a tailor-made regime to apply to crypto-assets.

While the information on executed transactions and/or current balance of wallets are often openly accessible in distributed ledger based crypto-assets, there is currently no binding requirement at EU level that would allow EU supervisors to directly identify the transacting counterparties (i.e. the identity of the legal or natural person(s) who engaged in the transaction).

Question 39. Do you see the need for supervisors to be able to formally identify the parties to transactions in crypto-assets?

- ○ Yes
- ○ No
- ◉ Don't know / no opinion / not relevant

39.1 Please explain your reasoning for your answer to question 39:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

This would depend on the general risk assessment of the current market. If a sound and functional market abuse regime should apply to the trading of crypto assets, supervisors should in general be able to identify the underlying parties to a transaction in order to conduct effective supervision and in order to investigate potential market abuse. In practice, this would be ensured through existing regimes, i.e. trading records and reporting requirements to trade repositories.

Question 40. Provided that there are new legislative requirements to ensure the proper identification of transacting parties in crypto-assets, how can it be

ensured that these requirements are not circumvented by trading on platforms/exchanges in third countries?

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

By securing adequate supervisory powers in respect of supervision, conduct rules, registration procedures etc. Legislative measures could also be taken to ensure fit & proper requirements, capital requirements or the like.

2. Anti-Money Laundering (AML)/Countering the Financing of Terrorism (CFT)

Under the current EU anti-money laundering and countering the financing of terrorism (AML/CFT) legal framework (Anti-Money Laundering Directive (Directive 2015/849/EU) as amended by AMLD5 (Directive 2018/843/EU)), providers of services (wallet providers and crypto-to-fiat exchanges) related to "virtual currency" are "obliged entities". A virtual currency is defined as: "*a digital representation of value that is neither issued by a central bank or a public authority, nor necessarily attached to a fiat currency, but is accepted by natural or legal persons as a means of payment and can be transferred, stored or traded electronically". The Financial Action Task Force (FATF) uses a broader term "virtual asset" and defines it as: "a digital representation of value that can be digitally traded or transferred, and can be used for payment or investment purposes, and that does not include digital representations of fiat currencies, securities and other financial assets that are already covered elsewhere in the FATF Recommendations*". Therefore, there may be a need to align the definition used in the EU AML/CFT framework with the FATF recommendation or with a "crypto-asset" definition, especially if a crypto-asset framework was needed.

Question 41. Do you consider it appropriate to extend the existing "virtual currency" definition in the EU AML/CFT legal framework in order to align it with a broader definition (as the one provided by the FATF or as the definition of "crypto-assets" that could be used in a potential bespoke regulation on crypto-assets)?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

41.1 Please explain your reasoning for your answer to question 41:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In order to not regulate the same currency, service or instrument twice, it makes sense to look at the purpose instead of a narrow definition. Example: Tether issues a 'stablecoin' (virtual asset) backed by US dollars and pegged to the USD, it is named USD Tether. If Tether moved their company to Denmark, we would most likely consider the USD Tether to be e-money and not a virtual asset.

Some crypto-asset services are currently covered in internationally recognised recommendations without being covered under EU law, such as the provisions of exchange services between different types of crypto-assets (crypto-to-crypto exchanges) or the "*participation in and provision of financial services related to an issuer"s offer and/or sale of virtual assets*". In addition, possible gaps may exist with regard to peer-to-peer transactions between private persons not acting as a business, in particular when done through wallets that are not hosted by custodial wallet providers.

Question 42. Beyond fiat-to-crypto exchanges and wallet providers that are currently covered by the EU AML/CFT framework, are there crypto-asset services that should also be added to the EU AML/CFT legal framework obligations?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

If you think there are crypto-asset services that should also be added to the EU AML/CFT legal framework obligations, describe the possible risks to tackle:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Exchanges offering to exchange one kind of crypto asset to another kind of crypto asset.

42.1 Please explain your reasoning for your answer to question 42:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The use of crypto-to-crypto exchanges are reducing imbedded transparency of many crypto assets making it harder for the FIU's to trace the transaction.

Question 43. If a bespoke framework on crypto-assets is needed, do you consider that all crypto-asset service providers covered by this potential framework should become 'obliged entities' under the EU AML/CFT framework?

- ( ) Yes
- (●)

No
- Don’t know / no opinion / not relevant

43.1 Please explain your reasoning for your answer to question 43:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Many crypto-asset service providers will compete with existing (non-crypto) service providers. The existing service providers are covered by a sufficient EU AML/CFT framework, e.g. remittance services, loan activities etc. This legislation will apply to the crypto-asset service providers, as it is the activity that is covered, not the technology used as rails.

Question 44. In your view, how should the AML/CFT risks arising from peer-to-peer transactions (i.e. transactions without intermediation of a service provider) be mitigated?

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Make sure all exchanging activities from crypto-assets to fiat currency (and fiat to crypto-assets) are registered within their local jurisdiction. It will be the responsibility of these exchanges to examine the source of funds from peer-to-peer transaction. At the same time the risk of peer-to-peer should be communicated in the Supranational risk assessment, to make sure the virtual asset exchanges takes this risk into account when assessing the risk of their business.

In order to tackle the dangers linked to anonymity, new FATF standards require that “*countries should ensure that originating Virtual Assets Service Providers (VASP) obtain and hold required and accurate originator information and required beneficiary information on virtual asset transfers, submit the above information to the beneficiary VASP or financial institution (if any) immediately and securely, and make it available on request to appropriate authorities. Countries should also ensure that beneficiary VASPs obtain and hold required originator information and required and accurate beneficiary information on virtual asset transfers and make it available on request to appropriate authorities*” (FATF Recommendations).

Question 45. Do you consider that these requirements should be introduced in the EU AML/CFT legal framework with additional details on their practical implementation?

- Yes
- (•) No
- Don’t know / no opinion / not relevant

45.1 Please explain your reasoning for your answer to question 45:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It seems like this FATF requirement is based on how the traditional transaction infrastructure works. SWIFT payments can carry a message, like the message requested in FATF's recommendation 16. However, if a similar message is submitted by the originating VASP to be carried on-chain to the beneficiary VASP this will be a major breach of GDPR because the originator and beneficiary information (names, social security numbers etc.) will be publicly available and never can be deleted afterwards.

Because of this, the massage must then be submitted off-chain, e.g. by the use of API-connections between the originator and beneficiary VASP's. In traditional correspondent banking relationships, the banks have entered into an agreement before transactions are possible to be conducted between the banks. This is not the case, when it comes to VASP's. A VASP is open for receiving any transaction as long as the receiving address is revealed/made available. The originating VASP is not able to know, who the beneficiary VASP is.

Applying these requirements will lead to forced non-compliance with the AML/CTF-framework of all VASP's as there (so far) is no answer to how this issue should be solved theoretically or technically.

Question 46. In your view, do you consider relevant that the following requirements are imposed as conditions for the registration and licensing of providers of services related to crypto-assets included in section III. B?

Please rate from 1 (completely irrelevant) to 5 (highly relevant)

	1 (completely irrelevant)	2	3	4	5 (highly relevant)	Don't know / no opinion / not relevant
Directors and senior management of such providers should be subject to fit and proper test from a money laundering point of view, meaning that they should not have any convictions or suspicions on money laundering and related offences	○	○	◉	○	○	○
Service providers must be able to demonstrate their ability to have all the controls in place in order to be able to comply with their obligations under the anti-money laundering framework	○	○	◉	○	○	○

46.1 Please explain your reasoning for your answer to question 46:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The fit and proper regime is designed for assessing the directors and senior management in companies that are centralized and run by people. Some larger exchanges and crypto-asset service providers are run by people, and in this case it makes sense to conduct fit and proper test from a money laundering point of view. However, part of the vision and goal of the crypto economy is to create decentralization, making decentralized finance "trustless" meaning you have to trust the smart contract (computer code), not the developers behind it.

The same argumentation is used, when it comes to the requirement, if service providers must be able to demonstrate their ability to have all the controls in place.

3. Consumer/investor protection[21]

Information on the profile of crypto-asset investors and users is limited. Some estimates suggest however that the user base has expanded from the original tech-savvy community to a broader audience, including both retail and institutional investors[22]. Offerings of utility tokens, for instance, do not provide for minimum investment amounts nor are they necessarily limited to professional or sophisticated investors. When considering the consumer protection, the functions of the crypto-assets should also be taken into consideration. While some crypto-assets are bought for investment purposes, other are used as a means of payment or for accessing a specific product or service. Beyond the information that is usually provided by crypto-asset issuer or sponsors in their 'white papers', the question arises whether providers of services related to crypto-assets should carry out suitability checks depending on the riskiness of a crypto-asset (e.g. volatility, conversion risks, ...) relative to a consumer's risk appetite. Other approaches to protect consumers and investors could also include, among others, limits on maximum investable amounts by EU consumers or warnings on the risks posed by crypto-assets.

[21] The term 'consumer' or 'investor' are both used in this section, as the same type of crypto-assets can be bought for different purposes. For instance, payment tokens can be acquired to make payment transactions while they can also be held for investment, given their volatility. Likewise, utility tokens can be bought either for investment or for accessing a specific product or service.

[22] ESMA, "Advice on initial coin offerings and Crypto-Assets", January 2019.

Question 47. What type of consumer protection measures could be taken as regards crypto-assets?

Please rate from 1 (completely irrelevant) to 5 (highly relevant)

	1 (completely irrelevant)	2	3	4	5 (highly relevant)	Don't know / no opinion /

						not relevant
Information provided by the issuer of crypto-assets (the so-called 'white papers')	○	○	○	○	◉	○
Limits on the investable amounts in crypto-assets by EU consumers	○	○	○	○	○	◉
Suitability checks by the crypto-asset service providers (including exchanges, wallet providers, ...)	○	○	○	○	◉	○
Warnings on the risks by the crypto-asset service providers (including exchanges, platforms, custodial wallet providers, ...)	○	○	○	○	◉	○

47.1 Is there any other type of consumer protection measures that could be taken as regards crypto-assets? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

47.2 Please explain your reasoning for your answer to question 47 and indicate if those requirements should apply to all types of crypto assets or only to some of them:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Due to the rapid technological progress in the highly complex area of crypto assets there is likely to be a high need for consumer protection, especially around areas such as transparency and information.

Question 48. Should different standards of consumer/investor protection be applied to the various categories of crypto-assets depending on their prevalent economic (i.e. payment tokens, stablecoins, utility tokens, ...) or social function?

○ Yes

- (●) No
- ( ) Don’t know / no opinion / not relevant

48.1 Please explain your reasoning for your answer to question 48:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please see comment to previous questions. It is likely to be increasingly difficult to distinguish between various types of crypto assets as most mature blockchains are developing new capabilities such as smart contract functionality.

Before an actual ICO (i.e. a public sale of crypto-assets by means of mass distribution), some issuers may choose to undertake private offering of crypto-assets, usually with a discounted price (the so-called “private sale”), to a small number of identified parties, in most cases qualified or institutional investors (such as venture capital funds). Furthermore, some crypto-asset issuers or promoters distribute a limited number of crypto-assets free of charge or at a lower price to external contributors who are involved in the IT development of the project (the so-called “bounty”) or who raise awareness of it among the general public (the so-called “air drop”) (see Autorité des Marchés Financiers, French ICOs – A New Method of financing, November 2018).

Question 49. Should different standards in terms of consumer/investor protection be applied depending on whether the crypto-assets are bought in a public sale or in a private sale?

- ( ) Yes
- ( ) No
- (●) Don’t know / no opinion / not relevant

49.1 Please explain your reasoning for your answer to question 49:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It is highly relevant to keep in mind that there is a strong need for guidelines and specification of the product (as complex) and that there is a need for a minimum standard of at least an appropriateness assessments prior to the trade of crypto-assets when trading crypto assets.

Question 50. Should different standards in terms of consumer/investor protection be applied depending on whether the crypto-assets are obtained against payment or for free (e.g. air drops)?

- ( ) Yes

- No
- Don’t know / no opinion / not relevant

50.1 Please explain your reasoning for your answer to question 50:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The vast majority of crypto-assets that are accessible to EU consumers and investors are currently issued outside the EU (in 2018, for instance, only 10% of the crypto-assets were issued in the EU (mainly, UK, Estonia and Lithuania) – Source Satis Research). If an EU framework on the issuance and services related to crypto-assets is needed, the question arises on how those crypto-assets issued outside the EU should be treated in regulatory terms.

Question 51. In your opinion, how should the crypto-assets issued in third countries and that would not comply with EU requirements be treated?

Please rate from 1 (factor not relevant at all) to 5 (very relevant factor)

	1 (factor not relevant at all)	2	3	4	5 (very relevant factor)	Don’t know / no opinion / not relevant
Those crypto-assets should be banned	○	○	○	○	○	◉
Those crypto-assets should be still accessible to EU consumers/investors	○	○	○	○	○	◉
Those crypto-assets should be still accessible to EU consumers/investors but accompanied by a warning that they do not necessarily comply with EU rules	○	○	○	○	○	◉

51.1 Is there any other way the crypto-assets issued in third countries and that would not comply with EU requirements should be treated? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Third countries issuers or sponsors of crypto-assets marketing its crypto-assets in EU should adhere to the same rules, as EU-issuers or -sponsors of crypto-assets. Further, each member state should have the possibility to ban certain crypto-assets if a problem should arise in their jurisdiction.

51.2 Please explain your reasoning for your answer to question 51:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There should be level playing field among crypto-assets issuers or sponsors and in order to ensure the highest level of investor/consumer protection as well as orderly markets and financial stability each member state should be allowed to ban certain crypto-assets.

4. Supervision and oversight of crypto-assets service providers

As a preliminary remark, it should be noted that where a crypto-asset arrangement, including "stablecoin" arrangements qualify as payment systems and/or scheme, the Eurosystem oversight frameworks may apply. In accordance with its mandate, the Eurosystem is looking to apply its oversight framework to innovative projects. As the payment landscape continues to evolve, the Eurosystem oversight frameworks for payments instruments, schemes and arrangements are currently reviewed with a view to closing any gaps that innovative solutions might create by applying a holistic, agile and functional approach. The European Central Bank and Eurosystem will do so in cooperation with other relevant European authorities. Furthermore, the Eurosystem supports the creation of cooperative oversight frameworks whenever a payment arrangement is relevant to multiple jurisdictions.

That being said, if a legislation on crypto-assets service providers at EU level is needed, a question arises on which supervisory authorities in the EU should ensure compliance with that regulation, including the licensing of those entities. As the size of the crypto-asset market is still small and does not at this juncture raise financial stability issues, the supervision of the service providers (that are still a nascent industry) by national competent authorities would be justified. At the same time, as some new initiatives (such as the "global stablecoin") through their global reach and can raise financial stability concerns at EU level, and as crypto-assets will be accessible through the internet to all consumers, investors and firms across the EU, it could be sensible to ensure an equally EU-wide supervisory perspective. This could be achieved, *inter alia*, by empowering the European Authorities (e.g. in cooperation with the European System of Central Banks) to supervise and oversee crypto-asset service providers. In any case, as the crypto-asset market rely on new technologies, EU regulators could face new challenges and require new supervisory and monitoring tools.

Question 52. Which, if any, crypto-asset service providers included in Section III. B do you think should be subject to supervisory coordination or supervision by the European Authorities (in cooperation with the ESCB where relevant)? Please explain your reasoning:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Question 53. Which are the tools that EU regulators would need to adequately supervise the crypto-asset service providers and their underlying technologies?

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

IV. Crypto-assets that are currently covered by EU legislation

This last part of the public consultation consists of general questions on security tokens (A.), an assessment of legislation applying to security tokens (B.) and an assessment of legislation applying to e-money tokens (C.).

A. General questions on 'security tokens'

Introduction

For the purpose of this section, we use the term 'security tokens' to refer to crypto-assets issued on a DLT and that qualify as transferable securities or other types of MiFID financial instruments. By extension, activities concerning security tokens would qualify as MiFID investment services/activities and transactions in security tokens admitted to trading or traded on a trading venue[23] would be captured by MiFID provisions. Consequently, firms providing services concerning security tokens should ensure they have the relevant MiFID authorisations and that they follow the relevant

rules and requirements. MiFID is a cornerstone of the EU regulatory framework as financial instruments covered by MiFID are also subject to other financial legislation such as CSDR or EMIR, which therefore equally apply to post-trade activities related to security tokens.

Building on ESMA's advice on crypto-assets and ICOs issued in January 2019 and on a preliminary legal assessment carried out by Commission services on the applicability and suitability of the existing EU legislation (mainly at level 1[24]) on trading, post-trading and other financial services concerning security tokens, such as asset management, the purpose of this part of the consultation is to seek stakeholders' views on the issues identified below that are relevant for the application of the existing regulatory framework to security tokens.

Technology neutrality is one of the guiding principles of the Commission's policies. A technologically neutral approach means that legislation should not mandate market participants to use a particular type of technology. It is therefore crucial to address any obstacles or identify any gaps in existing EU laws which could prevent the take-up of financial innovation, such as DLT, or leave certain risks brought by these innovations unaddressed. In parallel, it is also important to assess whether the market practice or rules at national level could facilitate or be an impediment that should also be addressed to ensure a consistent approach at EU level.

[23] Trading venues are a regulated market, a multilateral trading facility or an organised trading facility.

[24] At level 1, the European Parliament and Council adopt the basic laws proposed by the Commission, in the traditional co-decision procedure. At level 2 the Commission can adopt, adapt and update technical implementing measures with the help of consultative bodies composed mainly of EU countries representatives. Where the level 2 measures require the expertise of supervisory experts, it can be determined in the basic act that these measures are delegated or implemented acts based on draft technical standards developed by the European supervisory authorities.

Current trends concerning security tokens

For the purpose of the consultation, we consider the instances where security tokens would be admitted to trading or traded on a trading venue within the meaning of MiFID. So far, however, there is evidence of only a few instances of security tokens issuance[25], with none of them having been admitted to trading or traded on a trading venue nor admitted in a CSD book-entry system[26].

Based on the limited evidence available at supervisory and regulatory level, it appears that existing requirements in the trading and post-trade area would largely be able to accommodate activities related to security tokens via permissioned networks and centralised platforms[27]. Such activities would be overseen by a central body or operator, de facto similarly to traditional market infrastructures such as multilateral trading venues or central security depositories. Based on the limited evidence currently available from the industry, it seems that activities related to security tokens would most likely develop via authorised centralised solutions. This could be driven by the relative efficiency gain that the use of the legacy technology of a central provider can generally guarantee (with near-instantaneous speed and high liquidity with large volumes), along with the business expertise of the central provider that would also ensure higher investor protection and easier supervision and enforcement of the rules.

On the other hand, it seems that adjustment of existing EU rules would be required to allow for the development of permissionless networks and decentralised platforms where activities would not be entrusted to a central body or operator but would rather occur on a peer-to-peer[28] basis. Given the absence of a central body that would be accountable for enforcing the rules of a public market, trading and post-trading on permissionless networks could also potentially create risks as regards market integrity and financial stability, which are regarded as being of utmost importance by the EU financial acquis.

The Commission services' understanding is that permissionless networks and decentralised platforms[29]are still in their infancy, with uncertain prospects for future applications in financial services due to their higher trade latency and lower liquidity. Permissionless decentralised platforms could potentially develop only at a longer time horizon when further maturing of the technology would provide solutions for a more efficient trading architecture. Therefore, it could be premature at this point in time to make any structural changes to the EU regulatory framework.

Security tokens are, in principle, covered by the EU legal framework on asset management in so far as such security tokens fall within the scope of “financial instrument” under MiFID II. To date, however, the examples of the regulatory use cases of DLT in the asset management domain have been incidental.

To conclude, depending on the feedback to this consultation, a gradual regulatory approach might be considered, trying to provide first legal clarity to market participants as regards permissioned networks and centralised platforms before considering changes in the regulatory framework to accommodate permissionless networks and decentralised platforms.

At the same time, the Commission services would like to use this opportunity to gather views on market trends as regards permissionless networks and decentralised platforms, including their potential impact on current business models and the possible regulatory approaches that may be needed to be considered, as part of a second step. A list of questions is included after the assessment by legislation.

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[25] For example the German Fundament STO which received the authorisation from Bafin in July 2019

[26] See section IV.2.5 for further information

[27] Type of crypto-asset trading platforms that holds crypto-assets on behalf of its clients. The trade settlement usually takes place in the books of the platforms, i.e. off-chain.

[28] In the trading context, going peer-to-peer means having participants buy and sell assets directly with each other, rather than working through an intermediary or third party service

[29] Type of crypto-asset trading platforms that do not hold crypto-assets on behalf of its clients. The trade settlement usually takes place on the DLT itself, i.e. on-chain.

Question 54. Please highlight any recent market developments (such as issuance of security tokens, development or registration of trading venues for security tokens, ...) as regards security tokens (at EU or national level)?

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The DFSA is not aware of any recent market developments.

Question 55. Do you think that DLT could be used to introduce efficiencies or other benefits in the trading, post-trade or asset management areas?

- Completely agree
- Rather agree
- Neutral

- Rather disagree
- Completely disagree
- Don’t know / no opinion / not relevant

55.1 Please explain your reasoning for your answer to question 55:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In general, efficiencies may achieved in the area of clearing, settlement and custody, since DLT might be able to speed up this process. Such efficiencies would be likely to reduce the time from an execution of a trade to clearing and settlement and consequently foster a lower risk premium.

Question 56. Do you think that the use of DLT for the trading and post-trading of financial instruments poses more financial stability risks when compared to the traditional trading and post-trade architecture?

- Completely agree
- Rather agree
- Neutral
- Rather disagree
- Completely disagree
- Don’t know / no opinion / not relevant

56.1 Please explain your reasoning for your answer to question 56:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A proof of concept is currently missing in order for the DFSA to asses any efficiencies in the trading architecture.

Question 57. Do you consider that DLT will significantly impact the role and operation of trading venues and post-trade financial market infrastructures (CCPs, CSDs) in the future (5/10 years’ time)? Please explain your reasoning.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Presumably not in the Danish market. The only CSD in DK has made it clear that it will not implement DLT in near future due to other more urgent IT-development goals.

Question 58. Do you agree that a gradual regulatory approach in the areas of trading, post-trading and asset management concerning security tokens (e.g. provide regulatory guidance or legal clarification first regarding permissioned centralised solutions) would be appropriate?

- Completely agree
- Rather agree
- Neutral
- Rather disagree
- Completely disagree
- Don't know / no opinion / not relevant

58.1 Please explain your reasoning for your answer to question 58:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Regulatory guidance would be necessary in order for the market to develop and evolve. The development of DLT technology requires a lot of capital and in order for to gain an interest from investors and ventures willing to build DLT-platforms or the like, it would be a good initiative to provide regulatory guidance and legal clarification in order to mitigate the legal risk for market participates (i.e. an ex-post assessment of a product that proves to be non-complying with existing regulation would incur a loss for investors / or firms).

B. Assessment of legislation applying to 'security tokens'

1. Market in Financial Instruments Directive framework (MiFID II)

The Market in Financial Instruments Directive framework consists of a directive (MiFID) and a regulation (MiFIR) and their delegated acts. MiFID II is a cornerstone of the EU's regulation of financial markets seeking to improve their competitiveness by creating a single market for investment services and activities and to ensure a high degree of harmonised protection for investors in financial instruments. In a nutshell MiFID II sets out: (i) conduct of business and organisational requirements for investment firms; (ii) authorisation requirements for regulated markets, multilateral trading facilities, organised trading facilities and broker/dealers; (iii) regulatory reporting to avoid market abuse; (iv) trade transparency obligations for equity and non-equity financial instruments; and (v) rules on the admission of financial instruments to trading. MiFID also contains the harmonised EU rulebook on investor protection, retail distribution and investment advice.

1.1 Financial instruments

Under MiFID, financial instruments are specified in Section C of Annex I. These are inter alia 'transferable securities', 'money market instruments', 'units in collective investment undertakings' and various derivative instruments. Under Article 4(1)(15), 'transferable securities' notably means those classes of securities which are negotiable on the capital market, with the exception of instruments of payment.

There is currently no legal definition of security tokens in the EU financial services legislation. Indeed, in line with a functional and technologically neutral approach to different categories of financial instruments in MiFID, where security tokens meet necessary conditions to qualify as a specific type of financial instruments, they should be regulated as such. However, the actual classification of a security token as a financial instrument is undertaken by National Competent Authorities (NCAs) on a case-by-case basis.

In its Advice, ESMA indicated that in transposing MiFID into their national laws, the Member States have defined specific categories of financial instruments differently (i.e. some employ a restrictive list to define transferable securities, others use broader interpretations). As a result, while assessing the legal classification of a security token on a case by case basis, Member States might reach diverging conclusions. This might create further challenges to adopting a common regulatory and supervisory approach to security tokens in the EU.

Furthermore, some 'hybrid' crypto-assets can have 'investment-type' features combined with 'payment-type' or 'utility-type' characteristics. In such cases, the question is whether the qualification of 'financial instruments' must prevail or a different notion should be considered.

Question 59. Do you think that the absence of a common approach on when a security token constitutes a financial instrument is an impediment to the effective development of security tokens?

- ○ Completely agree
- ◉ Rather agree
- ○ Neutral
- ○ Rather disagree
- ○ Completely disagree
- ○ Don't know / no opinion / not relevant

59.1 Please explain your reasoning for your answer to question 59:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Crypto-assets are offered on the internet and are as such cross-border in nature. Therefore, the Danish government finds that the regulation of crypto-assets should be set out on at least EU-level.

Question 60. If you consider that the absence of a common approach on when a security token constitutes a financial instrument is an impediment, what would be the best remedies according to you?

Please rate from 1 (factor not relevant at all) to 5 (very relevant factor)

	1 (factor not relevant at all)	2	3	4	5 (very relevant factor)	Don't know / no opinion / not relevant
Harmonise the definition of certain types of financial instruments in the EU	○	○	○	○	◉	○
Provide a definition of a security token at EU level	○	○	○	○	◉	○
Provide guidance at EU level on the main criteria that should be taken into consideration while qualifying a crypto-asset as security token	○	○	○	○	◉	○

60.1 Is there any other solution that would be the best remedies according to you?

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

60.2 Please explain your reasoning for your answer to question 60:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In order to ensure level playing field among traditional providers of financial services and providers of financial services using new technology like DLT as well as addressing the risk of regulatory arbitrage between member states the Danish government finds that it is important with a common understanding at EU level on the understanding of what constitute a financial instrument.

Question 61. How should financial regulators deal with hybrid cases where tokens display investment-type features combined with other features (utility-type or payment-type characteristics)?

Please rate from 1 (factor not relevant at all) to 5 (very relevant factor)

	1 (factor not relevant at all)	2	3	4	5 (very relevant factor)	Don't know / no opinion / not relevant
Hybrid tokens should qualify as financial instruments/security tokens	◉	○	○	○	○	○
Hybrid tokens should qualify as unregulated crypto-assets (i.e. like those considered in section III. of the public consultation document)	◉	○	○	○	○	○
The assessment should be done on a case-by-case basis (with guidance at EU level)	◉	○	○	○	○	○

61.1 Is there any other way financial regulators should deal with hybrid cases where tokens display investment-type features combined with other features?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The Danish government finds that a bespoke regime for crypto-assets should be developed. Please see answer to question 35.

61.2 Please explain your reasoning for your answer to question 61:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The Danish government refers to the ESMA Advice (ESMA50-157-1391).

1.2. Investment firms

According to Article 4(1)(1) and Article 5 of MiFID, all legal persons offering investment services/activities in relation to financial instruments need be authorised as investment firms to perform those activities/services. The actual authorisation of an investment firm is undertaken by the NCAs with respect to the conditions, requirements and procedures to grant the authorisation. However, the application of these rules to security tokens may create challenges, as they were not designed with these instruments in mind.

Question 62. Do you agree that existing rules and requirements for investment firms can be applied in a DLT environment?

- ○ Completely agree
- ○ Rather agree
- ○ Neutral
- ○ Rather disagree
- ◉ Completely disagree
- ○ Don’t know / no opinion / not relevant

62.1 Please explain your reasoning for your answer to question 62:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The Danish government finds that a bespoke regime for crypto-assets should be developed. Please see answer to question 35.

Question 63. Do you think that a clarification or a guidance on applicability of such rules and requirements would be appropriate for the market?

- ○ Completely agree
- ○ Rather agree
- ◉ Neutral
- ○ Rather disagree
- ○ Completely disagree
- ○ Don’t know / no opinion / not relevant

63.1 Please explain your reasoning for your answer to question 63:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The Danish government finds that a bespoke regime for crypto-assets should be developed. Please see answer to question 35.

1.3 Investment services and activities

Under MiFID Article 4(1)(2), investment services and activities are specified in Section A of Annex I, such as 'reception and transmission of orders, execution of orders, portfolio management, investment advice, etc. A number of activities related to security tokens are likely to qualify as investment services and activities. The organisational requirements, the conduct of business rules and the transparency and reporting requirements laid down in MiFID II would also apply, depending on the types of services offered and the types of financial instruments.

Question 64. Do you think that the current scope of investment services and activities under MiFID II is appropriate for security tokens?

- ○ Completely agree
- ◉ Rather agree
- ○ Neutral
- ○ Rather disagree
- ○ Completely disagree
- ○ Don't know / no opinion / not relevant

64.1 Please explain your reasoning for your answer to question 64:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The Danish government finds that a bespoke regime for crypto-assets should be developed. Please see answer to question 35.

Question 65. Do you consider that the transposition of MiFID II into national laws or existing market practice in your jurisdiction would facilitate or otherwise prevent the use of DLT for investment services and activities? Please explain your reasoning.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The Danish government finds that a bespoke regime for crypto-assets should be developed. Consequently, we see challenges in the use of the MiFID II rules on this type of assets. However, we find that a bespoke regime for crypto-assets could be MiFID II-inspired to ensure, among other things, investor/consumer protection and level playing field among traditional providers of financial services and providers of financial services using new technology such as DLT. Please also see answer to question 35.

1.4. Trading venues

Under MiFID Article 4(1)(24) 'trading venue' means a regulated market (RM), a Multilateral Trading Facility (MTF) or an Organised Trading Facility (OTF') which are defined as a multilateral system operated by a market operator or an investment firm, bringing together multiple third-party buying and selling interests in financial instruments. This means that the market operator or an investment firm must be an authorised entity, which has legal personality.

As also reported by ESMA in its advice, platforms which would engage in trading of security tokens may fall under three main broad categories as follows:

- Platforms with a central order book and/or matching orders would qualify as multilateral systems;
- Operators of platforms dealing on own account and executing client orders against their proprietary capital, would not qualify as multilateral trading venues but rather as investment firms; and
- Platforms that are used to advertise buying and selling interests and where there is no genuine trade execution or arranging taking place may be considered as bulletin boards and fall outside of MiFID II scope (recital 8 of MiFIR).

Question 66. Would you see any particular issues (legal, operational) in applying trading venue definitions and requirements related to the operation and authorisation of such venues to a DLT environment which should be addressed?
Please explain your reasoning.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No. Only in relation to identification and supervision of such venues. In general the Danish government would need to broaden supervision and market surveillance in order to capture and prosecute potential offences.

1.5. Investor protection

A fundamental principle of MiFID II (Articles 24 and 25) is to ensure that investment firms act in the best interests of their clients. Firms shall prevent conflicts of interest, act honestly, fairly and professionally and execute orders on terms most favourable to the clients. With regard to investment advice and portfolio management, various information and product governance requirements apply to ensure that the client is provided with a suitable product.

Question 67. Do you think that current scope of investor protection rules (such as information documents and the suitability assessment) are appropriate for security tokens? Please explain your reasoning.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The Danish government finds that a bespoke regime for crypto-assets should be developed. Please see answer to question 35 and question 65.

The framework of MiFID II is considered suitable for crypto-assets, but there is a strong need for guidelines and specification of the product (as complex). There is a need for a minimum standard of at least an appropriateness assessment prior to the trade of crypto-assets.

Question 68. Would you see any merit in establishing specific requirements on the marketing of security tokens via social media or online? Please explain your reasoning.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It is worth considering restrictions in relation to the access to marketing security tokens via social media such as Facebook. However, it is difficult to control as this can be promoted in closed groups which the FSAs does not have access to (which the Danish FSA does not have a legal basis to do).

Question 69. Would you see any particular issue (legal, operational,) in applying MiFID investor protection requirements to security tokens? Please explain your reasoning.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The Danish government finds that a bespoke regime for crypto-assets should be developed. Please see answer to question 35 and question 65.

1.6. SME growth markets

To be registered as SME growth markets, MTFs need to comply with requirements under Article 33 (e.g. 50% of SME issuers, appropriate criteria for initial and ongoing admission, effective systems and controls to prevent and detect market abuse). SME growth markets focus on trading securities of SME issuers. The average number of transactions in SME securities is significantly lower than those with large capitalisation and therefore less dependent on low latency and high throughput. Since trading solutions on DLT often do not allow processing the amount of transactions typical for most liquid markets, the Commission is interested in gathering feedback on whether trading on DLT networks could offer cost efficiencies (e.g. lower costs of listing, lower transaction fees) or other benefits for SME Growth Markets that are not necessarily dependent on low latency and high throughput.

Question 70. Do you think that trading on DLT networks could offer cost efficiencies or other benefits for SME Growth Markets that do not require low latency and high throughput? Please explain your reasoning.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

1.7. Systems resilience, circuit breakers and electronic trading

According to Article 48 of MiFID, Member States shall require a regulated market to have in place effective systems, procedures and arrangements to ensure its trading systems are resilient, have sufficient capacity and fully tested to ensure orderly trading and effective business continuity arrangements in case of system failure. Furthermore regulated markets that permits direct electronic access[30] shall have in place effective systems procedures and arrangements to ensure that members are only permitted to provide such services if they are investment firms authorised under MiFID II or credit institutions. The same requirements also apply to MTFs and OTFs according to Article 18(5). These requirements could be an issue for security tokens, considering that crypto-asset trading platforms typically provide direct access to retail investors.

[30] As defined by article 4(1)(41) and in accordance with Art 48(7) of MIFID by which trading venues should only grant permission to members or participants to provide direct electronic access if they are investment firms authorised under MiFID or credit institutions authorised under the Credit Requirements Directive (2013/36/EU)

Question 71. Would you see any particular issue (legal, operational) in applying these requirements to security tokens which should be addressed? Please explain your reasoning.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No. The Danish government has the necessary supervisory powers in order to enforce IT-related provisions. Since multilateral facilities would have to comply with conduct rules and licenses to operate, the DFSA would be able to asses compliance at an ex ante basis.

1.8. Admission of financial instruments to trading

In accordance with Article 51 of MiFID, regulated markets must establish clear and transparent rules regarding the admission of financial instruments to trading as well as the conditions for suspension and removal. Those rules shall ensure that financial instruments admitted to trading on a regulated market are capable of being traded in a fair, orderly and efficient manner. Similar requirements apply to MTFs and OTFs according to Article 32. In short, MiFID lays down general principles that should be embedded in the venue's rules on admission to trading, whereas the specific rules are established by the venue itself. Since markets in security tokens are very much a developing phenomenon, there may be merit in reinforcing the legislative rules on admission to trading criteria for these assets.

Question 72. Would you see any particular issue (legal, operational) in applying these requirements to security tokens which should be addressed? Please explain your reasoning.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Question 1.9 Access to a trading venues

In accordance with Article 53(3) and 19(2) of MiFID, RMs and MTFs may admit as members or participants only investment firms, credit institutions and other persons who are of sufficient good repute; (b) have a sufficient level of trading ability, competence and ability (c) have adequate organisational arrangements; (d) have sufficient resources for their role. In effect, this excludes retail clients from gaining direct access to trading venues. The reason for limiting this kind of participants in trading venues is to protect investors and ensure the proper functioning of the financial markets. However, these requirements might not be appropriate for the trading of security tokens as crypto-asset trading platforms allow clients, including retail investors, to have direct access without any intermediation.

Question 73. What are the risks and benefits of allowing direct access to trading venues to a broader base of clients? Please explain your reasoning.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

1.10 Pre and post-transparency requirements

In its Articles 3 to 11, MiFIR sets out transparency requirements for trading venues in relations to both equity and non-equity instruments. In a nutshell for equity instruments, it establishes pre-trade transparency requirements with certain waivers subject to restrictions (i.e. double volume cap) as well as post-trade transparency requirements with authorised deferred publication. Similar structure is replicated for non-equity instruments. These provisions would apply to security tokens. The availability of data could perhaps be an issue for best execution[31] of security tokens platforms. For the transparency requirements, it could perhaps be more difficult to establish meaningful transparency thresholds according to the calibration specified in MIFID, which is based on EU wide transaction data. However, under current circumstances, it seems difficult to clearly determine the need for any possible adaptations of existing rules due to the lack of actual trading of security tokens.

[31] MiFID II investment firms must take adequate measures to obtain the best possible result when executing the client's orders. This obligation is referred to as the best execution obligation.

Question 74. Do you think these pre- and post-transparency requirements are appropriate for security tokens?

- Completely agree

- Rather agree
- Neutral
- Rather disagree
- Completely disagree
- Don’t know / no opinion / not relevant

74.1 Please explain your reasoning for your answer to question 74:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Question 75. Would you see any particular issue (legal, operational) in applying these requirements to security tokens which should be addressed (e.g. in terms of availability of data or computation of thresholds)? Please explain your reasoning.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Since the trading of security tokens is a fairly new market, a lack of available data makes it difficult for the Danish government to asses this question. If the general provisions from the MiFID II, MIFIR, MAR and CSDR etc. would apply to such security tokens, this would force the market to comply and consequently, any legal or operational issues would only be identified ex post.

1.11. Transaction reporting and obligations to maintain records

In its Article 25 and 26, MiFIR sets out detailed reporting requirements for investment firms to report transactions to their competent authority. The operator of the trading venue is responsible for reporting the details of the transactions where the participants is not an investment firm. MiFIR also obliges investment firms or the operator of the trading venue to maintain records for five years. Provisions would apply to security tokens very similarly to traditional financial instruments. The availability of all information on financial instruments required for reporting purposes by the Level 2 provisions could perhaps be an issue for security tokens (e.g. ISIN codes are mandatory).

Question 76. Would you see any particular issue (legal, operational) in applying these requirement to security tokens which should be addressed? Please explain your reasoning.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please refer to the answer above.

2. Market Abuse Regulation (MAR)

MAR establishes a comprehensive legislative framework at EU level aimed at protecting market integrity. It does so by establishing rules around prevention, detection and reporting of market abuse. The types of market abuse prohibited in MAR are insider dealing, unlawful disclosure of inside information and market manipulation. The proper application of the MAR framework is very important for guaranteeing an appropriate level of integrity and investor protection in the context of trading in security tokens.

Security tokens are covered by the MAR framework where they fall within the scope of that regulation, as determined by its Article 2. Broadly speaking, this means that all transactions in security tokens admitted to trading or traded on a trading venue (under MiFID Article 4(1)(24) 'trading venue' means a regulated market (RM), a Multilateral Trading Facility (MTF) or an Organised Trading Facility (OTF')) are captured by its provisions, regardless of whether transactions or orders in those tokens take place on a trading venue or are conducted over-the-counter (OTC).

2.1. Insider dealing

Pursuant to Article 8 of MAR, insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates. In the context of security tokens, it might be the case that new actors, such as miners or wallet providers, hold new forms of inside information and use it to commit market abuse. In this regard, it should be noted that Article 8(4) of MAR contains a catch-all provision applying the notion of insider dealing to all persons who possess inside information other than in circumstances specified elsewhere in the provision.

Question 77. Do you think that the current scope of Article 8 of MAR on insider dealing is appropriate to cover all cases of insider dealing for security tokens? Please explain your reasoning.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It depends on the kind of security token in question, especially on whether or not there is an underlying issuer that can be identified. If the security token has currency-like features, it would difficult to apply art. 8.

In order to identify an insider, this should in general relate to either a physical or legal person employed by or working on behalf of the issuer or relate to someone who has inside information of a upcoming event (sell off, divestment or the like, that could led the person to try to engage in “front running”).

Regulatory guidance would need to be provided in order for supervisors to understand the legal aspects of issuers vs. security tokens.

2.2. Market manipulation

In its Article 12(1)(a), MAR defines market manipulation primarily as covering those transactions and orders which (i) give false or misleading signals about the volume or price of financial instruments or (ii) secure the price of a financial instrument at an abnormal or artificial level. Additional instances of market manipulation are described in paragraphs (b) to (d) of Article 12(1) of MAR.

Since security tokens and blockchain technology used for transacting in security tokens differ from how trading of traditional financial instruments on existing trading infrastructure is conducted, it might be possible for novel types of market manipulation to arise that MAR does not currently address. Finally, there could be cases where a certain financial instrument is covered by MAR but a related unregulated crypto-asset is not in scope of the market abuse framework. Where there would be a correlation in values of such two instruments, it would also be conceivable to influence the price or value of one through manipulative trading activity of the other.

Question 78. Do you think that the notion of market manipulation as defined in Article 12 of MAR is sufficiently wide to cover instances of market manipulation of security tokens? Please explain your reasoning.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Yes – the current notion of market manipulation should be sufficient to capture market manipulation cases on security tokens. If proper market surveillance was to be conducted by trading venues and if proper trading reporting measures would be taken, the DFSA would be able to sufficient data to monitor and conduct market surveillance.

Question 79. Do you think that there is a particular risk that manipulative trading in crypto-assets which are not in the scope of MAR could affect the price or value of financial instruments covered by MAR?

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Manipulative trading in crypto assets would only be able to affect the price on financial instruments with an exposure to said assets (e.g. an interest rate-derivative that are partly constructed of an exposure to a crypto asset). If a crypto asset is defined as a commodity, it would generally be captures by the existing market abuse regime.

3. Short Selling Regulation (SSR)

The Short Selling Regulation (SSR) sets down rules that aim to achieve the following objectives: (i) increase transparency of significant net short positions held by investors; (ii) reduce settlement risks and other risks associated with uncovered short sales; (iii) reduce risks to the stability of sovereign debt markets by providing for the temporary suspension of short-selling activities, including taking short positions via sovereign credit default swaps (CDSs), where sovereign debt markets are not functioning properly. The SSR applies to MiFID II financial instruments admitted to trading on a trading venue in the EU, sovereign debt instruments, and derivatives that relate to both categories.

According to ESMA's advice, security tokens fall in the scope of the SSR where a position in the security token would confer a financial advantage in the event of a decrease in the price or value of a share or sovereign debt. However, ESMA remarks that the determination of net short positions for the application of the SSR is dependent on the list of financial instruments set out in Annex I of Commission Delegated Regulation (EU) 918/2012), which should therefore be revised to include those security tokens that might generate a net short position on a share or on a sovereign debt. According to ESMA, it is an open question whether a transaction in an unregulated crypto-asset could confer a financial advantage in the event of a decrease in the price or value of a share or sovereign debt, and consequently, whether the Short Selling Regulation should be amended in this respect.

Question 80. Have you detected any issues that would prevent effectively applying SSR to security tokens?

Please rate from 1 (not a concern) to 5 (strong concern)

	1 (not a concern)	2	3	4	5 (strong concern)	Don't know / no opinion / strong concern
Transparency for significant net short positions	○	○	○	○	○	◉
Restrictions on uncovered short selling	○	○	○	○	○	◉
Competent authorities' power to apply temporary restrictions to short selling	○	○	○	○	○	◉

80.1 Is there any other issue that would prevent effectively applying SSR to security tokens? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

80.2 Please explain your reasoning for your answer to question 80:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Question 81. Have you ever detected any unregulated crypto-assets that could confer a financial advantage in the event of a decrease in the price or value of a share or sovereign debt? Please explain your reasoning.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

4. Prospectus Regulation (PR)

The Prospectus Regulation establishes a harmonised set of rules at EU level about the drawing up, structure and oversight of the prospectus, which is a legal document accompanying an offer of securities to the public and/or an

admission to trading on a regulated market. The prospectus describes a company's main line of business, its finances, its shareholding structure and the securities that are being offered and/or admitted to trading on a regulated market. It contains the information an investor needs before making a decision whether to invest in the company's securities.

4.1. Scope and exemptions

With the exception of out of scope situations and exemptions (Article 1(2) and (3)), the PR requires the publication of a prospectus before an offer to the public or an admission to trading on a regulated market (situated or operating within a Member State) of transferable securities as defined in MiFID II. The definition of 'offer of securities to the public' laid down in Article 2(d) of the PR is very broad and should encompass offers (e.g. STOs) and advertisement relating to security tokens. If security tokens are offered to the public or admitted to trading on a regulated market, a prospectus would always be required unless one of the exemptions for offers to the public under Article 1(4) or for admission to trading on a RM under Article 1(5) applies.

Question 82. Do you consider that different or additional exemptions should apply to security tokens other than the ones laid down in Article 1(4) and Article 1(5) of PR?

- (●) Completely agree
- ( ) Rather agree
- ( ) Neutral
- ( ) Rather disagree
- ( ) Completely disagree
- ( ) Don't know / no opinion / not relevant

82.1 Please explain your reasoning for your answer to question 82:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The Danish government finds that the PR should be sufficient to cover security tokens. Since especially crypto coins typically do not have an issuer or be subject to any central bank guaranty, this might foster further provisions in order to secure that prospective investors are well informed.

4.2. The drawing up of the prospectus

Delegated Regulation (EU) 2019/980, which lays down the format and content of all the prospectuses and its related documents, does not include schedules for security tokens. However, Recital 24 clarifies that, due to the rapid evolution of securities markets, where securities are not covered by the schedules to that Regulation, national competent authorities should decide in consultation with the issuer which information should be included in the prospectus. Such approach is meant to be a temporary solution. A long term solution would be to either (i) introduce additional and specific schedules for security tokens, or (ii) lay down 'building blocks' to be added as a complement to existing schedules when drawing up a prospectus for security tokens.

The level 2 provisions of prospectus also defines the specific information to be included in a prospectus, including Legal Entity Identifiers (LEIs) and ISIN. It is therefore important that there is no obstacle in obtaining these identifiers for security tokens.

The eligibility for specific types of prospectuses or relating documents (such as the secondary issuance prospectus, the EU Growth prospectus, the base prospectus for non-equity securities or the universal registration document) will depend on the specific types of transferable securities to which security tokens correspond, as well as on the type of the issuer of those securities (i.e. SME, mid-cap company, secondary issuer, frequent issuer).

Article 16 of PR requires issuers to disclose risk factors that are material and specific to the issuer or the security, and corroborated by the content of the prospectus. ESMA's guidelines on risk factors under the PR assist national competent authorities in their review of the materiality and specificity of risk factors and of the presentation of risk factors across categories depending on their nature. The prospectus could include pertinent risks associated with the underlying technology (e.g. risks relating to technology, IT infrastructure, cyber security, etc, ...). ESMA's guidelines on risk factors could be expanded to address the issue of materiality and specificity of risk factors relating to security tokens.

Question 83. Do you agree that Delegated Regulation (EU) 2019/980 should include specific schedules about security tokens?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

83.1 If you do agree that Delegated Regulation (EU) 2019/980 should include specific schedules about security tokens, please indicate the most effective approach: a 'building block approach' (i.e. additional information about the issuer and/or security tokens to be added as a complement to existing schedules) or a 'full prospectus approach' (i.e. completely new prospectus schedules for security tokens). Please explain your reasoning.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A building block approach would suffice. Concerns may be related to "use of proceeds", since this is not typically covered in white papers concerning ICO's (initial coin offerings). Consequently, one could legally make Ponzi-like ICO's complying with the PR, where it is not clear what will be the intended use of proceeds.

Question 84. Do you identify any issues in obtaining an ISIN for the purpose of issuing a security token?

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The Danish government finds that CSD's would be able to issue ISIN's for security tokens and cannot identify any issues on this matter.

Question 85. Have you identified any difficulties in applying special types of prospectuses or related documents (i.e. simplified prospectus for secondary issuances, the EU Growth prospectus, the base prospectus for non-equity securities, the universal registration document) to security tokens that would require amending these types of prospectuses or related documents? Please explain your reasoning.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No. The DFSA has not meet any prospectuses concerning ICO's or security tokens.

Question 86. Do you believe that an *ad hoc* alleviated prospectus type or regime (taking as example the approach used for the EU Growth prospectus or for the simplified regime for secondary issuances) should be introduced for security tokens?

- Yes
- No
- Don't know / no opinion / not relevant

86.1 Please explain your reasoning for your answer to question 86:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Question 87. Do you agree that issuers of security tokens should disclose specific risk factors relating to the use of DLT?

- Completely agree

- Rather agree
- Neutral
- Rather disagree
- Completely disagree
- Don't know / no opinion / not relevant

87.1 If you do agree that issuers of security tokens should disclose specific risk factors relating to the use of DLT, please indicate if ESMA's guidelines on risks factors should be amended accordingly. Please explain your reasoning:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ESMA's guidelines on risk factors should only be amended if the ESMA finds a need to do so. In general security tokens is a fairly new market and consequently it would be difficult to identify risks and draw up regulatory guidance before the market is "live" and compliant with the general provisions. This should be conducted on an ex post basis and only when the market risks has been thoroughly assessed.

5. Central Securities Depositories Regulation (CSDR)

CSDR aims to harmonise the timing and conduct of securities settlement in the European Union and the rules for central securities depositories (CSDs) which operate the settlement infrastructure. It is designed to increase the safety and efficiency of the system, particularly for intra-EU transactions. In general terms, the scope of the CSDR refers to the 11 categories of financial instruments listed under MiFID. However, various requirements refer only to subsets of categories under MiFID.

Article 3(2) of CSDR requires that transferable securities traded on a trading venue within the meaning of MiFID II be recorded in book-entry form in a CSD. The objective is to ensure that those financial instruments can be settled in a securities settlement system, as those described by the Settlement Finality Directive (SFD). Recital 11 of CSDR indicates that CSDR does not prescribe any particular method for the initial book-entry recording. Therefore, in its advice, ESMA indicates that any technology, including DLT, could virtually be used, provided that this book-entry form is with an authorised CSD. However, ESMA underlines that there may be some national laws that could pose restrictions to the use of DLT for that purpose.

There may also be other potential obstacles stemming from CSDR. For instance, the provision of 'Delivery versus Payment' settlement in central bank money is a practice encouraged by CSDR. Where not practical and available, this settlement should take place in commercial bank money. This could make the settlement of securities through DLT difficult, as the CSDR would have to effect movements in its cash accounts at the same time as the delivery of securities on the DLT.

This section is seeking stakeholders' feedback on potential obstacles to the development of security tokens resulting from CSDR.

Question 88. Would you see any particular issue (legal, operational, technical) with applying the following definitions in a DLT environment?

Please rate from 1 (not a concern) to 5 (strong concern)

	1 (not a concern)	2	3	4	5 (strong concern)	Don't know / no opinion / strong concern
Definition of 'central securities depository' and whether platforms can be authorised as a CSD operating a securities settlement system which is designated under the SFD	○	◉	○	○	○	○
Definition of 'securities settlement system' and whether a DLT platform can be qualified as securities settlement system under the SFD	○	◉	○	○	○	○
Whether records on a DLT platform can be qualified as securities accounts and what can be qualified as credits and debits to such an account;	○	◉	○	○	○	○
Definition of 'book-entry form' and 'dematerialised form	○	◉	○	○	○	○
Definition of settlement (meaning the completion of a securities transaction where it is concluded with the aim of discharging the obligations of the parties to that transaction through the transfer of cash or securities, or both);	○	○	○	○	◉	○
What could constitute delivery versus payment in a DLT network, considering that the cash leg is not processed in the network	○	◉	○	○	○	○
What entity could qualify as a settlement internaliser	○	◉	○	○	○	○

88.1 Is there any other particular issue with applying the following definitions in a DLT environment Please specify which one(s) and explain your reasoning:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

88.2 Please explain your reasoning for your answer to question 88:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The Danish government only sees a great concern on DVP-on the CSD. Since a lot of exchanges on crypto assets makes it possible for investors to pay in kind (for example pay for one crypto asset with another crypto asset), this would undermine the general delivery versus payment that is currently the practice in all CSD-environments.

Question 89. Do you consider that the book-entry requirements under CSDR are compatible with security tokens?

- ○ Yes
- ○ No
- ◉ Don’t know / no opinion / not relevant

89.1 Please explain your reasoning for your answer to question 89:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It should be possible to establish book-entry requirements for security tokens, but it could prove to be difficult.

Question 90. Do you consider that national law (e.g. requirement for the transfer of ownership) or existing market practice in your jurisdiction would facilitate or otherwise prevent the use of DLT solution? Please explain your reasoning.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Existing market practices in DK does not involve DLT-solutions. In order to secure the rightful owner of an asset different regimes exists. If crypto assets were to be considered as financial instruments, the trading and bookkeeping of these would have to comply with CSD-related provisions.

Question 91. Would you see any particular issue (legal, operational, technical) with applying the current rules in a DLT environment?

Please rate from 1 (not a concern) to 5 (strong concern)

	1 (not a concern)	2	3	4	5 (strong concern)	Don't know / no opinion / strong concern
Rules on settlement periods for the settlement of certain types of financial instruments in a securities settlement system	○	○	○	◉	○	○
Rules on measures to prevent settlement fails	○	○	○	◉	○	○
Organisational requirements for CSDs	○	◉	○	○	○	○
Rules on outsourcing of services or activities to a third party	○	○	○	◉	○	○
Rules on communication procedures with market participants and other market infrastructures	○	○	○	◉	○	○
Rules on the protection of securities of participants and those of their clients	○	○	○	◉	○	○
Rules regarding the integrity of the issue and appropriate reconciliation measures	○	○	○	○	◉	○
Rules on cash settlement	○	○	○	○	◉	○
Rules on requirements for participation	○	○	◉	○	○	○
Rules on requirements for CSD links	○	○	○	○	◉	○
Rules on access between CSDs and access between a CSD and another market infrastructure	○	○	○	○	◉	○

91.1 Is there any other particular issue with applying the current rules in a DLT environment, (including other provisions of CSDR, national rules applying the EU acquis, supervisory practices, interpretation, applications...)? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

91.2 Please explain your reasoning for your answer to question 91:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As stated above, there is no typically no requirement of DVP in crypto assets, which would be needed in order for CSD's to onboard them. There is a strong concerning in relation to all aspects of CSD's and safekeeping / custody. There is a great risk that issuers of crypto tokens would "opt out" of the EU-regulation and seek listing outside EU-venues in order to bring down costs related to compliance. Since the market on crypto assets is both diverse and fragmented and consisting on a lot of market participants subject to different national regimes, it could proof difficult to onboard such venues on the existing EU-regimes concerning financial instruments.

Question 92. In your Member State, does your national law set out additional requirements to be taken into consideration, e.g. regarding the transfer of ownership (such as the requirements regarding the recording on an account with a custody account keeper outside a DLT environment)? Please explain your reasoning.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

6. Settlement Finality Directive (SFD)

The Settlement Finality Directive lays down rules to minimise risks related to transfers and payments of financial products, especially risks linked to the insolvency of participants in a transaction. It guarantees that financial product transfer and payment orders can be final and defines the field of eligible participants. SFD applies to settlement systems duly notified as well as any participant in such a system.

The list of persons authorised to take part in a securities settlement system under SFD (credit institutions, investment firms, public authorities, CCPs, settlement agents, clearing houses, system operators) does not include natural persons. This obligation of intermediation does not seem fully compatible with the functioning of crypto-asset platforms that rely on retail investors' direct access.

Question 93. Would you see any particular issue (legal, operational, technical) with applying the following definitions in the SFD or its transpositions into national law in a DLT environment?

Please rate from 1 (not a concern) to 5 (strong concern)

	1 (not a concern)	2	3	4	5 (strong concern)	Don't know / no opinion / strong concern
Definition of a securities settlement system	○	○	◉	○	○	○
Definition of system operator	○	○	◉	○	○	○
Definition of participant	○	○	◉	○	○	○
Definition of institution	○	○	◉	○	○	○
Definition of transfer order	○	○	◉	○	○	○
What could constitute a settlement account	○	○	◉	○	○	○
What could constitute collateral security	○	○	◉	○	○	○

93.1 Is there any other particular issue with applying the following definitions in the SFD or its transpositions into national law in a DLT environment? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

93.2 Please explain your reasoning for your answer to question 93:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Question 94. SFD sets out rules on conflicts of laws. According to you, would there be a need for clarification when applying these rules in a DLT network (in particular with regard to the question according to which criteria the location of the register or account should be determined and thus which Member State would be considered the Member State in which the register or account, where the relevant entries are made, is maintained)? Please explain your reasoning.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Question 95. In your Member State, what requirements does your national law establish for those cases which are outside the scope of the SFD rules on conflicts of laws?

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Question 96. Do you consider that the effective functioning and/or use of DLT solution is limited or constrained by any of the SFD provisions?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

96.1 If you do agree that the effective functioning and/or use of DLT solution is limited or constrained by any of the SFD provisions, please provide specific examples (e.g. provisions national legislation transposing or implementing SFD, supervisory practices, interpretation, application,...). Please explain your reasoning.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The Danish government cannot foresee any legal issues in regard to SFD versus crypto assets. In general, onboarding of crypto assets might result in a need to make further provisions or amendments to existing law, in order to secure settlement.

7. Financial Collateral Directive (FCD)

The Financial Collateral Directive aims to create a clear uniform EU legal framework for the use of securities, cash and credit claims as collateral in financial transactions. Financial collateral is the property provided by a borrower to a lender to minimise the risk of financial loss to the lender if the borrower fails to meet their financial obligations to the lender. DLT can present some challenges as regards the application of FCD. For instance, collateral that is provided without title transfer, i.e. pledge or other form of security financial collateral as defined in the FCD, needs to be enforceable in a distributed ledger[32].

[32] ECB Advisory Group on market infrastructures for securities and collateral, "the potential impact of DLTs on securities post-trading harmonisation and on the wider EU financial market integration" (2017).

Question 97. Would you see any particular issue (legal, operational, technical) with applying the following definitions in the FCD or its transpositions into national law in a DLT environment?

Please rate from 1 (not a concern) to 5 (strong concern)

	1 (not a concern)	2	3	4	5 (strong concern)	Don't know / no opinion / strong concern
If crypto-assets qualify as assets that can be subject to financial collateral arrangements as defined in the FCD	○	○	○	◉	○	○
If crypto-assets qualify as book-entry securities collateral	○	○	○	◉	○	○
If records on a DLT qualify as relevant account	○	○	○	◉	○	○

97.1 Is there any other particular issue with applying the following definitions in the FCD or its transpositions into national law in a DLT environment? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

97.2 Please explain your reasoning for your answer to question 97:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Question 98. FCD sets out rules on conflict of laws. Would you see any particular issue with applying these rules in a DLT network[32]?

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Question 99. In your Member State, what requirements does your national law establish for those cases which are outside the scope of the FCD rules on conflicts of laws?

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Question 100. Do you consider that the effective functioning and/or use of DLT solution is limited or constrained by any of the FCD provisions?

- Yes
- No
- Don’t know / no opinion / not relevant

100.1 Please explain your reasoning for your answer to question 100:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

8. European Markets Infrastructure Regulation (EMIR)

The European Markets Infrastructure Regulation (EMIR) applies to the central clearing, reporting and risk mitigation of over-the-counter (OTC) derivatives, the clearing obligation for certain OTC derivatives, the central clearing by central counterparties (CCPs) of contracts traded on financial markets (including bonds, shares, OTC derivatives, Exchange-Traded Derivatives, repos and securities lending transactions) and services and activities of CCPs and trade repositories (TRs).

The central clearing obligation of EMIR concerns only certain OTC derivatives. MiFIR extends the clearing obligation by CCPs to regulated markets for exchange-traded derivatives. At this stage, however, the Commission services does not have knowledge of any project of securities token that could enter into those categories.

A recent development has also been the emergence of derivatives with crypto-assets as underlying.

Question 101. Do you think that security tokens are suitable for central clearing?

- Completely agree
- Rather agree
- Neutral
- Rather disagree
- Completely disagree
- Don't know / no opinion / not relevant

101.1 Please explain your reasoning for your answer to question 101:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As stated above, the technology and the market is new and consequently it is difficult to draw any conclusions in relation to central clearing. If a regulatory approach is made to include crypto assets in the definition of financial instruments, this would force the market to adapt and comply with the rules on market integrity etc. As stated above a problem may arise in relation to delivery-versus-payment, which would also have spillover effects on central clearing.

Question 102. Would you see any particular issue (legal, operational, technical) with applying the current rules in a DLT environment?

Please rate from 1 (not a concern) to 5 (strong concern)

						Don't know /

	1 (not a concern)	2	3	4	5 (strong concern)	no opinion / strong concern
Rules on margin requirements, collateral requirements and requirements regarding the CCP's investment policy	○	○	○	◉	○	○
Rules on settlement	○	○	○	◉	○	○
Organisational requirements for CCPs and for TRs	○	○	○	◉	○	○
Rules on segregation and portability of clearing members' and clients' assets and positions	○	○	○	◉	○	○
Rules on requirements for participation	○	○	○	◉	○	○
Reporting requirements	○	○	○	◉	○	○

102.1 Is there any other particular issue (including other provisions of EMIR, national rules applying the EU acquis, supervisory practices, interpretation, applications, ...) with applying the current rules in a DLT environment? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

102.2 Please explain your reasoning for your answer to question 102:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Question 103. Would you see the need to clarify that DLT solutions including permissioned blockchain can be used within CCPs or TRs?

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As raised earlier, the Danish government finds that regulatory guidance should be provided to market participants. In order for the market to prioritize and develop DLT-technology and technical solutions, regulatory guidance is needed in order to mitigate legal risks in relation to compliance in their IT-architecture etc.

Question 104. Would you see any particular issue with applying the current rules to derivatives the underlying of which are crypto assets, in particular considering their suitability for central clearing? Please explain your reasoning

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

9. The Alternative Investment Fund Directive

The Alternative Investment Fund Managers Directive (AIFMD) lays down the rules for the authorisation, ongoing operation and transparency of the managers of alternative investment funds (AIFMs) which manage and/or market alternative investment funds (AIFs) in the EU.

The following questions seek stakeholders' views on whether and to what extent the application of AIFMD to tokens could raise some challenges. For instance, AIFMD sets out an explicit obligation to appoint a depositary for each AIF. Fulfilling this requirement is a part of the AIFM authorisation and operation. The assets of the AIF shall be entrusted to the depositary for safekeeping. For crypto-assets that are not 'security tokens' (those which do not qualify as financial instruments), the rules for 'other assets' apply under the AIFMD. In such a case, the depositary needs to ensure the

safekeeping (which involves verification of ownership and up-to-date recordkeeping) but not the custody. An uncertainty can arguably occur whether the depositary can perform this task for security tokens and also whether the safekeeping requirements can be complied with.

Question 105. Do the provisions of the EU AIFMD legal framework in the following areas are appropriately suited for the effective functioning of DLT solutions and the use of security tokens?

Please rate from 1 (not suited) to 5 (very suited)

	1 (not suited)	2	3	4	5 (very suited)	Don't know / no opinion / very suited
AIFMD provisions pertaining to the requirement to appoint a depositary, safe-keeping and the requirements of the depositary, as applied to security tokens;	○	○	○	○	○	◉
AIFMD provisions requiring AIFMs to maintain and operate effective organisational and administrative arrangements, including with respect to identifying, managing and monitoring the conflicts of interest;	○	○	○	○	○	◉
Employing liquidity management systems to monitor the liquidity risk of the AIF, conducting stress tests, under normal and exceptional liquidity conditions, and ensuring that the liquidity profile and the redemption policy are consistent;	○	○	○	○	○	◉
AIFMD requirements that appropriate and consistent procedures are established for a proper and independent valuation of the assets;	○	○	○	○	○	◉
Transparency and reporting provisions of the AIFMD legal framework requiring to report certain information on the principal markets and instruments.	○	○	○	○	○	◉

105.1 Is there any other area in which the provisions of the EU AIFMD legal framework are appropriately suited for the effective functioning of DLT solutions and the use of security tokens? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Due to the uncertainty pertaining to aim of the question, the Danish government does not know how to best answer the question. It is uncertain whether the question refers to the services provided by an AIFM, the investment object/assets and/or something third (e.g. capital requirements). It is also uncertain what is required for an effective usage of DLT solutions and security tokens. Consequently, it is not possible to provide a clear-cut answer to the questions.

Today the AIFMD has difficulties handling all the different alternative investment opportunities (i.e. the different types of assets). This is true for both for the AIFMs who have to manage the assets (portfolio management of the fund(s), ensure proper valuation of the asset(s), risk management, liquidity and so on), but also for NCAs who have to supervise the AIFMs and ensure compliance with AIFMD and the Commissions Regulation.

Due these challenges, it is likely that the current provisions are less suited for regulating DLT solutions and security tokens. Due to a lack of knowledge concerning the specific requirements for an effective usage and regulation of DLT solutions and security tokens it is, however, not possible to provide an answer on which specific provisions are appropriate for ensuring an effective usage and regulation of DLT solutions and security tokens.

It is likely that decentralized nature of DLTs will hinder the NCAs supervision with AIFM. In its current form, the AIFMD determine who is responsible. For example, a depositary is responsible for its tasks, but when using DLTs, the task of a depositary is not centralized at one party, but many parties.

Additionally, the AIFMD lacks provisions that ensures investor protection. More and more retail investors are turning to alternative investments which then hampers their protection when they turn their investments towards the alternatives. Introducing DLT solutions and security tokens to AIFMD will add additional level of risk when turning to alternative investments.

Lastly, the current provisions are likely not suitable for ensuring a level-playing field between “traditional AIFMs” and “AIFMs who use DLT solutions and/security tokens”. This may lead to different approaches by NCAs and then hamper the AIFMDs aim of providing an internal market for AIFMs and a harmonised and stringent regulatory and supervisory framework for the activities within the Union.

105.2 Please explain your reasoning for your answer to question 105:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please see the answer for Question 105.1.

Question 106. Do you consider that the effective functioning of DLT solutions and/or use of security tokens is limited or constrained by any of the AIFMD provisions?

- ○ Yes
- ○ No
- ◉ Don’t know / no opinion / not relevant

106.2 Please explain your reasoning for your answer to question 106:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As was the case under question 105, it is uncertain whether the question refers to services, investment object /assets and/or something third.

Due to a lack of knowledge concerning the requirements for an effective usage and regulation of DLT solutions and security tokens it is not possible to provide an answer on which specific provisions are limiting the effective usage and regulation of DLT solutions and security tokens. A more general answer is therefore only possible.

Please see question 105.1.

10. The Undertakings for Collective Investment in Transferable Securities Directive (UCITS Directive)

The UCITS Directive applies to UCITS established within the territories of the Member States and lays down the rules, scope and conditions for the operation of UCITS and the authorisation of UCITS management companies. The UCITS directive might be perceived as potentially creating challenges when the assets are in the form of ‘security tokens’, relying on DLT.

For instance, under the UCITS Directive, an investment company and a management company (for each of the common funds that it manages) shall ensure that a single depositary is appointed. The assets of the UCITS shall be entrusted to the depositary for safekeeping. For crypto-assets that are not ‘security tokens’ (those which do not qualify as financial instruments), the rules for ‘other assets’ apply under the UCITS Directive. In such a case, the depositary needs to ensure the safekeeping (which involves verification of ownership and up-to-date recordkeeping) but not the custody. This function could arguably cause perceived uncertainty where such assets are security tokens.

Question 107. Do the provisions of the EU UCITS Directive legal framework in the following areas are appropriately suited for the effective functioning of DLT solutions and the use of security tokens?

Please rate from 1 (not suited) to 5 (very suited)

	1 (not suited)	2	3	4	5 (very suited)	Don’t know / no opinion / very suited

Provisions of the UCITS Directive pertaining to the eligibility of assets, including cases where such provisions are applied in conjunction with the notion “financial instrument” and/or “transferable security”	○	○	○	○	○	◉
Rules set out in the UCITS Directive pertaining to the valuation of assets and the rules for calculating the sale or issue price and the repurchase or redemption price of the units of a UCITS, including where such rules are laid down in the applicable national law, in the fund rules or in the instruments of incorporation of the investment company;	○	○	○	○	○	◉
UCITS Directive rules on the arrangements for the identification, management and monitoring of the conflicts of interest, including between the management company and its clients, between two of its clients, between one of its clients and a UCITS, or between two -UCITS;	○	○	○	○	○	◉
UCITS Directive provisions pertaining to the requirement to appoint a depositary, safe-keeping and the requirements of the depositary, as applied to security tokens;	○	○	○	○	○	◉
Disclosure and reporting requirements set out in the UCITS Directive.	○	○	○	○	○	◉

107.1 Is there any other area in which the provisions of the EU UCITS Directive legal framework are appropriately suited for the effective functioning of DLT solutions and the use of security tokens? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The Danish government has no opinion on the question due to the uncertainty of how to understand the question. See for example the answer to question 105.

107.2 Please explain your reasoning for your answer to question 107:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The Danish government has no opinion on the question due to the uncertainty of how to understand the question. See for example the answer to question 105.

11. Other final comments and questions as regards tokens

It appears that permissioned blockchains and centralised platforms allow for the trade life cycle to be completed in a manner that might conceptually fit into the existing regulatory framework. However, it is also true that in theory trading in security tokens could also be organised using permissionless blockchains and decentralised platforms. Such novel ways of transacting in financial instruments might not fit into the existing regulatory framework as established by the EU acquis for financial markets.

Question 108. Do you think that the EU legislation should provide for more regulatory flexibility for stakeholders to develop trading and post-trading solutions using for example permissionless blockchain and decentralised platforms?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

108.1 If you do think that the EU legislation should provide for more regulatory flexibility for stakeholders to develop trading and post-trading solutions using for example permissionless blockchain and decentralised platforms, please explain the regulatory approach that you favour. Please explain your reasoning.

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The current status of national efforts in DK is "wait and see" as no greater risks has been identified yet in relation to DLT and crypto assets. The market is still underdeveloped and the Danish goverment is not aware of any market participants engaged in the development of DLT-technology in relation to trading and post-trading solutions. The Danish government finds that regulatory flexibility and the provision of regulatory guidance would be able to incentivize the market to develop. Regulatory approached might involve sandboxes, where technology can be tested decentralized in order to mitigate risks to the rest of the market. This would be beneficial for market participants in order to lower the costs on compliance and in order to secure, that their product developments follow regulatory guidance before launch.

Question 109. Which benefits and risks do you see in enabling trading or post-trading processes to develop on permissionless blockchains and decentralised platforms?

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See above.

Blockchain systems work in a fundamentally different way compared to the current trading and post-trading architecture. Tokens can be directly traded on blockchain and after the trade almost instantaneously settled following the validation of the transaction and its addition to the blockchain. Although existing EU acquis regulating trading and post-trading activities strives to be technologically neutral, existing regulation reflects a conceptualisation of how financial market currently operate, clearly separating the trading and post-trading phase of a trade life cycle. Therefore, trading and post-trading activities are governed by separate legislation which puts distinct requirements on trading and post-trading financial infrastructures.

Question 110. Do you think that the regulatory separation of trading and post-trading activities might prevent the development of alternative business models based on DLT that could more efficiently manage the trade life cycle?

- Yes
- No
- Don’t know / no opinion / not relevant

110.2 Please explain your reasoning for your answer to question 112:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Question 111. Have you detected any issues beyond those raised in previous questions on specific provisions that would prevent effectively applying EU regulations to security tokens and transacting in a DLT environment, in particular as regards the objective of investor protection, financial stability and market integrity?

- Yes
- No
- Don’t know / no opinion / not relevant

111.1 Please provide specific examples and explain your reasoning for your answer to question 111:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Question 112. Have you identified national provisions in your jurisdictions that would limit and/or constraint the effective functioning of DLT solutions or the use of security tokens?

- Yes
- No
- Don't know / no opinion / not relevant

112.1 Please provide specific examples (national provisions, implementation of EU acquis, supervisory practice, interpretation, application, ...) and explain your reasoning for your answer to question 112:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

C. Assessment of legislation for 'e-money' tokens

Electronic money (e-money) is a digital alternative to cash. It allows users to make cashless payments with money stored on a card or a phone, or over the internet. The e-money directive (EMD2) sets out the rules for the business practices and supervision of e-money institutions.

In its advice on crypto-assets, the EBA noted that national competent authorities reported a handful of cases where payment tokens could qualify as e-money, e.g. tokens pegged to a given currency and redeemable at par value at any time. Even though such cases may seem limited, there is merit in ensuring whether the existing rules are suitable for these tokens. In that this section, payments tokens, and more precisely "stablecoins", that qualify as e-money are called 'e-money tokens' for the purpose of this consultation. Consequently, firms issuing such e-money tokens should ensure they have the relevant authorisations and follow requirements under EMD2.

Beyond EMD2, payment services related to e-money tokens would also be covered by the Payment Services Directive (PSD2). PSD2 puts in place comprehensive rules for payment services, and payment transactions. In particular, the Directive sets out rules concerning a) strict security requirements for electronic payments and the protection of consumers' financial data, guaranteeing safe authentication and reducing the risk of fraud; b) the transparency of conditions and information requirements for payment services; c) the rights and obligations of users and providers of payment services.

The purpose of the following questions is to seek stakeholders' views on the issues they could identify for the application of the existing regulatory framework to e-money tokens.

Question 113. Have you detected any issue in EMD2 that could constitute impediments to the effective functioning and/or use of e-money tokens?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

113.1 Please provide specific examples (EMD2 provisions, national provisions, implementation of EU acquis, supervisory practice, interpretation, application, ...) and explain your reasoning for your answer to question 113:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The definition of electronic money in art. 2(2) requires that the monetary value represent a claim against the issuer. At the same time art. 11(2) requires electronic money issuers to redeem upon request from the electronic money holder. This creates an opportunity for issuers to design a token that in the terms of agreement states that it does not represent a claim against the issuer (e.g. Libra). Thus, the token would not constitute electronic money.

The difference between the different types of electronic money is, that the functionality of electronic money issued as a crypto-asset is independent of the issuer as soon as it is issued - but the value, and therefore the acceptance by third-parties, is not. This also raise concerns for the compatibility of the current definition of e-money to decentralized business models. Decentralized issuers would not easily be covered by the EMD2, due to the fact that an issuing entity (legal or physical) would not always be identifiable.

A solution could be to remove "represented by a claim on the issuer" from art. 2(2).

Question 114. Have you detected any issue in PSD2 which would constitute impediments to the effective functioning or use of payment transactions related to e-money token?

- (●) Yes
- ( ) No
- ( ) Don't know / no opinion / not relevant

114.1 Please provide specific examples (PSD2 provisions, national provisions, implementation of EU acquis, supervisory practice, interpretation, application, ...) and explain your reasoning for your answer to question 114:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Due to the way most blockchains currently function, the information requirements in chapter 3 in PSD2 can be difficult to adhere to. This issue is also discussed in relation to the FATF standards on the travel rule.

Question 115. In your view, do EMD2 or PSD2 require legal amendments and /or supervisory guidance (or other non-legislative actions) to ensure the effective functioning and use of e-money tokens?

- Yes
- No
- Don’t know / no opinion / not relevant

115.1 Please provide specific examples and explain your reasoning for your answer to question 115:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The Danish government finds that the 2% ongoing capital requirement, might be unnecessary for fully collateralized e-money token issuance, where such funds are segregated and safeguarded.

The safeguarding requirements as of now, don't allow decentralized issuance of e-money tokens as smart contracts such as CDPs does not fulfill the requirement

Under EMD 2, electronic money means “*electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions [...], and which is accepted by a natural or legal person other than the electronic money issuer*”. As some “stablecoins” with global reach (the so-called “global stablecoin”) may qualify as e-money, the requirements under EMD2 would apply. Entities in a “global stablecoins” arrangement (that qualify as e-money under EMD2) could also be subject to the provisions of PSD2. The following questions aim to determine whether the EMD2 and/or PSD2 requirements would be fit for purpose for such “global stablecoins” arrangements that could pose systemic risks.

Question 116. Do you think the requirements under EMD2 would be appropriate for “global stablecoins” (i.e. those that reach global reach) qualifying as e-money tokens?

Please rate from 1 (completely inappropriate to 5 (completely appropriate)

	1 (completely inappropriate)	2	3	4	5 (completely appropriate)	Don’t know / no opinion /

						very suited
Initial capital and ongoing funds	○	○	○	○	○	◉
Safeguarding requirements	○	○	○	○	○	◉
Issuance	○	○	○	○	○	◉
Redeemability	○	○	○	○	○	◉
Use of agents	○	○	○	○	○	◉
Out of court complaint and redress procedures	○	○	○	○	○	◉

116.1 Is there any other requirement under EMD2 that would be appropriate for "global stablecoins"? Please specify which one(s) and explain your reasoning:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 116 needs to be elaborated. See answer to Question 115.

116.2 Please explain your reasoning for your answer to question 116:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 117. Do you think that the current requirements under PSD2 which are applicable to e-money tokens are appropriate for "global stablecoins" (i. e. those that reach global reach)?

- ○ Completely agree
- ○ Rather agree
- ○ Neutral
- ◉ Rather disagree
- ○ Completely disagree
- ○ Don't know / no opinion / not relevant

117.1 Please explain your reasoning for your answer to question 117:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

So-called ‘stablecoins’ and ‘global stablecoins’ can have very different properties. Some have properties similar to financial instruments, some may have no financial properties, and some may have properties similar to e-money. It is not possible to give a unified answer to the question above.
In cases where a crypto-asset is deemed to be e-money and therefore funds - the requirements are suitable. But there are some issues that needs to be addressed, especially as regards decentralized issuance of e-money tokens e.g. the requirements under chapter 3 in PSD2 and chargeback rules.

Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:

The maximum file size is 1 MB.
You can upload several files.
Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

Useful links

More on the Transparency register (http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)
More on this consultation (https://ec.europa.eu/info/publications/finance-consultations-2019-crypto-assets_en)
Specific privacy statement (https://ec.europa.eu/info/law/better-regulation/specific-privacy-statement_en)
Consultation document (https://ec.europa.eu/info/files/2019-crypto-assets-consultation-document_en)

Contact

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