

# AMLA's Response to the EC's Targeted Consultation on the Review of Regulation on the Markets in Crypto-Assets (MICA)



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# 1 Introduction

The European Anti-Money Laundering Authority (AMLA) welcomes the opportunity to contribute to the targeted consultation on Regulation (EU) 2023/1114 on Markets in Crypto-Assets (MiCA) from an anti-money laundering and countering the financing of terrorism (AML/CFT) perspective. In line with its mandate to strengthen AML/CFT supervision and promote supervisory convergence across the Union, AMLA provides observations on the AML/CFT implications of the MiCA framework and on areas in where clarifications or additional provisions could enhance the effectiveness and consistency of the framework and therefore mitigate ML/TF risks.

AMLA has structured its contribution around the AML/CFT issues, as these cut across several areas of the Commission's consultation, rather than responding to each consultation question individually.

Against this background, AMLA's contribution focuses on:

- Staking, lending and borrowing arrangements of crypto assets
- DeFi arrangements
- Unauthorized stablecoins
- ART issuers not being considered as obliged entities under the AML/CFT Framework
- Passporting regime for CASPs

## 2 Staking, lending and borrowing crypto assets

MiCA does not regulate crypto-asset staking, lending, and borrowing as standalone activities, despite their growing importance within the crypto-asset market. This presents a regulatory gap as recognised in the EBA-ESMA joint report on recent developments in crypto-asset markets<sup>1</sup>. While staking services may fall indirectly within MiCA through the authorisation requirement for custody and administration services, this only addresses the custody element and does not capture the specific risks associated with asset pooling, yield generation, temporary control transfers, or limited client access to assets during staking periods. Similar concerns arise where CASPs facilitate access to DeFi lending, borrowing or staking arrangements on behalf of their clients.

There is therefore a risk that the current framework could create a structural incentive for CASPs to route transactions through unregulated lending wrappers, geographical risk exposure due to customers, transactions and funds involved linked to high-risk jurisdictions or jurisdictions with deficient AML/CFT frameworks and finally, risks due to customer anonymity, as there is no obligation to disclose their true identity as well as no or limited monitoring of activity as recognized by the EBA and ESMA.<sup>2</sup>

**AMLA recommendation.** The EC should consider whether dedicated regulatory requirements for staking, lending and borrowing crypto assets would be appropriate, taking into account their specific risk profile rather than relying solely on the ancillary coverage provided by the custody provisions of Article 75 to bring them within the Scope of MiCA. Such requirements could be incorporated into the existing CASP framework, where appropriate. Consideration could also be given to introducing additional management requirements for CASPs acting as gatekeepers when giving access and offering DeFi services to their customers as pointed out by EBA.<sup>3</sup>

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<sup>1</sup> EBA/Rep/2025/01

<sup>2</sup> EBA/Rep/2025/01, Joint EBA and ESMA factsheet on Crypto lending, borrowing and staking

<sup>3</sup> EBA Response to the EC Consultation on the review of Regulation (EU) 2023/1114 (MiCA), Q67

### 3 DeFi arrangements

Where an arrangement claims to be decentralised as set out in Recital 22 MiCA, there may still be significant reliance on the persons or entities concerned to self-assess whether the arrangement falls outside the scope of MiCA. In practice, this may make it difficult for supervisors to identify whether a person or entity nevertheless performs, provides or exercises effective control over crypto-asset services or activities carried out through the arrangement. For example, effective control may arise from a concentration of governance tokens or the ability to pause or modify smart contracts. Where such control is not adequately identified, activities that would otherwise be subject to MiCA and AML/CFT requirements may remain outside their scope. In addition, the absence of clear criteria for assessing the degree of decentralisation may lead supervisors to apply different approaches when determining whether an arrangement is genuinely decentralised and whether a person or entity exercises effective control.

**AMLA recommendation.** To address these supervisory gaps and provide greater legal clarity and consistency, the legal framework should define the term “DeFi arrangement” and establish common criteria for determining whether a person or entity performs, provides or exercises effective control over crypto-asset services or activities through such an arrangement. These criteria should enable supervisors to identify consistently arrangements that are not genuinely decentralised and therefore fall within the scope of MiCA and AML/CFT obligations. Where a person or entity exercises significant influence over key functionalities or holds a significant concentration of governance power without itself providing a crypto-asset service, consideration could also be given to requiring CASPs that facilitate access to the arrangement to apply appropriate risk-mitigation measures.

## 4 Unauthorized Stablecoins

Notwithstanding the authorisation requirements for ART and EMT issuers under Titles III and IV of MiCA, stablecoin activity in EEA markets continues to involve tokens issued by entities that have not obtained, or are not eligible for, MiCA authorization. In accordance with Articles 16(1) and 48(1) MiCA, CASP services involving non-compliant ARTs or EMTs also constitute an offer to the public or admission to trading. The EC has provided a clarification on these obligations through a Q&A<sup>4</sup>, followed by a statement by ESMA saying that Member states are expected to comply with these obligations.<sup>5</sup>

AMLA supports the clear position taken by EBA<sup>6</sup> and ESMA<sup>7</sup> on non-MiCA-compliant ARTs and EMTs. The FATF's Targeted Report on Stablecoins and unhosted Wallets identifies stablecoins as a common component of money laundering, terrorist-financing and proliferation-financing activity, particularly where transactions involve unhosted wallets or no AML/CFT-obliged intermediary.<sup>8</sup> These findings are reflected in examples such as US Treasury action against the TGR Group, which found that the network used US dollar-backed stablecoins, to facilitate money laundering and sanctions evasion<sup>9</sup> as well as range of illicit finance typologies linked to scams, hacks, and human trafficking referenced by the ICIJ, which show the increasing prevalence of stablecoins in criminal activity stressing the need for holistic action forward.<sup>10</sup>

**AMLA recommendation.** The European Commission should ensure that the treatment of non-MiCA-authorized ARTs and EMTs is clarified and applied consistently across the EEA, including where such tokens continue to circulate or are intermediated by CASPs. In particular, the Commission should consider legislative measures to remove legal uncertainty regarding the application of MiCA to services involving non-authorized stablecoins and to support the consistent mitigation of the associated ML/TF risks.

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<sup>4</sup> ESMA\_QA\_2404

<sup>5</sup> ESMA75-223375936-6099

<sup>6</sup> [EBA statement on Application of MiCAR to ARTs and EMTs.pdf](#)

<sup>7</sup> ESMA75-223375936-6099

<sup>8</sup> FATF's Targeted Report on Stablecoins and Unhosted Wallets, 2026

<sup>9</sup> Treasury Exposes Money Laundering Network Using Digital Assets to Evade Sanctions, 2024

<sup>10</sup> [Cryptocurrency giant Tether is wildly profitable. Can it do more to stop financial crime? - ICIJ.](#)

## 5 ART issuers not considered as obliged entities

Under MiCAR, issuers of asset-referenced tokens (ARTs) can either be credit institutions or ART issuers authorized with an ad hoc license. If the issuer is a credit institution it is an obliged entity under the AML/CFT framework. However, the AMLR does not mention ART issuers as obliged entities. They will be classified as obliged entity only if they decide to provide services in relation to their ARTs, ie obtain a CASP license. Pure-play ART issuers without engagement of another obliged entity placing the token are therefore not directly subject to AML/CFT requirements, meaning that customer due diligence (CDD) is not performed when a token is issued or during redemption, as MiCAR Article 16(1) provides that an ART may be offered to the public by the issuer itself. In addition, MiCAR Article 39 gives ART holders a permanent right of redemption against the issuer, regardless of its legal status. Moreover, several jurisdictions have already extended, or are considering extending, AML/CFT obligations to ART issuers, also in line with FATF recommendations.

**AMLA recommendation.** The European Commission should review the interaction between MiCAR and the AML/CFT framework to determine whether the existing regulatory perimeter sufficiently captures the AML/CFT risks associated with ART issuance and redemption activities not currently in Scope by MiCAR. This assessment should take into account the roles of entities involved in the issuance, distribution and redemption of ARTs, including CASPs, custodians and credit institutions, and whether CDD and transaction monitoring are applied in each stage. Following this assessment, the Commission should consider whether the AMLR should be amended to include ART issuers that are not otherwise covered as obliged entities, and that issue or redeem ARTs directly without the involvement of another obliged entity applying appropriate AML/CFT measures, or whether equivalent AML/CFT requirements should apply to such entities.

## 6 Passporting regime of CASPs

The cross-border nature of crypto-asset activities makes it essential for AML/CFT authorities to have timely, accurate and sufficiently granular information on how CASPs operate across the Union. However, Feedback from competent authorities suggests that, under the current MiCA passporting framework, the nature of cross-border activity cannot always be reliably ascertained as CASPs notifying activities in another Member State are not required to specify whether services are provided through an establishment or under the freedom to provide services (FPS).

The issue arises specifically in light of the central contact point (CCP) regime as set out in Article 45(9) of Directive (EU) 2015/849 as amended by Regulation (EU) 2023/1113, as the framework presupposes that authorities have reliable information on the presence and operations of foreign providers within their jurisdiction to identify the need for a CCP. Without a clear understanding of CASP's operational footprint in the host Member State, authorities may encounter difficulties in identifying activities falling within their remit and applying the host-state powers envisaged by the AML/CFT framework.

**Recommendation.** The European Commission should consider revising the MiCA passporting framework by introducing additional information requirements at Level 1 to enable competent authorities to clearly distinguish between establishment-based and FPS-based business models and to identify whether – in case of FPS - the provision of services relies on infrastructures located in the host Member State for effective exercise of the powers conferred to them under Articles 38 of Directive (EU) 2024/1640.

## 7 Additional observations

In addition, AMLA would like to convey the following points:

Regarding the treatment of third-country multi-issuance stablecoin arrangements under MiCA, AMLA notes that such arrangements warrant consideration from an AML/CFT perspective, given the global circulation of identical and fully fungible tokens with particular concerns related to the ultimate redemption of a token due to limited visibility on the token's transactional history and the origin of the funds. Should these arrangements be permitted, consideration could be given to measures that ensure adequate mitigation of AML/CFT risks through enhanced transparency, cooperation and information exchange across jurisdictions, in line with the recommendations put forward by the ESRB<sup>11</sup>.

AMLA notes that a number of the AML/CFT concerns relevant in this context have been addressed through the changes introduced by the new framework. This includes for example the requirements set out in Article 16 AMLD regarding the attribution and identification of crypto-asset accounts. In this regard, AMLA considers that the broader issue of attributing wallet activity might be mitigated. However, clarification will be needed on whether the required unique identifier of a crypto-asset account will enable the identification of the relevant wallet address(es), as this is the information necessary for the effective use of blockchain analytics tools.

Finally, AMLA is in support of observations made by the EBA, on MiCA Level 1 mandates not being fully aligned with other sectoral *acquis* (e.g. authorisations, assessment of qualifying holdings) possibly limiting ability to take into account the full spectrum of information relevant to assessing good reputation, including from an ML/TF perspective. The European Commission should therefore consider aligning the relevant provisions and mandates.<sup>12</sup>

In addition to preventing financial crime, closing regulatory gaps, improving legal certainty and promoting consistent supervision will support the effective functioning, integrity and stability of EU crypto-asset markets.

AMLA stands ready to support the European Commission.

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<sup>11</sup> ESRB/2025/9

<sup>12</sup> EBA BS 2026 489, Q86

## Contact Information



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