A N E X O I

CONSULTATION DOCUMENT ON AN EU FRAMEWORK FOR MARKETS IN CRYPTO-ASSETS

I. General remarks

Spanish CNMV Advisory Committee (hereinafter "the Committee") welcomes the public consultation on an EU regulatory framework for markets in crypto-assets.

As the main features of crypto-asset are of a digital or virtual nature, relying on cryptography and the use of distributed ledger technology (DLT), a number of issues such as legal nature of the issuer (private vs. public), the difference between asset and technology and the possible stabilization mechanisms behind the crypto-asset (e.g. in case of stablecoins) need to be considered from a regulatory perspective.

Crypto-assets entail specific risks that have been identified by ESMA in its advice (January 2019): (i) financial stability (in particular in the case of global stablecoins); (ii) investor protection (consumers may not be aware of the risks they may be exposed to and even the rights attached to these instruments); (iii) market integrity (liquidity of crypto-assets is typically shallow); (iv) technology (DLT is still a nascent technology and still untested in financial markets); (v) legal uncertainties (issues around governance, privacy and territoriality attached to the distributed nature of DLT); and (vi) custody and safekeeping (absence of segregation and safeguard measures by custodial wallets).

On the other hand, crypto-assets may bring significant potential benefits to the financial system: ICOs could be an alternative funding source for innovative businesses; and "tokenization" can enhance the liquidity of certain financial assets, reduce the need for intermediaries and foster the use of smart contracts.

Therefore, crypto-assets are not only a reality but also a growing trend with both beneficial outcomes and attached risks that need to be tackled.

The Committee considers that a comprehensive regulatory regime for crypto-assets is needed in order to adequately address the risks they entail and preserve current levels of investor protection. The Committee supports that this legal framework should be

harmonized at EU level. The existence of different and diverging approaches by Member States may be an obstacle for the development of this market across the EU.

The legal framework for crypto-assets should fulfill three general principles. Firstly, and this is not a minor challenge, this regulation should not hamper innovation. As ESMA wisely warns in its advice, potential opportunity costs may arise if developments were unduly restricted. 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.

Secondly, as there are significant similarities on many aspects between crypto-assets and traditional instruments, it is of paramount importance that investor's benefit from an equally high level of protection and a regulatory level playing field is ensured.

Thirdly, technology neutrality should be one of the guiding principles of any regulatory action. A technologically neutral approach means that legislation should not mandate market participants to use a particular type of technology.

The Committee would like to make the following specific considerations:

- As a first step, to guarantee a uniform treatment across Member States, a clear definition and classification of different crypto-assets is needed.

- International coordination and consensus is needed to capture risks posed by crypto-assets (e.g. in areas such as investor protection, financial stability, monetary policy, AML-CFT) and to ensure a level playing field across jurisdictions.

- Market venues for virtual currencies and tokens need to be regulated including requirements on price transparency, rules against money laundering and information disclosure.

- Adapting the regulatory framework for ICOs' application, the secondary markets and the platforms where crypto-assets are exchanged is of great importance in order to integrate ICOs in the diverse landscape of raising capital mechanisms.

- It is necessary to ensure a single supervisory approach on ICOs in order to guarantee the transparency of transactions and the origin of funds. Regulatory uncertainty on ICOs creates a regulatory limbo as new firms may succeed at the expense of more regulated competitors and/or investors' protection.

- The growing risks, stemming from the impact of cyber-attacks on the ICO market, need to be addressed.

- The lack of clarity on which 'white papers' must be applied (e.g. in some cases the Prospectus Regulation may apply, but in others it may not, while sometimes even applying that Regulation might need an adaptation to the different technological environment). This lack of clarity often provokes non-existent due diligence performed by investors.

With the aim of contributing to the abovementioned objectives, below you may find the Committee answers to the questions raised in the document.

II. Answers to the questions raised in the public consultation

II. Classification of crypto-assets

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 (X)**
- No
- Don't know/no opinion

Please explain your reasoning (if needed).

Due to their importance, diversity and potential risks and benefits, crypto-assets deserve a specific regulatory treatment. Crypto-assets and digital assets involve dissimilar risks attached and require a differentiated analysis and treatment. A general scope including all digital assets would be therefore inefficient from a regulatory perspective.

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

- **Yes (X)**
- No
- Don't know/no opinion

If yes, please indicate the best way to achieve this classification (non-legislative guidance, regulatory classification, a combination of both…). Please explain your reasoning.

The best way to achieve a classification for crypto-assets would be a combination of regulation and guidance, according to the following scheme:

- Prior to determine any classification a crypto-asset legal definition is needed. The consultation document provides its own definition ("a digital asset that may depend on cryptography and exists on a distributed ledger") that probably should be refined. The AMLD also contains a definition that could serve as a good starting point.

- As a second step, a classification should be established taking into account the features of the different types of crypto-assets.

- Both the definition and the classification should be made at regulatory level, since they will determine the legal regime to apply. The main benefit of legal approach is that regulation provides reliability and a level playing field for the market participants involved.

- Finally, guidance could lay down subsequent classifications and clarifications.

The starting point in order to design a balanced legal framework for this market is to determine whether crypto-assets can be considered as financial instruments according to MiFID II, that defines "financial instruments" in its Article 4.1.15 (listed in section C of Annex I) or alternatively as electronic money in accordance to the Electronic Money Directive (EMD2).

The consideration of crypto-assets as financial instruments or electronic money is not harmonized at EU level. The Financial Innovation Standing Committee (FISC) survey concludes that crypto-asset classification is under the responsibility of each National Competent Authority (NCA) and will depend on the implementation of MiFID II. In general terms, crypto-assets that grant rights to participate in benefits (without property or political rights) have been qualified by the majority of NCAs as transferable securities, leaving those of pure utility outside the financial regulation.

Legal action at EU level is required due to the wide variety of existing crypto-assets and different approaches emerging across the Union. Other jurisdictions have recently taken regulatory actions: USA (by the SEC), United Kingdom (by the FCA) and Switzerland (by the FINMA), among others.

Therefore a previous and essential issue for the necessary legal certainty is to clarify how crypto-assets are legally defined, classified and how the current regulatory framework of the European Union can be applied to them and should be adapted.

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). [Insert text box]

Following ESMA and EBA reports (both 9 January 2019) and the application stemming from EMD2 and the Payment Service Directive (PSD2), crypto-assets can be classify in four categories:

- Currency tokens: cryptocurrencies with no rights or investment purposes (for example, bitcoin).

- Security tokens: they usually provide property rights, interest rights or dividends attached to a business.
- Utility tokens: they facilitate access to a product or a service, but do not serve as a payment method for other products or services.
- Hybrids: they can be framed in more than one category mentioned before.

For a description of Spanish regulatory and supervisory approach regarding definition and classification of crypto-assets, see answer to question 15.

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 (X)**
- No
- Don't know/no opinion

Please explain your reasoning (if needed). If yes, indicate if any further sub-classification would be necessary. [Insert text box]

Yes. At regulatory level there is no need for further sub-classification, since it seems enough in order to determine the legal regime applicable to each category. At guidance level a development could make sense.

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? [Insert text box]

In Spain we do not have record at the moment of any crypto-asset marketed or considered as 'deposit'. However, we do not dismiss the potential encryption of these deposit assets in the future. In that case they should be subject to the banking regulatory framework.

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

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

10) In your opinion, what is the importance of each of the potential benefits related to crypto-assets listed below? Please rate each proposal from 1 to 5, 1 standing for "not important at all" and 5 for "very important". [Insert text box]

	1	2	3	4	5	No opinion
Issuance of utility tokens as a cheaper, more efficient capital raising tool than IPOs			X			
Issuance of utility tokens as an alternative funding source for start-ups				X		
Cheap, fast and swift payment instrument					X	
Enhanced financial inclusion			X			
Crypto-assets as a new investment opportunity for investors			X			
Improved transparency and traceability of transactions			x			
Enhanced innovation and competition				X		
Improved liquidity and tradability of tokenised 'assets'			X			
Enhanced operational resilience (including cyber resilience)				X		
Security and management of personal data			X			
Possibility of using tokenisation to coordinate social innovation or decentralised governance			X			
Other						

Please justify your reasoning (if needed). [Insert text box]

Crypto-assets have been praised as offering benefits for many applications beyond finance, but there is also significant caution and even skepticism.

Investors are increasingly considering crypto-assets, especially cryptocurrency such as bitcoin, as a way to diversify portfolios and capture some of the potential upside of this new asset class.

However, they can be incomprehensible and difficult to grasp for new adopters and many ordinary investors, including how to establish a wallet and transfer tokens securely.

Amongst potential benefits the following could be highlighted: the possibility to become a payment instrument cheap, fast and swift, to enhance financial inclusion or to issue utility tokens as an alternative funding source for start-ups.

Innovation is another clear strength but it is too early to say how significant the benefits will be as the technology and governance is still in its infancy.

11) In your opinion, what are the most important risks related to crypto-assets? Please rate each proposal from 1 to 5, 1 standing for "not important at all" and 5 for "very important". [Insert text box]

	1	2	3	4	5	No opinion
Fraudulent activities					X	
Market integrity (e.g. price, volume manipulation…)				X		
Investor/consumer protection					X	
Anti-money laundering and CFT issues					X	
Data protection issues					X	
Competition issues			X			
Cyber security and operational risks				X		
Taxation issues				X		
Energy consumption entailed in crypto-asset activities				X		
Financial stability			X			
Monetary sovereignty/monetary policy transmission			X			
Other						

Please justify your reasoning (if needed). [Insert text box]

According to reports from different financial authorities, crypto-assets do not pose a real threat to financial stability at this stage. However they can generate problems related to consumer protection and market integrity, among others.

Financial services regulations do not apply to a large range of crypto-assets, even though they entail similar risks to other products that are subject to demanding regulations. It is key to preserve and extend to this new market recent advances and improvements achieved in market integrity, investor and data protection and anti-money laundering.

12) In our view, what are the benefits of "stablecoins" and "global stablecoins"? Please explain your reasoning (if needed). [Insert text box]

The main benefits of stablecoins are price stability, scalability, privacy, decentralization and redeemability. Practical applications could be availability (using every day as fiat currency and digital money), P2P payments (automated by smart contracts), affordable and extremely fast remittances, adding level of security unlike other crypto currencies, and more stable cryptocurrency exchanges.

However, the global stablecoins vision is larger. Stablecoins promise an on-ramp into the "crypto-world" that a retail user could trust, facilitating wider acceptance and adoption of programmable money and securities. For stablecoins to be accepted as a viable alternative to fiat currencies, however, they must first intersect and integrate into the current financial infrastructure. Various use cases have been proposed, including mobile app payments, alternative currencies in emerging markets and global payment systems (e.g. Facebook/WhatsApp Coin, Reserve Protocol or JPM Coin).

13) In your opinion, what are the most important risks related to "stablecoins"? Please rate each proposal from 1 to 5, 1 standing for "not relevant factor" and 5 for "very relevant factor".

	1	2	3	4	5	No opinion
Fraudulent activities				X		
Market integrity (e.g. price, volume manipulation…)				X		
Investor/consumer protection					X	
Anti-money laundering and CFT issues					X	
Data protection issues					X	
Competition issues			X			
Cyber security and operational risks					X	
Taxation issues				X		
Energy consumption entailed in crypto-asset activities				X		
Financial stability					X	
Monetary sovereignty/monetary policy transmission					X	
Other						

Please explain in your answer potential differences in terms of risks between "stablecoins" and "global stablecoins" (if needed). [Insert text box]

Stablecoins pose legal, regulatory and oversight challenges and risks related to:

- Legal certainty.
- Sound governance, including the investment rules of the stability mechanism.
- Money laundering, terrorist financing and other forms of illicit finance.
- Safety, efficiency and integrity of payment systems.
- Cyber security and operational resilience.
- Market integrity.
- Data privacy, protection and portability.
- Consumer/investor protection.
- Tax compliance.

Moreover, stablecoins that reach global scale could add the following risks:

- Monetary policy.
- Financial stability.
- Fair competition.

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 (X)**
- No
- Don't know/no opinion

Please explain your reasoning (if needed). [Insert text box]

A harmonized and balanced regulation approach will provide the legal certainty required to enable a sustainable crypto-assets market in the EU. This strategy will always be preferable to fragmented approach where each Member State applies its own rules.

15) What is your experience (if any) as regards national regimes on crypto-assets? Please indicate which measures in these national laws are, in your view, an effective approach to crypto-assets regulation, which ones rather not. [Insert text box]

Pending a common EU regulation that encompasses the issuance, trading and negotiation of cryptocurrency, Spanish authorities have adopted several initiatives. In

October 2018 draft legislations in the area of taxation, dealing partially with crypto-assets, were subjected to consultation process (although they were not finally approved).

- Anteproyecto de Ley de Medidas de Prevención y Lucha contra el Fraude Fiscal (Draft Law on measures to prevent and fight against tax fraud).
- Anteproyecto de Ley del Impuesto a las Transacciones Financieras (Draft Law on transaction financial tax).
- Anteproyecto de Ley de Impuestos a determinados Servicios Digitales (Draft Law on taxes on certain digital services).

In the absence of national regulation, the National Securities Market Commission (CNMV) together with the Bank of Spain, have been the guiding beacon in relation to crypto-assets in Spain.

During 2018 and 2019 certain statements have been published trying to respond to the situations that arise in the crypto-asset market. In chronological order CNMV public statements are the following:

- 14th November 2017: CNMV transposes and translates two ESMA statements expressing its concern regarding non-compliance with European legislation by entities that promote or participate in ICOs and enabling a channel for raising doubts about this type of investment.

- 8th February 2018: two statements are issued:
  - ✓ Jointly with Bank of Spain, warning about crypto-assets risks.
  - ✓ Making recommendations to professionals in the financial sector providing the initial criteria to determine in which cases ICOs should be considered securities offerings.

- 20th September 2018: clarification of aspects such as the need to publish a prospectus in certain cases and determining the scope of intervention of entities authorized to provide investment services and the possible subsequent negotiation of crypto-assets on trading platforms.

It seems clear that Spanish CNMV assimilates the issuance of cryptocurrencies and tokens to the issuance of financial instruments and therefore it requires compliance with the obligations established in the Securities Market Law as it is, for example, the presentation of a prospectus, the maintenance of an accounting record and the assumption of various responsibilities, this being applicable both to tokens that attribute some rights or expectation of benefit associated with a business (security

tokens) and to those that facilitate access to a service or the purchase of products (utility tokens), as long as there is that expectation of value revaluation.

In the absence of a an ad-hoc regulation and taking into account the circumstances, Spanish CNMV has played a key role proportioning an appropriate framework to market participants and addressing consultations by private agents. A good practice is the CNMV Q&A document to FinTech companies, distinguishing five categories: general questions, crowdfunding platforms, robo advisor, neo-banks and crypto-currencies and ICOs.

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) [Insert text box]

As a general principle legal certainty does not prevent innovation.

Nevertheless, it is necessary (and useful) to admit the difficulty to design a consistent and balanced legal framework, since technological innovation is always faster than the capacity to better regulate.

One of the best practices that ensure a proper balance between consumer / investor protection and innovation is the Sandbox. This is an instrument that offers an excellent opportunity to test innovative solutions to both incumbent entities and new operators in a regulatory safe environment while enabling the necessary understanding and adaptation from regulators to a constantly changing technological environment.

A European Sandbox project could be an extremely useful contribution, since it could serve as a tool for a right balance that preserves investor protection and provide innovation simultaneously.

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?

- **Yes (X)**
- No
- Don't know/no opinion

Please indicate how this clarity should be provided (guidance, EU legislation…).

In terms of the prudential treatment of crypto-assets in the banking sector, two broad possibilities need to be differentiated in advance:

a) Custody of the asset on behalf of a customer (off-balance sheet): in this case, the asset is not part of the entity's balance sheet, and only needs to be taken into account in terms of the operational risk involved in its custody.

b) Ownership of the asset by the entity (on-balance sheet): in this situation, a clear categorization of crypto assets is needed in order to be assigned a specific treatment. Capital Requirements Regulation (CRR) assigns assets to different categories based on a combination of their counterpart (public sector, financial entities, corporates...) and the specificities of the asset (product category, such as covered bonds or mortgages).

Based on the characteristics of each asset, different risks are involved:

- Counterparty (credit) risk: depending on whether the crypto asset is issued in a centralized way (i.e. crypto currency of a central bank) or not (i.e. bitcoin), calculating this risk may pose significant difficulties. Also, being or not backed by other assets (i.e. basket of commodities or securities) have to be taken into consideration.

- Market risk: if the asset is held in the trading book it will be subject to market risk, which may be significant in the case of non-backed assets with a higher volatility).

- Operational risk: due to their specificities, crypto assets will increase the operational risk profile.

- Liquidity risk: depending on the issuer (centralized/decentralized) and the possibility of trading the crypto asset in an organized market or other kind of trading system or exchange, its liquidity risk may also be significant.

- Exchange rate risk: in the case of crypto currencies, their exchange rate with the official currency in which the accounts are denominated will impose an added risk, higher for those not backed with real assets (algorithm-based), than for backed ones (stablecoins).

Having a clear understanding of the risks involved and the capital requirements associated with them is of paramount importance provided there is need to facilitate their development and inclusion in the balance sheet of financial institutions.

It would be necessary, at least, to modify the Capital Requirements Regulation (Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012), to introduce a specific treatment for the different types of crypto assets. Some Level 2 measures may also need to be modified: for instance, it can be decided to include these assets under the umbrella of the EBA Guidelines on specification of types of exposures to be associated with high risk.

18) Should harmonisation of national civil laws be considered to provide clarity on the legal validity of token transfers and the tokenization of tangible (material) assets? [Insert text box]

Yes. Harmonization of national civil laws should be considered to provide clarity on the legal validity of token transfers and the tokenization of tangible (material) assets. Strengthening standardization will contribute to investor trust, elude conflict and gain certainty.

Blockchain introduces a new element that could impact in national civil laws schemes: the smart contracts.

A smart contract is a self-executing contract with the terms of the agreement between buyer and seller being directly written into lines of code. The code and the agreements contained therein exist across a distributed, decentralized blockchain network. The code controls the execution, and transactions are trackable and irreversible.

Smart contracts permit trusted transactions and agreements to be carried out among disparate, anonymous parties without the need for a central authority, legal system, or external enforcement mechanism.

Although smart contracts provide potential benefits in terms of reducing transaction costs and increasing security, disputes can and will arise. As an example:

- Difficulty of identifying the parties: pseudonymously execution.
- Uncertainty over jurisdiction and governing law: distributed nodes all over the world.
- Novel enforcement issues: transaction is indelibly record and irrevocable.
- Protecting proprietary information: proprietary software and/or hardware.

- Courts with specialist technical knowledge.
- Bespoke procedures and automated enforcement.

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

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? [Insert text box]

Reporting Spanish experience in this market is complicated due to the lack of information available. Also, some Spanish initiatives are being developed from other jurisdictions (London, Singapore).

In the area of cryptocurrencies, the first initiative was SpainCoin in 2014. The most successful project to date is pesetaCoin (PTC) that, at the end of April 2019, featured a market value of 6.4 million euros. Last year a new cryptocurrency of Spanish initiative based in London, named Bilur, was launched. There is also a growing generation of tokens that arise from different sectors.

In order to illustrate market trends, more than 258 consultations have been received in the Fintech website of the CNMV until December 31, 2018; of which 63 have been in relation to crypto-asset and blockchain, and in turn, within these, 31 have been in relation to ICO, 12 to exchanges and 20 of other issues.

Consultas recibidas en el Portal Fintech CUADRO 10.2.1

Verticales	N.º de solicitudes
Plataformas de financiación participativa (PFP)	75
Criptoactivos y *blockchain*	63
ICO	31
Exchanges	12
Otros	20
Asesoramiento y gestión automatizadas	41
Relación con el cliente	12
Proveedor de tecnología	15
Otros	52
Total	**258**

Fuente: CNMV.

1. Issuance of crypto-assets

1.1. Issuance of crypto-assets in general

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 (X)**
- No
- Don't know/no opinion

Please explain your reasoning (if needed). [Insert text box]

This kind of provisions seems necessary in order to facilitate supervisory activities.

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 (X)**
- No
- This depends on the nature of the crypto-asset (utility token, payment token, hybrid token…)
- Don't know/no opinion

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…). [Insert text box]

The Committee considers that the issuer or sponsor of crypto-assets should provide information (e.g. through a 'white paper') when issuing crypto-assets.

This matter is a very sensitive subject that would merit a particular analysis in the context of Prospectus Regulation.

The content of the information should include:

- The identity of directors, senior management, advisers and auditors (where appropriate).
- Expected timetable.
- Essential information (financial data and risks factors).

- Company information.
- Operating and financial review and prospects.
- Major shareholders and related-party transactions.
- Details of the offer and admission to trading details.

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 each proposal from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant". [Insert text box]

	1	2	3	4	5	No opinion
The Consumer Rights Directive			X			
The E-Commerce Directive			X			
The EU Distance Marketing of Consumer Financial Services Directive			X			
Other (please specify)						

Please explain your reasoning and indicate the type of clarification (legislative/non legislative) that would be required [insert text box]. Yes.

The crypto-assets market requires specific rules within the context of financial regulation. Under this scheme the three Directives considered in this question would work as subsidiary pieces of legislation, i.e. they would apply in the absence of provisions in the sectorial legal framework.

Provided this is a right approach a further clarification of the interaction between sectorial regulation and general consumer protection regulation, does not seem indispensable. Non legislative initiatives (such as a Q&A) could be enough.

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 each proposal from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant ".

	1	2	3	4	5	No opinion
The managers of the issuer or sponsor should be subject to fitness and probity standards			X			
The issuer or sponsor should be subject to advertising rules to avoid misleading marketing/promotions					X	
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					X	
Other						

Please explain your reasoning (if needed). [Insert text box]

MiFiD II gives extraordinary relevance to investor protection imposing target markets and product governance rules. In this context, the safeguard of funds and deposit collected from customers should be the top priority of any legal framework for this activity.

1.2. Issuance of "stablecoins" backed by real assets

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 (if needed). [Insert text box]

The Committee believes that the best way to proceed should be conducting a prior analysis about the global stablecoins market evolution. Probably this analysis should take into account the following factors (in addition to those already proposed): the number of customers, countries involved (by investor residence), total turnover related to volatility of the reserve (e.g. in case of commodities), among others.

Also these criteria may vary from different stablecoins collateralized by fiat currency, commodities, cryptocurrency or non-collateralized (controlled by algorithm).

25) 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 both "stablecoins" and "global stablecoins" if each is proposal is relevant (leave it blank if you have no opinion).

	1	2	3	4	5	No opinion
The reserve of assets should only be invested in safe and liquid assets (such as fiat-currency, short term-government bonds…)					X	
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					X	
The assets or funds of the reserve should be segregated from the issuer's balance sheet					X	
The assets of the reserve should not be encumbered (i.e. not pledged as collateral)					X	
The issuer of the reserve should be subject to prudential requirements rules (including capital requirements)					X	
The issuer and the reserve should be subject to specific requirements in case of insolvency or when it decides to stop operating					X	
Obligation for the assets or funds to be held in custody with credit institutions in the EU					X	
Periodic independent auditing of the assets or funds held in the reserve					X	
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					X	
The value of the funds or assets held in the reserve and the number of stablecoins should be disclosed periodically					X	
Requirements to ensure interoperability across different distributed ledgers or enable access to the technical standards used by the issuer				X		
Other						

Please illustrate your response (if needed). [Insert text box]

Main concerns reside in global stablecoins for the potential impact in financial stability and in both categories for the inherent risks of the reserve (volatility, liquidity, etc.).

For global stablecoins and stablecoins a preselection of assets (reserve) should be made to prevent losses and reinforce investor protection. Also a set of rules related to

the whole investment process in terms of custody, collateralization, insolvency and value of the reserve should be useful.

Specifically, for global stablecoins monitoring the markets (jurisdictions), volumes and their possible impact in macro-economic market would be an additional provision.

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 (X)**
- No
- Don't know/no opinion

Please explain your reasoning (if needed). [Insert text box]

The Markets in Financial Instruments Directive regime implemented in 2007 introduced client categories to recognize that investors have different levels of experience, knowledge and expertise.

MiFID II states that retail investors require an additional level of protection depending of the knowledge and expertise, investment objective and financial situation. Professional clients and eligible counterparties (wholesale) have a level of protection adapted to their risk profile and receive a different legal treatment that allows a reduction of the information, communication and report obligations.

Therefore, in a case-by-case analysis some institutions or accredited clients of financial institutions could receive for a "wholesale" stablecoins a different regulatory treatment than "retail stablecoins".

2. Trading platforms

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 each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant".

	1	2	3	4	5	No opinion
Absence of accountable entity in the EU				X		
Lack of adequate governance arrangements, including operational resilience and ICT security					X	

Absence or inadequate segregation of assets held on the behalf of clients (e.g. for 'centralised platforms')					X	
Conflicts of interest arising from other activities				X		
Absence/inadequate recordkeeping of transactions					X	
Absence/inadequate complaints or redress procedures are in place					X	
Bankruptcy of the trading platform					X	
Lacks of resources to effectively conduct its activities				X		
Losses of users' crypto-assets through theft or hacking (cyber risks)					X	
Lack of procedures to ensure fair and orderly trading				X		
Access to the trading platform is not provided in an undiscriminating way				X		
Delays in the processing of transactions				X		
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)				X		
Lack of rules, surveillance and enforcement mechanisms to deter potential market abuse				X		
Other						

Please explain your reasoning (if needed). [Insert text box]

The Committee agrees with the conclusions of the IOSCO Consultation Report on "Issues, Risks and Regulatory Considerations Relating to Crypto-Asset Trading Platforms" (2019), according to which the main risks relating to crypto-asset trading platforms (CPT) are:

- Access to and on-boarding of investors.
- Safekeeping of participant assets, including custody arrangements.
- Identification and management of conflicts of interest.
- Transparency of operations.
- Market integrity, including the rules governing trading on the CTP and how those rules are monitored and enforced.

- Price discovery mechanisms.
- Technology, including resiliency and cyber security.
- Clearing and settlement, especially in a centralized platform where trade settlement typically occurs on the books of the platform (off-chain).
- Cross-border information sharing and regulatory cooperation.

28) What are the requirements that could be imposed on trading platforms in order to mitigate those risks? Please rate each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant".

	1	2	3	4	5	No opinion
Trading platforms should have a physical presence in the EU				X		
Trading platforms should be subject to governance arrangements (e.g. in terms of operational resilience and ICT security)					X	
Trading platforms should segregate the assets of users from those held on own account					X	
Trading platforms should be subject to rules on conflicts of interest				X		
Trading platforms should be required to keep appropriate records of users' transactions					X	
Trading platforms should have an adequate complaints handling and redress procedures					X	
Trading platforms should be subject to prudential requirements (including capital requirements)				X		
Trading platforms should have adequate rules to ensure fair and orderly trading					X	
Trading platforms should provide access to its services in an undiscriminating way					X	
Trading platforms should have adequate rules, surveillance and enforcement mechanisms to deter potential market abuse					X	
Trading platforms should be subject to reporting requirements (beyond AML/CFT requirements)					X	
Trading platforms should be responsible for screening crypto-assets against the risk of fraud					X	
Other						

Please indicate if those requirements should be different depending on the type of crypto-assets traded on the platform and explain your reasoning (if needed). [Insert text box]

To determine the requirements applicable to crypto-assets traded on platforms the following initial questions may contribute to better design regulatory approaches. Each of these questions relate to key issues and risks that may impact investors and fair, efficient and transparent markets.

- Who can access the CTP?
- How does the trading system operate, and what are the rules of that system?
- Which crypto-assets categories are eligible for trading?
- How are different crypto-assets priced on the CTP?
- What degree of transparency of trading is provided?
- How does the CTP seek to prevent market abuse?
- What clearance and settlement processes exist depending on crypto-assets categories?
- How are participant assets held?
- What possible conflicts of interest exist?
- What cyber security and system resiliency controls are in place?

The Committee considers it positive the implementation of adequate systems and controls to ensure fair and orderly trading and protection against market manipulation and insider dealing. Some initiatives should be considered in this regard:

- Market venues for virtual currencies and tokens need to be regulated including requirements on price transparency, systems against money laundering and information disclosure.

- Adapting the regulatory framework for ICOs' application, the secondary markets and the platforms where crypto-assets are exchanged, is of great importance in order to integrate ICOs on the diverse set of rules applying to other forms of raising capital.

- The growing risks, stemming from the impact that cyber-attacks can have on the ICO market, need to be addressed.

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

29) In your opinion, what are the main risks in relation to crypto-to-crypto and fiat–to-crypto exchanges? Please rate each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant".

	1	2	3	4	5	No opinion
Absence of accountable entity in the EU				X		
Lack of adequate governance arrangements, including operational resilience and ICT security					X	
Conflicts of interest arising from other activities				X		
Absence/inadequate recordkeeping of transactions					X	
Absence/inadequate complaints or redress procedures are in place					X	
Bankruptcy of the exchange					X	
Inadequate own funds to repay the consumers					X	
Losses of users' crypto-assets through theft or hacking					X	
Users suffer loss when the exchange they interact with does not exchange crypto-assets against fiat currency (conversion risk)					X	
Absence of transparent information on the crypto-assets proposed for exchange					X	
Other						

Please explain your reasoning (if needed). [Insert text box]

Specialized trading platforms allow exchanging crypto-assets for fiat money or other crypto assets. There are currently more than two hundred platforms at global level although the largest flow of operations is controlled by a small group. The daily volume traded on platforms is around fifteen billion dollars.

In our view, the main risks of exchanges are the following:

- Absence of transparency in the information requirements and regulatory status of the companies involved.
- Operational resilience and good risk governance (in case of loss of crypto-assets, for instance).
- Absence of solutions to mitigate conflicts of interest.
- Absence of adequate advertising standards.

30) What are the requirements that could be imposed on exchanges in order to mitigate those risks? Please rate each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant".

	1	2	3	4	5	No opinion
Absence of accountable entity in the EU				X		
Exchanges should be subject to governance arrangements (e.g. in terms of operational resilience and ICT security)				X		
Exchanges should segregate the assets of users from those held on own account					X	
Exchanges should be subject to rules on conflicts of interest					X	
Exchanges should be required to keep appropriate records of users' transactions					X	
Exchanges should have an adequate complaints handling and redress procedures					X	
Exchanges should be subject to prudential requirements (including capital requirements)				X		
Exchanges should be subject to advertising rules to avoid misleading marketing/promotions					X	
Exchanges should be subject to reporting requirements (beyond AML/CFT requirements)					X	
Exchanges should be responsible for screening crypto-assets against the risk of fraud					X	
Other						

Please indicate if those requirements should be different depending on the type of crypto-assets available on the exchange and explain your reasoning (if needed). [Insert text box]

The Committee deems that a common set of rules should apply to all crypto-assets. Specific additional requirements could be considered for those that pose higher risk.

Nevertheless, the Committee strongly believes that focus should be made on investor protection and the safeguard of the assets. In this sense, separation between trade and custody is essential. The role of independent custodians contributes to avoiding conflict of interest (trading-exchange-custody) and inadequate recordkeeping, and reduce the likelihood of custodial wallet negligently, fraudulently behavior, the failing to provide expected functionality or even the potential bankruptcy.

In fact, in several US states, custody of crypto-assets is performed by an independent and authorised third party if customer positions exceed certain amounts.

4. Provision of custodial wallet services for crypto-assets

31) In your opinion, what are the main risks in relation to the custodial wallet service provision? Please rate each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant".

	1	2	3	4	5	No opinion
No physical presence in the EU				X		
Lack of adequate governance arrangements, including operational resilience and ICT security					X	
Absence or inadequate segregation of assets held on the behalf of clients					X	
Conflicts of interest arising from other activities (trading, exchange)					X	
Absence/inadequate recordkeeping of holdings and transactions made on behalf of users					X	
Absence/inadequate complaints or redress procedures are in place					X	
Bankruptcy of the custodial wallet provider					X	
Inadequate own funds to repay the consumers				X		
Losses of users' crypto-assets/private keys (e.g. through wallet theft or hacking)					X	
The custodial wallet is compromised or fails to provide expected functionality				X		
The custodial wallet provider behaves negligently or fraudulently					X	
No contractual binding terms and provisions with the user who holds the wallet				X		
Other						

Please explain your reasoning (if needed). [Insert text box]

In relation to crypto-assets custodial services there is an important aspect that should be take into account: the legal status of private keys and their custody.

In order to trade in blockchain networks it is necessary to use a private key. The loss of this key prevents any kind of transaction, so at the end of the day this equates to the loss of the assets. There is no possibility of claim, recovery or alternative solution.

The disclosure of private keys, either through carelessness or hacking, to people not entitled to use it, may lead to the loss (theft) of crypto-assets.

There is no traditional ownership in crypto-assets. There is no repository or account that accumulates the balance that belongs to a market participant. It is the crypto-asset traceability of all shipping and receiving movements what marks the available balance to continue trading.

32) What are the requirements that could be imposed on custodial wallet providers in order to mitigate those risks? Please rate each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant".

	1	2	3	4	5	No opinion
Custodial wallet providers should have a physical presence in the EU					X	
Custodial wallet providers should be subject to governance arrangements (e.g. in terms of operational resilience and ICT security)					X	
Custodial wallet providers should segregate the asset of users from those held on own account					X	
Custodial wallet providers should be subject to rules on conflicts of interest					X	
Custodial wallet providers should be required to keep appropriate records of users' holdings and transactions				X		
Custodial wallet providers should have an adequate complaints handling and redress procedures					X	
Custodial wallet providers should be subject to capital requirements				X		
Custodial wallet providers should be subject to advertising rules to avoid misleading marketing/promotions					X	
Custodial wallet providers should be subject to certain minimum conditions for their contractual relationship with the consumers/investors					X	
Other						

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 (if needed). [Insert text box]

See answer to question 30 related to the separation between trade and custody, the essential role of independent custodian and the adoption of good practices from traditional securities trading platforms.

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 (but see the reasoning below)**
- No
- Don't know/no opinion

Please explain your reasoning (if needed). [Insert text box]

The Committee suggests the opportunity to create the figure of crypto-asset depositary with the following functions (taking as reference the legal framework for depositaries in UCITS Directive):

1- Safeguarding private keys:

- Safety against theft, hacking, negligence or contingency, concerning private keys.
- Encryption of all participating elements.
- Use of independent databases for storing encrypted items that must act together for the use of the keys.

2- Supervision of investor positions.

3- Ensure the individuality of the investor and ensure the ownership of the assets: monitor the individualized public keys to ensure blockchain networks proper functioning and create the corresponding adaptations in the case of bifurcations or changes in them.

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? [Insert text box]

No.

5. Other service providers

35) In your view, what are the services related to crypto-assets that should be subject to requirements? Please rate each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant"

	1	2	3	4	5	No opinion
Reception and transmission of orders in relation to crypto-assets				X		
Execution of orders on crypto-assets on behalf of clients				X		
Crypto-assets portfolio management					X	
Advice on the acquisition of crypto-assets					X	
Underwriting of crypto-assets on a firm commitment basis			X			
Placing crypto-assets on a firm commitment basis			X			
Placing crypto-assets without a firm commitment basis			X			
Information services (an information provider can make available information on exchange rates, news feeds and other data related to crypto-assets)			X			
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)		X				
Distribution of crypto-assets (some crypto-assets arrangements rely on designated dealers or authorised resellers)				X		
Services provided by developers that are responsible for maintaining/updating the underlying protocol			X			
Agent of an issuer (acting as liaison between the issuer and to ensure that the regulatory requirements are complied with)				X		
Other services						

Please illustrate your response, by underlining the potential risks raised by these services if they were left unregulated and by identifying potential requirements for those service providers. [Insert text box]

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 (X)**
- No
- Partially
- Don't know/no opinion

Please explain your reasoning (if needed). [Insert text box]

Under this definition, an important part of the activities related to crypto-assets (crypto-currency) cannot be subsumed within the scope of European regulations for financial services (EMD2 and PSD2) and this entails problems related to consumer protection.

Furthermore, even when a crypto-asset falls in the scope of European financial services regulations, not all risks attached would be adequately addressed and mitigated.

According to Article 2.2 EMD2, electronic money is defined as follows: monetary value + stored by electronic or magnetic means + that represents a credit on the issuer + is issued upon receipt of funds + for the purpose of making payment transactions (5.4 PSD2) + accepted by a natural or legal person other than the issuer of electronic money.

Since the nature of the activity is the same (payment services), PSD2 should apply with those adaptations required by the specificities of crypto-assets and the specific risks they pose.

C. Horizontal questions

1. Market Integrity

37) In your opinion, what are the biggest market integrity risks related to the trading of crypto-assets? Please rate each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant".

	1	2	3	4	5	No opinion
Price manipulation				X		
Volume manipulation (wash trades…)				X		
Pump and dump schemes				X		

Manipulation on basis of quoting and cancellations				X		
Dissemination of misleading information by the crypto-asset issuer or any other market participants				X		
Insider dealings				X		
Other						

Please explain your reasoning (if needed). [Insert text box]

In theory, DLT provides a safe environment for transactions. However, the complexity of this technology and its immaturity (at least in financial services) entail significant risks (to a large extent similar to those that can be found in the traditional market).

38) In your view, how should market integrity on crypto-asset markets be ensured? [Insert text box]

An adequate classification of financial instruments is needed to avoid market fragmentation and to facilitate interoperability. Also as mentioned before, the Committee considers it positive the implementation of requirements in terms of adequate systems and controls to ensure fair and orderly trading and protect against market manipulation and insider dealing (see answer to question 28).

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

- **Yes (X)**
- No
- Don't know/no opinion

Please explain your reasoning (if needed). If yes, please explain how you would see this best achieved in practice. [Insert text box]

To the extent that tokens are considered as financial instruments, exchange and custody providers should be subject to the same obligations regarding market integrity and prevention of money laundering foreseen for traditional markets. Under this approach supervisors should be able to formally identify the parties to transactions in crypto-assets.

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? [Insert text box]

Technology providers find proper locations all over the world trying to find the best conditions in energy consumption, tax legislation or human talent. The best approach would be to reach a global consensus around international bodies standards, such as FATF recommendations on Anti-Money Laundering (AML)/Countering the Financing of Terrorism (CFT).

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

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 (X)**
- No
- Don't know/no opinion

Please explain your reasoning (if needed). [Insert text box]

The EU AML/CFT legal framework defines virtual currency as "a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically.'

The Financial Action Task Force (FATF) recommendations (2018) introduced changes using a broader term of '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".

The Committee considers that EU AML/CFT legal framework should converge with FATF definition.

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? If any, please describe the possible risks to tackle. [Insert text box]

Crypto-assets are often described as highly disruptive. However, when considering the adequate AML framework for them, it is important to take into consideration that there are many similarities with traditional assets, e.g. cash. Moreover, crypto-assets may allow greater anonymity than traditional payment methods, due to DLT.

In effect, significant parallelism can be established between crypto-assets services provider and traditional financial services providers. These similarities can be used to determine the scope of AML requirements applicable to crypto-assets. In fact, the 5th AML Directive has already included fiat-to-crypto exchanges and wallet providers as 'obliged entities'.

Exchanges and wallets are the more sensitive providers within the crypto-assets value chain In terms of money laundering prevention. So far, no further providers need to be covered by the EU AML/CFT framework. Future developments in this business may lead to reconsider this approach.

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 (X)**
- No
- Don't know/no opinion

Please explain your reasoning (if needed). [Insert text box]

See answer to question 42.

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? [Insert text box]

The anonymity of the wallet holders and the existence of blockchains specifically designed to ensure secrecy on the sender, the receiver and the amount transferred, create virtually risk-free ways of laundering money. It is key to find ways to prevent this possibility.

In fact, FATF has expressed its concern regarding decentralized systems due to their higher AML/CTF risk profile. For example the bitcoin protocol does not require or provide identification and verification of participants or generate historical records of transactions that are necessarily associated with real world identity. There is no central

oversight body. It thus offers a level of potential anonymity that is impossible with traditional credit and debit cards or online payment systems.

Anyway, it is important to take into account that current AML framework (applicable to “real” assets”) does not cover peer to peer transactions. Its objective is the prevention of the use of financial system for the money laundering. In the absence of intermediaries it seems really difficult to design specific measures. The final solution has to be found in the technology behind these new assets.

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 (X)**
- No
- Don't know/no opinion

Please explain your reasoning (if needed). [Insert text box]

See answer to question 44**.**

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 each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant".

	1	2	3	4	5	No opinion
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					X	
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					X	
Other						

Please explain your reasoning (if needed). [Insert text box]

3. Consumer/investor protection

47) What type of consumer protection measures could be taken as regards crypto-assets? Please rate each proposal by level of relevance from 1 to 5, 1 standing for "completely irrelevant" and 5 for "highly relevant".

	1	2	3	4	5	No opinion
Information provided by the issuer of crypto-assets (the so-called 'white papers')					X	
Limits on the investable amounts in crypto-assets by EU consumers				X		
Suitability checks by the crypto-asset service providers (including exchanges, wallet providers…)					X	
Warnings on the risks by the crypto-asset service providers (including exchanges, platforms, custodial wallet providers…)					X	
Other						

Please explain your reasoning and indicate if those requirements should apply to all types of crypto assets or only to some of them. [Insert text box]

Due to crypto-assets volatility, speculative characteristic and complexity in terms of transparency, suitability and warnings, investor protection is a top priority in order to preserve trust and design a level playing field framework.

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 (X)**
- No
- Don't know/no opinion

Please explain your reasoning (if needed). [Insert text box]

A common set rule should be established for all crypto-assets. Additionally, specific provision would be necessary depending on the economic or social function of each kind of crypto-assets and the specific risks they may entail.

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 (X)**
- No
- Don't know/no opinion

Please explain your reasoning (if needed). [Insert text box]

Private sales involve rewards distributed by some crypto-assets issuers or promoters. That reward called “bounty” consists of a limited crypto-assets number for free or at a lower price to external agents who are involved in the IT development of the project. Significant differences between public and private sales can be found (in terms of targeted market, for instance) and they justify the existence of different standards in terms of investor protection.

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 (X)**
- No
- Don't know/no opinion

Please explain your reasoning (if needed). [Insert text box]

See answer to question 49.

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 each proposal from 1 to 5, 1 standing for "not relevant factor" and 5 for "very relevant factor".

	1	2	3	4	5	No opinion
Those crypto-assets should be banned		X				
Those crypto-assets should be still accessible to EU consumers/investors			X			
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				X		
Other						

Please explain your reasoning (if needed). [Insert text box]

As stated in the consultative document, the vast majority of crypto-assets that are accessible to EU consumers and investors are currently issued outside the EU. To gain market creation 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.

4. Supervision and oversight of crypto-assets service providers

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 (if needed). [Insert text box]

Crypto-assets are a global business. Addressing the risks they entail (market integrity, money laundering and terrorism finance or tax evasion) requires international cooperation. Since access to crypto exchanges is as easy as a "click" (to access to the Internet in any part of the world), consumer and investor protection for crypto exchanges would benefit from a global approach. We therefore consider the European Authorities should play an important role in the area of supervision.

The Committee agrees with the consultative document: as the size of the crypto-asset market is still small and does not raise financial stability issues, the service provider's supervision by national competent authorities would be justified. At the same time, as "global stablecoin" can raise financial stability concerns at EU level, it seems sensible to ensure an equally EU-wide supervisory perspective. This could be achieved, by empowering the European Authorities (e.g. in cooperation with the European System of Central Banks) to supervise and oversee crypto-asset service providers.

53) Which are the tools that EU regulators would need to adequately supervise the crypto-asset service providers and their underlying technologies? [Insert text box]

Providing any insight regarding supervision tools may be premature at this stage. As a general remark (and as a first step) it is key to admit that the first barrier in this market is the difficulty to fully understand the complex underlying technology. The first tool for supervision should be to gain sufficient knowledge (by recruiting experts, ideally), since at the end of the day this technology should also be used for supervisory tasks.

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

A. General questions on 'security tokens'

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)? [Insert text box]

As the consultation paper states, 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.

We agree that adjustment of the 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 basis. This adjustment should take into account that trading and post-trading on permissionless networks could also potentially create risks as regards market integrity and financial stability.

Taking into consideration that permissionless networks and decentralized platforms are still very immature and need to resolve significant challenges (high trade latency and low liquidity), the Committee agrees that it is premature at this point in time to make any structural changes to the EU regulatory framework in this regard.

Being said the above, we also consider that a gradual regulatory approach might be considered, trying to provide legal clarity to market participants, and afterwards considering changes in the regulatory framework to also accommodate permissionless networks and decentralised platforms.

Regarding Spain there are no developments to highlight in this regard.

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	X
Neutral	
Rather disagree	
Completely disagree	
Don't know / No opinion	

Please explain your reasoning (if needed). If you agree, please indicate the specific areas where, in your opinion, the technology could afford most efficiencies when compared to the legacy system. [Insert text box]

DLT developments could bring more efficiency in post–trade area for the following reasons:

- 10% of the processes require conciliation.
- Existence of redundant process and technologies.
- Cost reduction and expedite settlement.
- Mitigating risks and providing more liquidity.

In the trading area it would be helpful to gain agility and compliance with MiFID II requirements (e.g. best execution policy) and efficiency in international commerce (import-export credit) by accessing the same information at a time, reducing counterparty risk and allowing goods traceability.

Finally, asset management will benefit from portfolio diversification for qualified investors.

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	X
Neutral	
Rather disagree	
Completely disagree	
Don't know / No opinion	

Please explain your reasoning (if needed). [Insert text box]

If no adjustments to the current legislation are introduced, the risk of financial instability may increase. After creating a secure regulatory environment for DLT options (permissioned networks and centralised platforms/permissionless networks and decentralised platforms) financial stability risks will probably be aligned (be similar to the already existing or even decrease).

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. [Insert text box]

It is too premature to predict the real impact of DLT in the role and operation of trading venues and post-trade financial market infrastructures (CCPs, CSDs).

However, if technology continues to evolve at the rate we can see today (and it probably will), and provided the legal framework does not hinder innovation, in 10 years' time the current landscape of trading venues may be very different.

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	**X**
Rather agree	
Neutral	
Rather disagree	
Completely disagree	
Don't know / No opinion	

Please explain your reasoning (if needed). [Insert text box]

See answer to question 54.

B. Assessment of legislation applying to 'security tokens'

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

1.1. Financial instruments

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	**X**
Neutral	
Rather disagree	

Completely disagree	
Don't know / No opinion	

Please explain your reasoning (if needed). [Insert text box]

It is clearly necessary to have a common regulatory and supervisory approach for security tokens in the EU. This would avoid diverging conclusions on what should be considered a security token across the EU. These divergences have the potential to hamper the development of this market. Security tokens matching specific requirements should fall within the category of financial instruments.

60) If you consider that this is an impediment, what would be the best remedies according to you? Please rate each proposal from 1 to 5, 1 standing for "not relevant factor" and 5 for "very relevant factor".

	1	**2**	**3**	**4**	**5**	**No opinion**
Harmonise the definition of certain types of financial instruments in the EU					**X**	
Provide a definition of a security token at EU level					**X**	
Provide guidance at EU level on the main criteria that should be taken into consideration while qualifying a crypto-asset as security token			**X**			
Other						

Please explain your reasoning (if needed). [Insert text box]

The Committee considers it necessary the existence of a harmonized definition of security token at EU level. This will provide legal certainty since it will contribute to better determine under which circumstance a specific security token falls under the scope of MiFID.

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 each proposal from 1 to 5, 1 standing for "not relevant factor" and 5 for "very relevant factor".

	1	2	3	4	5	No opinion
Hybrid tokens should qualify as financial instruments/security tokens				x		
Hybrid tokens should qualify as unregulated crypto-assets (i.e. like those considered in section III. of the public consultation document)	x					
The assessment should be done on a case-by-case basis (with guidance at EU level)					x	
Other						

Please explain your reasoning (if needed). [Insert text box]

A case-by-case approach seems the most pragmatic solution. The combination in the same asset of different features (security, payment, utility) brings up the question of which regime prevails (and MiFID should not be the permanent "winner" since there is no subordination between MiFID and PSD).

Two criteria could be useful to determine the right regime to be applied in case of hybrid crypto-assets: (1) the degree of importance of each component (investment or payment) within the asset; and (2) which regime provides the best level of protection to the investor/consumer in each case.

1.2. Investment firms

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

Completely agree	
Rather agree	**X**
Neutral	
Rather disagree	
Completely disagree	
Don't know / No opinion	

Please explain your reasoning (if needed). [Insert text box]

Yes, existing rules can be applied to crypto-assets. However, the Committee agrees that the current legal framework was not designed for these products so difficulties

may arise. Nevertheless, the general framework seems absolutely valid. Specificities derived from crypto-assets can be addressed through amendments to the legislation when needed or issuing specific guidance.

63) Do you think that a clarification or a guidance on applicability of such rules and requirements would be appropriate for the market? [Insert text box]

Completely agree	**X**
Rather agree	
Neutral	
Rather disagree	
Completely disagree	
Don't know / No opinion	

Please explain your reasoning (if needed). [Insert text box]

As already mentioned, the fulfillment of further specific requirements may be needed in order to deal with crypto-assets, so clarifications or guidance would be welcome.

1.3. Investment services and activities

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	**X**
Neutral	
Rather disagree	
Completely disagree	
Don't know / No opinion	

Please explain your reasoning (if needed). [Insert text box]

Yes. From a general point of view the current scope is appropriate. However, this does not mean that no adjustments should be made, as changes will be needed in order to adapt the legislation to the specificities of these new instruments.

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 (if needed). [Insert text box]

In the case of Spain the transposition is neutral, so it would not prevent the use of DLT for investment services and activities.

1.4. Trading venues

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 (if needed). [Insert text box]

No. Trading venue definitions and requirements may also apply to DLT environments, as they are designed to capture diverse realities. Anyway, ESMA advice regarding the impact of DLT in trading platforms is a good approach to a gradual application of MiFID to venues trading with security tokens.

1.5. Investor protection

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 (if needed). [Insert text box]

Yes, as the nature of the transactions and the position of (retail) investors is essentially the same. Therefore, the general principles and the basic rules (information duties and suitability assessments) already foreseen for traditional instruments should apply to security tokens. The required level playing field across investments products must also be considered.

Obviously this approach does not dismiss adaptations of the legal framework to the specificities of security tokens.

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 (if needed). [Insert text box]

No, at least at this stage. The existing regulatory framework for traditional financial instruments provides a protection scheme that covers the marketing via social media or online. The current regime seems valid from a general point of view.

69) Would you see any particular issue (legal, operational,) in applying MiFID investor protection requirements to security tokens? Please explain your reasoning (if needed). [Insert text box]

No. As above explained the regime actual is valid.

1.6. SME growth markets

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 (if needed). [Insert text box]

Yes. At this point DLT main weakness are low latency and high throughput. Since SME growth markets do not necessarily rely on these factors, it seems that DLT technology could optimize its possibilities in these markets.

1.7. Systems resilience, circuit breakers and electronic trading

71) Would you see any particular issue (legal, operational) in applying these requirements to security tokens which should be addressed? Please explain your reasoning (if needed). [Insert text box]

MiFID requires regulated markets to implement effective systems, procedures an arrangements to ensure its trading systems are resilient, have sufficient capacity and ensure that members are only permitted to provide services if they are authorized credit institutions or investment firms. The consultation paper states that these requirement could be an issue for security tokens, considering that crypto-asset trading platforms typically provide direct access to retail investors.

This is one of the most important and complex decisions to take when considering to what extent the current regulatory framework needs to be adapted.

Provided the “no intermediaries” model is to be preserved (which would require that the level of investor protection established by MiFID is also preserved), perhaps the solution that could be explored is to impose the legal requirements directly to the venue or the trading platform itself.

1.8. Admission of financial instruments to trading

72) Would you see any particular issue (legal, operational) in applying these requirements to security tokens which should be addressed? Please explain your reasoning (if needed). [Insert text box]

Since markets in security tokens are very much a developing phenomenon, the Committee agrees that there may be merit in reinforcing the legislative rules on admission to trading criteria for these assets.

1.9. Access to a trading venues

73) What are the risks and benefits of allowing direct access to trading venues to a broader base of clients? Please explain your reasoning (if needed). [Insert text box]

See answer to question 71.

1.10. Pre and post-transparency requirements

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

Completely agree	
Rather agree	**X**
Neutral	
Rather disagree	
Completely disagree	
Don't know / No opinion	

Please explain your reasoning (if needed). [Insert text box]

If they are to be considered financial instruments, pre and post-transparency requirements are a key aspect for an orderly functioning of securities markets. 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.

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 (if needed). [Insert text box]

As mentioned by the consultation paper, the availability of data could be an issue for best execution within security tokens platforms. The establishment of transparency thresholds would be more complex for this kind of instruments.

1.11. Transaction reporting and obligations to maintain records

76) Would you see any particular issue (legal, operational) in applying these requirements to security tokens which should be addressed? Please explain your reasoning (if needed). [Insert text box]

In terms of reporting, probably new rules should be needed according to the specific characteristics of these instruments. As the consultation document mentions, the availability of the information on financial instruments required for reporting purposes by the Level 2 provisions could perhaps be an issue for security tokens if they are not able to obtain it (e.g. ISIN codes are mandatory).

2. Market Abuse Regulation (MAR)

2.1. Insider dealing

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?

Yes. If the security token (financial instrument) is traded on a MiFID venue similar rules should be applied in terms of inside information and insider dealing, as they will cover all potential cases.

2.2. Market manipulation

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? [Insert text box]

Yes. The definition is wide enough, so it will cover market manipulation related with security tokens (categorized as financial instruments).

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? [Insert text box]

Yes. Since security tokens and blockchain technology 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.

3. Short Selling Regulation (SSR)

80) Have you detected any issues that would prevent effectively applying SSR to security tokens? Please rate each proposal from 1 to 5, 1 standing for "not a concern" and 5 for "strong concern".

	1	2	3	4	5	No opinion
Transparency for significant net short positions			x			
Restrictions on uncovered short selling			x			
Competent authorities' power to apply temporary restrictions to short selling			x			
Other						

Please explain your reasoning (if needed). [Insert text box]

SSR refers to equity or equity like instruments traded on a trading venue and to CSDs of sovereign debt. If security tokens qualify as financial instruments, SSR would also capture them.

As ESMA remarks, 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.

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? [Insert text box]

No.

4. Prospectus Regulation (PR)

4.1. Scope and exemptions

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	X
Rather disagree	
Completely disagree	
Don't know / No opinion	

Please explain your reasoning (if needed). [Insert text box]

Same exemptions should apply, as the exemptions were conceived from a general perspective and covering all financial instruments. However, one cannot dismiss the possibility that future developments require specific exemptions.

4.2. The drawing up of the prospectus

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

- **Yes (X)**
- No
- Don't know/no opinion

If yes, 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 (if needed). [Insert text box]

Building block approach, as it seems a more flexible solution.

84) Do you identify any issues in obtaining an ISIN for the purpose of issuing a security token? [Insert text box]

If security tokens are considered financial instruments under the revised rules they should be required to obtain an ISIN. From a technical point of view and considering

the characteristics of security tokens this may be an issue. Underlying technology should be required to work on a solution or alternative.

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 (if needed). [Insert text box]

The adaptation of special types of prospectus and related documents seems necessary. But no huge difficulties have been identified in this regard. Anyway, this aspect should be further analysed after PR is applied to security tokens for a limited period of time. If problems are detected then prospectuses or related documents should be amended in order to solve them.

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 X**
- Don't know/no opinion

Please explain your reasoning (if needed). [Insert text box]

As a first approach, we are very much in favour of a building block solution. The Committee considers it preferable to a simplified regime, which does not seem fully justified taking into consideration the risk profile of security tokens.

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

Completely agree	
Rather agree	**X**
Neutral	
Rather disagree	
Completely disagree	
Don't know / No opinion	

If you agree, please indicate if ESMA's guidelines on risks factors should be amended accordingly. Please explain your reasoning (if needed). [Insert text box]

The disclosure of such information may contribute to a better understanding by investors of this kind of instruments.

5. Central Securities Depositories Regulation (CSDR)

88) Would you see any particular issue (legal, operational, technical) with applying the following definitions in a DLT environment? Please rate each proposal from 1 to 5, 1 standing for "not a concern" and 5 for "strong concern"

	1	2	3	4	5	No opinion
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					x	
Definition of 'securities settlement system' and whether a DLT platform can be qualified as securities settlement system under the SFD					x	
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;					x	
Definition of 'book-entry form' and 'dematerialised form					x	
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);					x	
What could constitute delivery versus payment in a DLT network, considering that the cash leg is not processed in the network					x	
What entity could qualify as a settlement internaliser					x	
Other						

Please explain your reasoning. [Insert text box]

In the long term, DLT could be more efficient (in terms of traceability, for instance), so likely the role of a CSD would be less relevant in this regard.

In the mid-term we do not think DLT platforms are going to replace CSD as they work today. Current CSDs are quite efficient in terms of providing settlement and custody to our markets. DLT probably will be a complementary method to settle and process digital assets (for example, for small issuers with difficulties to access traditional infrastructures due to their higher costs). However, to resolve legal and operational issues in order to include DLT as a real option, many challenges have still to be solved. For instance, EU and national legislation should cover DLT to avoid legal uncertainty and an efficient method has to be defined to allow delivery versus payment (smart contracts could be a solution here)

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

- **Yes (X)**
- No
- Don't know/no opinion

Please explain your reasoning. [Insert text box]

Yes. DLT will give the necessary information and security in relation to each transaction, the participants and the last owner. However it should be included specifically in CSDR to create the necessary legal certainty.

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. [Insert text box]

Spanish legislation will have to be adapted (since it requires the register of every financial instrument in an official CSD). Otherwise, this legal framework will prevent the use of DLT solutions.

91) Would you see any particular issue (legal, operational, technical) with applying the current rules in a DLT environment? Please rate each proposal from 1 to 5, 1 standing for "not a concern" and 5 for "strong concern".

	1	2	3	4	5	No opinion
Rules on settlement periods for the settlement of certain types of financial instruments in a securities settlement system					x	
Rules on measures to prevent settlement fails					x	
Organisational requirements for CSDs				x		
Rules on outsourcing of services or activities to a third party				x		
Rules on communication procedures with market participants and other market infrastructures					x	
Rules on the protection of securities of participants and those of their clients					x	
Rules regarding the integrity of the issue and appropriate reconciliation measures					x	
Rules on cash settlement					x	
Rules on requirements for participation					x	
Rules on requirements for CSD links				x		
Rules on access between CSDs and access between a CSD and another market infrastructure				x		
Other (including other provisions of CSDR, national rules applying the EU acquis, supervisory practices, interpretation, applications…)						

Please explain your reasoning (if needed). [Insert text box]

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? Please explain your reasoning. [Insert text box]

No.

6. Settlement Finality Directive (SFD)

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 each proposal from 1 to 5, 1 standing for "not a concern" and 5 for "strong concern".

	1	2	3	4	5	No opinion
Definition of a securities settlement system					X	
Definition of system operator					X	
Definition of participant					X	
Definition of institution					X	
Definition of transfer order					X	
What could constitute a settlement account					X	
What could constitute collateral security					X	
Other						

Please explain your reasoning. [Insert text box]

SFD sets a framework in order to deal insolvency cases, covering cash and financial instruments. The regime has been transposed to each Member State with particularities. In order to regulate DLT systems to be incorporated to market infrastructures, the key issue will be the regulation of the procedures to mitigate or resolve insolvency. This issue should be deeply analysed as this may change current rules.

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? Please explain your reasoning. [Insert text box]

No. However experience in the daily application of the legal framework may rise situations (not foreseen at this stage) that could justify such clarification. Flexible instruments, like guidance, could be the best option.

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? [Insert text box]

Not expressly foreseen in the Spanish Law transposing SFD (Law 41/1999).

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 (X)**
- No

- Don't know/no opinion

If yes, please provide specific examples (e.g. provisions national legislation transposing or implementing SFD, supervisory practices, interpretation, application…). Please explain your reasoning. [Insert text box]

See answer to question 94.

7. Financial Collateral Directive (FCD)

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 each proposal from 1 to 5, 1 standing for "not a concern" and 5 for "strong concern".

	1	2	3	4	5	No opinion
if crypto-assets qualify as assets that can be subject to financial collateral arrangements as defined in the FCD					X	
if crypto-assets qualify as book-entry securities collateral if records on a DLT qualify as relevant account					X	
Other						

Please explain your reasoning. [Insert text box].

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

No (see answer to question 94).

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? [Insert text box]

According to Spanish Royal Decree-Law 5/2005 (Article 17º.3) when the object of the collateral are credit rights, the Law applicable would be the one governing the assigned or pledged credit.

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

- Yes
- **No (X)**
- Don't know/no opinion

If yes, please provide specific examples (e.g. provisions national legislation transposing or implementing FCD, supervisory practices, interpretation, application…). Please explain your reasoning. [Insert text box]

8. European Markets Infrastructure Regulation (EMIR)

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	X

Please explain your reasoning (if needed). [Insert text box]

This Committee does not have knowledge of any project of securities token that could enter into the categories of venues concerned by EMIR and MiFID. This lack of experience makes it really difficult and daring to express a strong opinion on this question.

102) Would you see any particular issue (legal, operational, technical) with applying the current rules in a DLT environment? Please rate each proposal from 1 to 5, 1 standing for "not a concern" and 5 for "strong concern".

	1	**2**	**3**	**4**	**5**	**No opinion**
Rules on margin requirements, collateral requirements and requirements regarding the CCP's investment policy			**X**			
Rules on settlement			**X**			
Organisational requirements for CCPs and for TRs			**X**			

Rules on segregation and portability of clearing members' and clients' assets and positions			x			
Rules on requirements for participation			x			
Reporting requirements			x			
Other (including other provisions of EMIR, national rules applying the EU acquis, supervisory practices, interpretation, applications…)						

Please explain your reasoning (if needed). [Insert text box]

Reconsideration of crypto-assets as financial instruments and the level of standardisation will contribute to reduce operational and technical issues.

103) Would you see the need to clarify that DLT solutions including permissioned blockchain can be used within CCPs or TRs? [Insert text box]

It may be useful in order to help further innovation and to provide legal certainty.

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 (if needed). [insert text box]

No, if the underlying asset is a crypto-asset already considered a financial instrument.

9. The Alternative Investment Fund Directive

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 each proposal from 1 to 5, 1 standing for "not suited" and 5 for "very suited".

	1	2	3	4	5	No opinion
AIFMD provisions pertaining to the requirement to appoint a depositary, safe-keeping and the requirements of the depositary, as applied to security tokens;					x	
AIFMD provisions requiring AIFMs to					x	

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;				**X**		
AIFMD requirements that appropriate and consistent procedures are established for a proper and independent valuation of the assets;					**X**	
Transparency and reporting provisions of the AIFMD legal framework requiring to report certain information on the principal markets and instruments.					**X**	
Other						

Please explain your reasoning (if needed). [Insert text box]

As before said, the depository function will be necessary in the future and in particular in digital economy. The underlying reason is that safeguarding private keys and their use are intrinsic and defines by themselves the encryption and immutable traceability ecosystems that constitute the essence of the storage systems and exchange of value in the digital economy. Therefore, appointment of specialised depositories able to custody security tokens is necessary to provide the required security to this specific market. Such depositaries would lead for the necessary safe keeping and independent valuation of the assets.

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 (X)**
- Don't know/no opinion

If yes, please provide specific examples with relevant provisions in the EU acquis. Please explain your reasoning (if needed). [Insert text box]

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

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 each proposal from 1 to 5, 1 standing for "not suited" and 5 for "very suited".

	1	2	3	4	5	No opinion
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"				X		
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;				X		
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;				X		
UCITS Directive provisions pertaining to the requirement to appoint a depositary, safe-keeping and the requirements of the depositary, as applied to security tokens;				X		
Disclosure and reporting requirements set out in the UCITS Directive.					X	
Other						

Please explain your reasoning (if needed). [Insert text box]

As a general principle, provided security tokens are considered financial instruments, the whole UCITS regime should apply to them. However, some clarification could be needed in particular issues. For instance, provisions regarding the requirement to appoint a depositary should be refined in order to specify the duties of this figure taking into account the special profile of tokens.

11. Other final comments and questions as regards security tokens

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 (X)**
- No
- Don't know/no opinion

If yes, please explain the regulatory approach that you favour. Please explain your reasoning (if needed). [Insert text box]

See answer to question 54.

109) Which benefits and risks do you see in enabling trading or post-trading processes to develop on permissionless blockchains and decentralised platforms? [Insert text box]

See answer to page 54.

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 (X)**
- No
- Don't know/no opinion

If yes, please identify the issues that should be addressed at EU level and the approach to address them. Please explain your reasoning (if needed). [Insert text box]

Under the principle of technology neutrality (see general remarks), EU legal framework should be flexible enough and adjust its schemes to a new technology, like blockchain where trading and post trading are almost instantaneous.

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? [Insert text box]

- Yes
- **No (X)**
- Don't know/no opinion

Please provide specific examples and explain your reasoning (if needed). [Insert text box]

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 (X)**
- Don't know/no opinion

Please provide specific examples (national provisions, implementation of EU acquis, supervisory practice, interpretation, application…). Please explain your reasoning (if needed). [Insert text box]

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

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 (X)**
- Don't know/no opinion

Please provide specific examples (EMD2 provisions, national provisions, implementation of EU acquis, supervisory practice, interpretation, application…). Please explain your reasoning (if needed). [Insert text box]

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 (X)**
- Don't know/no opinion

Please provide specific examples (PSD2 provisions, national provisions, implementation of EU acquis, supervisory practice, interpretation, application…). Please explain your reasoning (if needed). [Insert text box]

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 (X)**
- No
- Don't know/no opinion

Please provide specific examples and explain your reasoning (if needed). [Insert text box]

No major changes. Even though such cases may seem limited, there is merit in ensuring whether the existing rules are suitable for these tokens.

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 each proposal from 1 to 5, 1 standing for "completely inappropriate" and 5 for "completely appropriate").

	1	**2**	**3**	**4**	**5**	**No opinion**
Initial capital and ongoing funds				**X**		
Safeguarding requirements				**X**		
Issuance				**X**		
Redeemability				**X**		
Use of agents				**X**		
Out of court complaint and redress procedures				**X**		
Other						

Please explain your reasoning (if needed). [Insert text box]

As some "stablecoins" with global reach (the so-called "global stablecoins") may qualify as e-money, we therefore believe that the requirements under EMD2 should apply.

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	**X**
Neutral	
Rather disagree	
Completely disagree	
Don't know / No opinion	

Please explain your reasoning (if needed). [Insert text box]

We consider that entities in a "global stablecoins" arrangement (that qualify as e-money under EMD2) should also be subject to the provisions of PSD2. The aim should be to cover those similar payment realities.