
European Commission
Objectives – the why

- Legal certainty
- Supporting innovation
- Consumer protection
- Market integrity
- Financial stability
- Mitigating risks to monetary policy transmission and to monetary sovereignty
How?

• Bespoke regime for all crypto-assets not covered elsewhere in EU financial services legislation and crypto-asset service providers

• Based on Art. 114 TFEU

• Instrument: A Regulation
## Overview of the proposal

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Title I: Scope of MiCA

Title I: Subject Matter, Scope and Definitions
In scope of MiCA

- All crypto-assets not covered elsewhere in financial services legislation and e-money tokens
- Issuers and crypto-asset service providers providing services in the Union

Not in scope of MiCA

- MiFID II financial instruments, deposits, structured deposits, securitisation
- E-money unless it qualifies as ‘e-money token’
- ECB, national central banks of Member States, EIB, EFSF, ESM, public international organisations
Title I: Definitions of MiCA

Crypto-assets, utility tokens, asset-referenced tokens and e-money tokens
Crypto-asset

• ‘crypto-asset’ means a digital representation of value or rights which may be transferred and stored electronically, using distributed ledger technology or similar technology

• ‘Catch-all’ definition – in line with the FATF recommendations

• Not adviseable attempting exhaustive list or a full taxonomy

• Future-proof

• Covers algorithmic ‘stablecoins’ as long as these do not reference one or several assets (see Recital 26)
Utility token

- ‘utility token’ means a type of crypto-asset which is intended to provide digital access to a good or service, available on DLT, and is only accepted by the issuer of that token
Asset-referenced token

- ‘asset-referenced token’ means a type of crypto-asset that purports to maintain a stable value by referring to the value of several fiat currencies that are legal tender, one or several commodities or one or several crypto-assets, or a combination of such asset.

- A token referring to gold for example
- A token referring to several currencies
- A token referring to other crypto-assets
E-money tokens

• ‘electronic money token’ or ‘e-money token’ means a type of crypto-asset the main purpose of which is to be used as a means of exchange and that purports to maintain a stable value by referring to the value of a fiat currency that is legal tender

• Wide definition to catch tokens referring to a single currency that is legal tender and to avoid risks of regulatory arbitrage
Existing;

‘financial instrument’ means those instruments specified in Section C of Annex I;

Replaced by;

‘financial instrument’ means those instruments specified in Section C of Annex I, including such instruments issued by means of distributed ledger technology;

Crypto-asset service providers

Services

• Custody (i.e. wallet providers)
• Operating trading platform
• Exchange services fiat-to-crypto
• Exchange services crypto-to-crypto
• Execution of order
• Placing of orders
• Reception and transmission of orders
• Advice

• This list is wider than the services in the FATF recommendations on virtual asset services
• This list of services is also in line with current bespoke regimes on crypto-asset services
Title II: Crypto-assets other than asset-referenced tokens and e-money tokens
Crypto-assets other than asset-referenced tokens and e-money tokens

• **General principle (Art. 4):** No issuer of crypto-assets can make an offer to the public of crypto-assets in the EU or seeks an admission of such crypto-assets to trading on a trading platform for crypto-assets unless:

  • it is established as a legal entity;
  • has drafted a crypto-asset white paper;
  • has notified this crypto-asset white paper to a NCA of its home MS;
  • complies with requirements laid down in Article 13.

• **Marketing communications by issuers of crypto-assets are subject to requirements under Art. 6**
### Crypto-assets other than asset-referenced tokens and e-money tokens

#### Exemptions from drafting, notifying and publishing a crypto-asset white paper

<table>
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<th>Crypto-assets offered for free</th>
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<td>Crypto-assets for the maintenance of DLT</td>
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<tr>
<td>Small offers (less than 150 people per MS)</td>
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<tr>
<td>Small offers (total consideration less than EUR 1 million)</td>
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<tr>
<td>Offers solely to qualified investors under the PR</td>
</tr>
<tr>
<td>CA which are unique and not fungible</td>
</tr>
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</table>

In any case, issuers of crypto-assets are not exempted from the requirements of Art. 13, i.e.:
- obligation to act honestly, fairly, professionally;
- communicating with holders of CA in a fair, clear and not misleading manner
- preventing conflicts of interest
- maintaining the systems and security protocols to adequate EU level (to be specified in ESMA guidelines)
## Content of the draft CAWP (Art.5 and Annex I)

- CAWP shall include a description of the issuer, issuer’s project, characteristics of the offer (including rights offered), description of the technology and risks related to the issuer.
- CAWP includes two statements.
- CAWP includes a summary.

## Notification of the draft CAWP to a NCA (Art.6)

- Notification to a NCA, no *ex ante* approval of the CAWP by a NCA but NCAs have powers under Art. 82.
- The notification should include an explanation why the CA at stake is not a MiFID II financial instrument, electronic money...
- Notification includes a list of MS where CA would be offered.

## Publication of the draft CAWP (Art. 8)

- The CAWP shall be published before the offer to the public or admission to trading.
- The CAWP published is identical to the one notified to the NCA.

## Modification of a published CAWP (Art.11)

- Procedure to modify a CAWP after publication to describe ‘any change likely to have a significant influence on the purchase decision’.

### Crypto-assets other than asset-referenced tokens and e-money tokens
To ensure consumer protection, **a right of withdrawal** is granted to consumers for 14 days;

*Lex specialis* approach on the right of withdrawal;

This right of withdrawal is not applicable where the CAs are admitted to trading on a trading platform for crypto-assets;

This right can be exercised until the end of the subscription period (where the issuer has set a limited period of time for the offer);

To ensure investor/consumer protection, provision on civil liability attached to the CAWP
Title III: Asset-referenced tokens
## Asset-referenced tokens

<table>
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<th>Chapter 1</th>
<th>Authorisation to offer asset-referenced tokens or to seek an admission of ART to trading</th>
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<td>Chapter 2</td>
<td>General obligations for all issuers of ART</td>
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<td>Chapter 3</td>
<td>Rules on the reserve of assets</td>
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<td>Chapter 5</td>
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<td>Chapter 6</td>
<td>Orderly wind-down</td>
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</table>
Asset-referenced tokens

• **General principle (Art.15):** No asset-referenced tokens can be offered in the EU or admitted to trading on a trading platform for crypto-assets unless:
  
  • They are offered by an entity established in the EU;
  
  • This entity has been authorised in application of Art. 19.

• Exemption from autorisation for:
  
  • small offers (less than EUR 5 million in the EU)
  
  • Offers solely addressed to qualified investors and that can be only held by qualified investors
  
  • Issuers are credit institutions

• Where exempted, the issuer has to produce a CAWP.
Authorisation as an issuer of asset-referenced tokens

- Autorisation granted by a NCA (Art. 19) on the issuers.

- Where seeking the authorisation, the applicant issuer also submit its CAWP. The content of the CAWP (Art. 17, Annexes I and II) for an asset-referenced token shall, in particular, include a description of the issuer’s governance arrangements, the reserve of assets, the custody arrangements, the investment policy of the reserve (where applicable) and the rights granted to the holders.

- Where assessing an application, the NCA shall consult the EBA, ESMA, the ECB and where a Union currency which is not euro is included in the reserve assets, these central banks.

- NCAs can refuse an authorisation to an issuer of asset-referenced tokens where there is a serious threat to financial stability, monetary policy transmission or monetary sovereignty.

- Art. 21 provides for a procedure to modify a CAWP where a change can have a significant influence on the purchase decision of a holder of the asset-referenced tokens.

- Civil liability is attached to the information given in a CAWP (Art.22)
### Obligations for issuers of asset-referenced tokens

| Art. 23 | • Obligation to act honestly, fairly, professionnally  
|         | • Obligation to communicate in a fair, clear and not misleading manner  
|         | • Obligation to act in the best interest of the holders of asset-referenced tokens |
| Art. 25 | • Requirements on marketing communications |
| Art. 26 | • Disclosure of tokens in circulation, value and composition of reserve assets every month  
|         | • Disclosure of the audit of the reserve (every six months)  
|         | • Disclosure of every event likely to have an effect on the value of the tokens or the reserve of assets |
| Art. 27 | • Complaint handling procedure |
| Art. 28 | • Prevention of conflicts of interest |
| Art. 30 | • Governance arrangements |
| Art. 31 | • Own funds requirements |
| Art. 36 | • Orderly wind-down |
## Obligation on the reserve of assets

| Art. 32 Reserve of assets | • Obligation to maintain a reserve of assets at all times  
• Obligation to ensure the prudent management of the reserve assets. Every issuance of asset-referenced tokens shall be matched by a corresponding increase of the reserve of assets  
• Independent audit of the reserve every 6 months |
| Art. 33 Custody of the reserve of assets | • Reserve assets shall be segregated from the issuer’s own assets and they shall not be encumbered;  
• Obligation to establish policies and procedures for the appointment and review of custodians  
• The custodians are EU credit institutions (for fiat currency, financial instruments or other assets) or crypto-asset service providers (for crypto-assets) |
| Art. 34 Investment of the reserve assets | • Investment of the reserve assets in other assets is possible only if it is highly liquid instruments with minimal market and credit risk  
• All profits and losses from the investment shall be borne by the issuer  
• Financial instruments to be further specified in a EBA RTS |
| Art. 35 Rights of holders of asset-referenced tokens | • Obligation to maintain a policy on the rights granted to holders (Art.35(1) and (2))  
• Where the issuer only grants rights on the reserve or on the issuer to a specific group of persons, the issuer shall have specific contractual arrangements with these persons  
• Where the issuer only grants rights on the reserve or on the issuer to a specific group of persons, all holders of asset-referenced tokens shall have minimum rights: (i) a right to liquidity; (ii) a direct right of redemption where the value of the asset-referenced tokens varies significantly from the value of the reference assets or the reserve assets; (iii) a contingency claim in case of orderly wind-down or if the issuer stops its activity. |
| Art. 36 Prohibition of interest | • Prohibition for issuers and crypto-asset service providers to provide interest for the length of time holders of asset-referenced tokens hold such tokens |
EBA can classify an asset-referenced token as significant at its own initiative (Art. 39) or at the request of the issuer (Art. 40).

The criteria to qualify an asset-referenced token as significant are:
- Size of customer base of the promoters of the asset-referenced tokens;
- Value of asset-referenced tokens/market capitalisation;
- Size of the reserve of assets;
- Significance of cross-border activity including use for cross-border payments/remittances;
- Interconnectedness with financial system.

The criteria shall be specified by a delegated act. The delegated act cannot set thresholds that are lower than those specified in Art. 39(6).
Significant asset-referenced tokens

- Issuer of significant asset-referenced tokens are subject to additional requirements:
  - Remuneration policy
  - Interoperability requirements
  - Liquidity management policy
  - Higher own funds requirements

- Supervision of issuer of significant asset-referenced tokens is transferred to EBA.
Title IV: E-money tokens
E-money tokens

- No e-money tokens can be offered in the EU or admitted to trading on a trading platform for crypto-assets unless the issuer:
  - is authorised as a credit institution or as a e-money institution;
  - publishes a CAWP (in accordance with Art. 46 and the content of Annex III).
- Exemption from authorisation for small issuances (< EUR 5 million) or if the e-money tokens are only held by qualified investors;
- Where an e-money tokens refers to a Union currency, there is a presumption that this e-money token is offered in the Union.
E-money tokens

• All holders of e-money tokens have a claim at any moment and at par value (Art.44(2))

• E-money tokens shall be issued at par value and on the receipt of funds (Art. 44(3))

• Prohibition of interest on e-money tokens (Art. 45)

• Civil liability attached to the CAWP prepared by the e-money token issuer (Art.47)

• Requirements on marketing communications (Art. 48)

• Investment of funds received in exchange of e-money tokens shall be denominated in the same currency as the one referenced by the e-money tokens (Art.49)
Significant e-money tokens

• EBA can classify an e-money token as significant at its own initiative (Art. 50) or at the request of the issuer (Art. 51)

• The criteria are the same as the ones for classifying an asset-referenced token as significant

• Issuers of significant e-money tokens are subject to:
  • Rules on the custody of the reserve assets;
  • Rules on the investment of the reserve assets;
  • Higher funds requirements;
  • Orderly wind-down plan.
Title V: Crypto-asset service providers
## Crypto-asset service providers

- CASPs shall be authorised to provide their services in the Union and have a passport (Art.53, 54, 55)
- This authorisation can be withdrawn (Art. 56)

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<th>Obligations applying to all crypto-asset service providers</th>
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<td>Organisational requirements (Art. 61)</td>
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<td>Complaint handling procedure (Art.64)</td>
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<td>Outsourcing (Art.66)</td>
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### Obligations applying for the provision of specific crypto-asset services

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<th>Obligations</th>
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<td>Contractual arrangements with clients, register of positions of clients, asset segregation, liability</td>
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<td>Trading platforms (Art. 68)</td>
<td>Operating rules, prohibition of dealing on own account for the CASP, resilience of the trading systems, pre- and post-trade transparency, obligation to settle the transactions on the DLT</td>
</tr>
<tr>
<td>Exchange fiat to crypto or crypto-to-crypto (Art. 69)</td>
<td>Non-discriminatory commercial policy, obligation to publish a firm price, execution at the price displayed at the time of receipt, transparency on orders and transactions</td>
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<td>Execution of orders (Art. 70)</td>
<td>Best execution, clear information to clients on the execution policy</td>
</tr>
<tr>
<td>Placing of crypto-assets (Art. 71)</td>
<td>Clear agreement with the issuer before the placing, specific rules on conflicts of interest</td>
</tr>
<tr>
<td>Reception and transmission of orders (Art. 72)</td>
<td>Prompt transmission of orders, prohibition of non-monetary benefits, no misuse of information related to clients orders</td>
</tr>
<tr>
<td>Advice on crypto-assets (Art. 73)</td>
<td>Necessary skills and knowledge, assessment of crypto-assets with the needs of clients</td>
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Title VI: Market integrity/Market abuse
Prevention of market abuse involving crypto-assets

• Scope of the rules: when a crypto-asset is admitted to trading on a trading platform for crypto-assets (Art. 76)

• Issuer shall disclose inside information (Art. 77)

• Prohibition of insider dealings (Art. 78), unlawful disclosure of inside information (Art. 79), market manipulation (Art. 80)
Title VII: Supervision
## Supervision

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<th>Supervision</th>
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<td>NCAs</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Issuers of asset-referenced tokens</td>
<td>-</td>
<td>NCAs</td>
<td>NCAs</td>
</tr>
<tr>
<td>Issuers of significant asset-referenced tokens</td>
<td>-</td>
<td>NCAs</td>
<td>EBA + College of supervisors</td>
</tr>
<tr>
<td>Issuers of e-money tokens</td>
<td>-</td>
<td>NCAs</td>
<td>NCAs</td>
</tr>
<tr>
<td>Issuers of significant e-money tokens</td>
<td>-</td>
<td>NCAs</td>
<td>Dual supervision NCAs/EBA + college of supervisors</td>
</tr>
<tr>
<td>Crypto-asset service providers</td>
<td>-</td>
<td>NCAs</td>
<td>NCAs</td>
</tr>
</tbody>
</table>
Title VII: transitional measures and final provisions
Transitional measures

Entry into force
- Crypto-assets (other than asset-referenced tokens and e-money tokens) offered in the EU before that date are exempted from the requirements of Title II
- Provisions for asset-referenced tokens (Title III) and e-money tokens (Title IV) are applicable on the date of entry into force

Entry into application (18 months after entry into force)
- CASPs that have been authorised under a national regime may continue to do so until 18 months after the entry into application or until they are granted an authorisation under MiCA

Entry into application of DA
- Supervisory powers of EBA apply when the DA specifying the criteria of significance (Art. 39(6)) enters into application.
Impact Assessment

accompanying the pilot regime
Market and Legal context

• A ‘Europe fit for the digital age’ is a top priority under the current Commission presidency

• Especially regarding crypto-assets a unified approach is needed to allow innovations to bring benefits to the EU, while mitigating the risks to consumers

• The impact assessment is mainly based on the responses to the public consultation on crypto-assets launched in December 2019 as well as the advice from EBA and ESMA
## Problem definition

<table>
<thead>
<tr>
<th></th>
<th>Crypto covered by EU legislation</th>
<th>Crypto not covered by EU legislation</th>
<th>Global stablecoins</th>
</tr>
</thead>
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<td><strong>Drivers towards a</strong></td>
<td>Lack of certainty as to how existing EU rules might apply</td>
<td>Absence of rules and diverging national rules for crypto-assets not yet covered by existing rules</td>
<td></td>
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<tr>
<td><strong>legislative initiative:</strong></td>
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<tr>
<td><strong>Problems to be addressed:</strong></td>
<td>Regulatory obstacles to the use of DLT and potential gaps in existing legislation</td>
<td>Consumer/investor protection risks and risks of fraud</td>
<td>Financial stability and monetary policy concerns</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Market integrity risks</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>Market fragmentation/ risks to level playing field</td>
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<tr>
<td><strong>Consequences:</strong></td>
<td>Missed efficiency gains in the issuance/ trade/post-trade areas</td>
<td>Missed funding opportunities for start-ups and companies (through low level ICOs/ STOs)</td>
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<tr>
<td></td>
<td></td>
<td>Missed opportunities in terms of financial inclusion and cheap, fast efficient payments</td>
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</tbody>
</table>
General and specific objectives

- **Legal certainty** for all crypto-assets
- **Supporting Innovation and fair competition** by creating a conducive framework
- **High levels of consumer and investor protection and market integrity**
- **Addressing financial stability and monetary policy risks** (especially from a wide use of crypto-assets and DLT)
- **Removing regulatory hurdles** (e.g. to issuance, trading and post-trading of security tokens)
- **Increasing the sources of funding** (through ICOs and STOs)
- **Limiting risks of fraud, money laundering and illicit practices** in the crypto-asset markets
- **Supporting access to new investment opportunities, new types of payment instruments and fueling competition**
## Overview: available policy options

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<th>Type of crypto-asset</th>
<th>Policy options</th>
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<td></td>
<td>Option 2: Full harmonisation regime</td>
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<tr>
<td>Crypto-assets that qualify as financial instruments under MiFID II</td>
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<td></td>
<td>Option 2: Targeted amendments to sectoral legislation</td>
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<td></td>
<td>Option 3: Pilot/experimental regime on DLT market infrastructure</td>
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<tr>
<td>‘Stablecoins’ and global ‘stablecoins’</td>
<td>Option 1: Bespoke legislative measures on stablecoins/global stablecoins</td>
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<tr>
<td></td>
<td>Option 2: Bringing stablecoins and global stablecoins under the Electronic Money Directive 2</td>
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<td></td>
<td>Option 3: Measures limiting the use of stablecoins and global stablecoins</td>
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## Preferred policy options

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<td>Option 2: Full harmonisation regime</td>
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<td></td>
<td><strong>a mix of:</strong></td>
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<tr>
<td></td>
<td>Option 1: Non-legislative measures</td>
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<td>MiFID II</td>
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<td><strong>a mix of:</strong></td>
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## Assessment of policy options; ‘unregulated’ crypto-assets

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<th>CON</th>
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<tbody>
<tr>
<td>Opt-in regime:</td>
<td></td>
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</table>
- Possibility to instil trust in the crypto-asset market;  
- Less legislative arbitrage;  
- Possibility to scale-up across borders |  
- No reduction of market fragmentation  
- Might create a two-tier market; |
| Full harmonisation: |  
- Legal clarity for users, issuers and service providers;  
- Same level of protection and market integrity across the single market  
- Financial stability  
- Little risk of regulatory arbitrage |  
- Imposing costs on issuers and providers  
- Risk of arbitrage regarding third countries |
### Assessment of policy options; crypto-assets qualifying as financial instruments

<table>
<thead>
<tr>
<th>Non-legislative measures, guidance on the applicability of existing rules</th>
<th>PRO</th>
<th>CON</th>
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<tr>
<td>Would clarify on the qualification as financial instruments under MiFID II</td>
<td></td>
<td>Could have limited effect</td>
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<tr>
<td>More flexibility</td>
<td></td>
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<tr>
<td>Preserving the high level of investor protection, market integrity and financial stability,</td>
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<tr>
<th>Targeted amendments to existing rules</th>
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<th>CON</th>
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<td>High degree of legal clarity</td>
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<td>Isolated amendments may have limited effect</td>
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<td>Addressing specific operational resilience risks</td>
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<th>Pilot regime</th>
<th>PRO</th>
<th>CON</th>
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<tr>
<td>Possibility to test the use of DLT on a larger scale, facilitate more reliability and safety</td>
<td></td>
<td>Might not be fully adequate</td>
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<td>Enable competition with third countries</td>
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<td>Investor protection and financial stability</td>
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<td>Possibility to establish real use cases</td>
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## Assessment of policy options: ‘stablecoins’ and ‘global stablecoins’

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<thead>
<tr>
<th></th>
<th><strong>PRO</strong></th>
<th><strong>CON</strong></th>
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<tbody>
<tr>
<td><strong>Bespoke legislative regime</strong></td>
<td>➢ Clear legal basis</td>
<td>➢ Regulatory and supervision costs</td>
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<td></td>
<td>➢ Adequate levels of investor protection across the EU</td>
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<td></td>
<td>➢ Comprehensive and holistic EU framework</td>
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<td></td>
<td>➢ Financial stability and consumer protection risks addressed</td>
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<tr>
<td><strong>Regulating ‘stablecoins’ under EMD 2</strong></td>
<td>➢ Possible comparability to e-money under EMD2</td>
<td>➢ Obligation for issuers to be authorised in the EU</td>
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<td>➢ Higher protection of users’ funds</td>
<td>➢ May not mitigate risks by wallet providers</td>
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<td>➢ Limiting risks of shadow banking</td>
<td>➢ Could limit the number of ‘stablecoins’ in the EU</td>
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<tr>
<td><strong>Measures to limit the use of ‘stablecoins’ in the EU</strong></td>
<td>➢ Restriction of ‘stablecoins’ and related services</td>
<td>➢ Possible issue with Union competences</td>
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<td>➢ Questionable effectiveness</td>
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Thank you