

**CONFIDENTIAL****From:** Calibra Digital Ireland Limited**To:** The European Commission DG FISMA**Subject:** European Commission consultation document on an EU framework for markets in crypto assets

Questions addressed are: 6-9, 12-14, 16-18, 20, 24, 25, 26-32, 36, 39, 40-48, 50, 51, 113-117

No	Question	Response
6	<p>In your view, would it be useful to create a classification of crypto-assets at EU level?</p> <p>If yes, please indicate the best way to achieve this classification (non-legislative guidance, regulatory classification, a combination of both...). Please explain your reasoning.</p>	<p>Yes, we are in favour of a classification regime, provided that this is sufficiently high-level to allow for variations and the hybrid nature of some products. Furthermore, we support the introduction of a harmonised regulatory approach to minimise cost, increase access and ensure consistency across the EU market.</p> <p>To this end, we are supportive of the approach of addressing attributes of crypto assets with specific regulatory instruments that could be combined to create bespoke regulatory responses to products exhibiting different attributes. This would also ensure that the principle of 'same risk, same regulation' is maintained.</p> <p>This will require a common supervisory approach given the varying supervisory models that are adopted across the EU.</p>

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No	Question	Response
7	<p>What would be the features of such a classification?</p> <p>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).</p>	<p>In line with our response to question 6 we would suggest focussing on specific features of such products, with classification being merely a convenient means of grouping products, rather than a regulatory framework with a perimeter.</p> <p>We suggest the approach adopted by the ESAs:</p> <ul style="list-style-type: none"><li>• Exchange (and payment) tokens: cryptocurrencies not issued or backed by any central authority, intended and designed to be used as a means of exchange.</li><li>• Security tokens: have specific characteristics that mean they meet the criteria set out in the definition of 'financial instrument', such as a share or a debt instrument.</li><li>• Utility tokens: crypto-assets that grant holders access to a current or prospective product or service but do not grant holders rights that are the same as those granted by financial instruments.</li></ul> <p>It is worth noting that stable coins increasingly an important part of the crypto asset landscape and may merit separate categorisation.</p>

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No	Question	Response
8	<p>Do you agree that any EU classification of crypto-assets should make a distinction between ‘payment tokens’, ‘investment tokens’, ‘utility tokens’ and ‘hybrid tokens’?</p> <p>Please explain your reasoning (if needed). If yes, indicate if any further subclassification would be necessary.</p>	<p>We do agree to the suggested distinction and further suggest that a tailored approach be developed that would be able to respond to products of varying attributes.</p> <p>This can be applied as an additional regulatory component to more traditional regulatory regimes, or as a toolset that can be accessed and applied by regulators.</p> <p>We do not therefore suggest a more detailed classification, which will undoubtedly be overtaken by innovation as soon as it is adopted. Rather, we are in favour of a high-level classification of types of assets or functionalities that can guide regulators but allow for some flexibility.</p> <p>In order to ensure consistency of application across the EU, and in order provide industry with predictability, we suggest guidance be issued that would indicate the manner in which different products would be regulated.</p>
9	Would you see any crypto-asset which is marketed and/or could be considered as ‘deposit’ within the meaning of Article 2(3) Deposit Guarantee Scheme Directive?	We are not aware of any crypto-assets that are currently offered that mimic the attributes of deposits or that meet the definition of ‘deposit’ in the CRR. It would not therefore be appropriate to treat such products as deposits for the purpose of Article 2(3) of

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No	Question	Response
		<p>the DGSD. In the event that products are developed that do meet the definition of deposits, it would be appropriate to apply the provisions of the DGSD.</p>
12	In your view, what are the benefits of “stablecoins” and “global stablecoins”? Please explain your reasoning	<p>Stablecoins have a number of benefits over other crypto tokens that are not backed by another asset.</p> <ul style="list-style-type: none"><li>• They provide a means of reducing or eliminating volatility by stabilising the value of the token with fiat currency or another type of asset.</li><li>• Stablecoins that are backed by fiat currency can also provide a means of using a proxy for the fiat currency in new and novel contexts. They can increase the effective utility of the underlying fiat currency, and can enable more convenient, efficient and mostly cheaper means of payment using that currency.</li><li>• The outcome is that fiat-proxy stablecoins can enable the fiat currency to harness the benefits of distributed ledger technology, increase utility, create a means to make payments globally using the fiat currency, and allow for peer-to-peer payments between users.</li><li>• An example that demonstrates the potential benefit of stablecoins is the World Food Programme’s blockchain-based Building Blocks system, which is described in the BIS 2018 Annual Economic Report (p. 104). While this is not a</li></ul>

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		<p>stablecoin initiative, it bears similar attributes, with the unit of account being fiat currency. This was used to assist in making payments for food aid for Syrian refugees in Jordan and resulted in a 98% reduction in cost compared to the bank payment alternative. This provides compelling evidence of the cost benefit.</p> <ul style="list-style-type: none"><li>• The development of a regulatory regime framework for stablecoins can provide a means of formalizing regulatory expectations, creating a level playing field, harmonizing an EU-wide approach and providing investors and businesses with certainty.</li></ul> <p>We are aware of a range of stablecoin arrangements that give rise to the requisite stability, and suggest that the regulatory framework allow for such variation, rather than require the adoption of a single model – please refer to our response to question 16 below for further information.</p> <p>Different products offer users varying utilities with differing benefits, and may take a different approach to stability.</p> <p>Global stablecoins can offer users the means of transacting digitally, using proxies for national currencies, but with global or cross-border multinational reach. They increase the effectiveness of the underlying fiat currency and enable commerce to take place more easily, both within the EU and across its borders. They will</p>

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		<p>benefit the European market by facilitating trade with third countries. They can act as a means to enable migrant workers to send money to their families in countries of origin, both within the Union and across its borders. The nature of the technology will also enable third-party developers to create tools and add-on services that provide additional benefits to users.</p> <p>This is likely to be reflected in better access to payment services for the unbanked and the financially excluded, both within the European Union and in third countries that may wish to do business with the EU.</p>
13	<p>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".</p> <p>Fraudulent activities</p> <p>Market integrity (e.g. price, volume manipulation...)</p> <p>Investor/consumer protection</p> <p>Anti-money laundering and CFT issues</p>	<p>The risks associated with a particular stablecoin will be similar to those that apply to financial services or payments service providers generally. Areas of risk that would be considered by a service provider will include: (i) operational risk, (ii) legal and regulatory risk, (iii) financial risk, (iv) commercial risk, (v) human resources, (vi) reputational risk, (vii) customer risk, (viii) financial crime and a mixture of (ix) macro-economic, political, geographic and related risks.</p> <p>Those risks that diverge from other financial services products relate to (i) operational risk, and specifically the technology,</p>

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	<p>Data protection issues</p> <p>Competition issues</p> <p>Cyber security and operational risks</p> <p>Taxation issues</p> <p>Energy consumption</p> <p>Financial stability</p> <p>Monetary sovereignty/monetary policy transmission</p> <p>Other</p> <p>Please explain in your answer potential differences in terms of risks between “stablecoins” and “global stablecoins”</p>	<p>governance and attributes of the coin, to (ii) financial risk, and specifically the nature of the stabilising mechanism and (iii) legal and regulatory risk, as this continues to be debated and is subject to policy considerations. Other risks are broadly shared with other payment products.</p> <p>We agree with the categories of risk set out in the question, but the degree of significance is likely to vary with the product that is considered. We reiterate the need to consider the specific attributes of different products and to bring to bear regulatory tools that address the different risks that arise.</p> <p>Global stablecoins will also benefit from the proposed common approach to regulation and harmonisation. The types of risks that arise will depend on the scale of the stablecoin initiative, its reach and how widely it is accepted as a means of payment. Similarly, its use cases, business model and governance will also impact its risk profile. It is our experience that all payment initiatives, regardless of their scale, have to demonstrate user value before they are widely accepted. This is likely to take some time, and a graduated approach to regulating global initiatives is suggested. This could for example have additional provisions apply as the size and complexity of the system increases.</p>

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No	Question	Response
		<p>The areas where global stablecoin initiatives are likely to be distinguished will relate to systemic risks in relation to impact on the payment system, and on users (if widely adopted). It may be appropriate to adopt a graduated approach, utilising additional regulatory tools, as the capitalisation, geographic reach, acceptance and similar factors increase, resulting in a more proportionate regulatory regime. It is worth noting in this context that we do not believe that stable coins representing fiat currencies have a meaningful impact on monetary policy, given the one to one substitution that must take place.</p> <p>Finally, we are fully in favour of the development of an appropriate regulatory framework for different types of stablecoins, and avoiding an outcome that seeks to restrict or prevent the offering of innovative products, because of the absence of a suitable regulatory framework.</p>
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. There are already a number of member state-specific frameworks emerging, as well as differing implementations of the 5MLD AML regime, giving rise to a need for member state by member state assessment and regulation. This is unworkable in the single market, and will need to be replaced by a harmonised

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No	Question	Response
	Please explain your reasoning	single regime that enables mutual recognition and a single point of authorisation. This will likely encourage innovation, give investors confidence, reduce the cost of business substantially and bring the benefits of the single market to bear.
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)	<p>We do not believe that the suggested classification (payment, investment, utility, and hybrid tokens) is by itself sufficient to determine the regulatory perimeter and the appropriate regulatory regime. We are of the view that a combination of high-level classification and attribute-based regulation would enable a proportionate and fit-for-purpose framework to be applied to each product, based on its specific characteristics.</p> <p>The regime must be informed by a range of factors, from product characteristics to the business model and the nature of the ecosystem that delivers the product to users. The regulatory tools will be familiar, drawn from existing prudential and conduct of business frameworks, but will need to be applied in a tailored manner.</p> <p>We do not for example regard the e-money regime as a suitable regulatory framework for stablecoins that depart from the definition of e-money, and suggest that a tailored regime is developed, as set out above.</p>

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		<p>The approach adopted by Libra and in which Calibra participates allows for confidence to be provided by holding a reserve in fiat currency, but does not create a direct redemption right for users. It allows users to resell their Libra holdings back to dealers, and in the absence of such a facility, Libra Networks will step in to remedy this situation. This approach is a valid arrangement, and should provide the necessary certainty and confidence in the payment system.</p>
17	<p>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?</p> <p>Please indicate how this clarity should be provided (guidance, EU legislation...).</p>	<p>Yes, this would. However, and in order to ensure a proportionate treatment, the regulation of crypto-assets is desirable. This will normalise the products and enable credit institutions to assess businesses and products on their merits, rather than place all crypto assets into a single higher risk grouping.</p> <p>A prudential and conduct of business regime would create a level playing field between crypto and conventional assets, and instil confidence in the regulated crypto sector.</p>

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No	Question	Response
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?	Yes, this is supported.
20	<p>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?</p> <p>Please explain your reasoning</p>	<p>It should be possible to address the risks by applying the regulatory regime to those parts of the crypto product's system that will be present in the EU –(for example exchanges and custodians) to enable appropriate regulation. Exchanges and custodians can, for example, be made subject to regulatory focus where the issuer of the currency is outside of the EU.</p> <p>We also encourage the European Commission to consider developing a regime that is consistent with international approaches to the regulation of the sector. This could lay the ground for greater cooperation between regulators and the possibility of recognition by other jurisdictions, and perhaps later, of mutual recognition.</p> <p>The need for consistency and recognition is a feature of the e-commerce approach to financial services; but it becomes more acute for crypto-assets, where distributed technology makes oversight by a single jurisdiction more challenging.</p>

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No	Question	Response
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).	<p>There are a number of indicators that would assist in this regard. These must reflect both size in terms of capitalisation but also use, in terms of utility, scale, and scope. A product that is highly capitalised but is not widely in use does not pose a systemic risk or a financial risk to the payment system. Indicators that show utility must be included in making an assessment of global reach.</p> <p>Global scalability in terms of operational capacity to scale and an intent to quickly scale to global reach can be evidenced by the regulatory business plan of a prospective regulated service provider, and this can then elicit questions regarding the impact of scale and relevant risk management.</p> <p>Possible indicators of a global stablecoin, when assessed cumulatively, could include:</p> <p>Capitalisation, volume and value of transactions, geographic scope of activity combined with a density of use for each jurisdiction, use for cross-border transactions, complexity of the issuer’s business and that of the ecosystem, dependence of users on the products and availability of alternatives.</p>

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No	Question	Response
25	<p>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).</p> <p>The reserve of assets should only be invested in safe and liquid assets (such as fiat-currency, short term government bonds...)</p> <p>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</p> <p>The assets or funds of the reserve should be segregated from the issuer’s balance sheet</p> <p>The assets of the reserve should not be encumbered (i.e. not pledged as collateral)</p> <p>The issuer of the reserve should be subject to prudential requirements rules (including capital requirements)</p> <p>The issuer and the reserve should be subject to specific requirements in case of insolvency or when it decides to stop operating</p>	<p>Stablecoins can be backed by a range of assets, and can offer a range of assurances to users. Products could be fiat currency backed with a right of redemption at par, in a similar way to e-money, or could be without a right of redemption. Other products may be backed by other assets, whether off chain or on chain.</p> <p>In all cases, it will be desirable to ensure that:</p> <ul style="list-style-type: none"><li>- The reserve is held off balance sheet, segregated and not commingled with the issuer’s funds.- The investment criteria for the reserve are conservative, and related to the nature of the rights that are given to holders of coins.</li><li>- The reserve is not encumbered (but the exclusion of all third party rights may not be necessary).</li><li>- The value of the reserve is maintained, and that whatever degree of backing is offered, this is maintained by the issuer.</li><li>- The nature of the backing is made clear.</li></ul> <p>A stable coin that offers a right of redemption and a 1:1 equivalence to a fiat currency may have attributes that are similar to e-money and attract similar restrictions on the investment of the reserve.</p>

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No	Question	Response
	<p>Obligation for the assets or funds to be held in custody with credit institutions in the EU</p> <p>Periodic independent auditing of the assets or funds held in the reserve</p> <p>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</p> <p>The value of the funds or assets held in the reserve and the number of stablecoins should be disclosed periodically</p> <p>Requirements to ensure interoperability across different distributed ledgers or enable access to the technical standards used by the issuer</p> <p>Other</p>	<p>If a right of redemption is not offered, and if the value of the token is free to rise and fall with market demand, then the restrictions on the reserve are likely to be less stringent, and the value of the reserve may correspond to the issued value and not the spot value from time to time.</p> <p>Where other assets are used as collateral, whether commodities or real estate, then a distinct approach may be needed, combined perhaps with a buffer element.</p> <p>Statement: The reserve of assets should only be invested in safe and liquid assets (such as fiat-currency, short term government bonds...)</p> <p>Response: This will depend on the nature of the rights that are afforded to users. Where a right of redemption exists, then the reserve must be subject to strict rules such as those relating to e-money. Where users do not have a right of redemption, then a broader set of investment criteria should be possible, maintaining a cautious approach.</p>

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No	Question	Response
		<p>Statement: 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.</p> <p>Response: This is again dependent on the nature of the backing arrangements that are offered. The reserve should always be equal to the value of the coins when issued, but if the coin is traded and is able to increase in value, then issuers should not be required to track its value and increase the reserve accordingly. The corollary to this is that issuers should also not be permitted to lower the value of the reserve if the coins lose value and fall below the issue price.</p> <p>Statement: The assets or funds of the reserve should be segregated from the issuer’s balance sheet.</p> <p>Response: Yes, this is prudent.</p> <p>Statement: The assets of the reserve should not be encumbered (i.e. not pledged as collateral).</p> <p>Response: Agreed.</p> <p>Statement: The issuer of the reserve should be subject to prudential requirements rules (including capital requirements).</p>

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No	Question	Response
		<p>Response: Agreed.</p> <p>Statement: The issuer and the reserve should be subject to specific requirements in case of insolvency or when it decides to stop operating.</p> <p>Response: Agreed.</p> <p>Statement: Obligation for the assets or funds to be held in custody with credit institutions in the EU.</p> <p>Response: There are good arguments for allowing a broader range of investments with a broader category of institutions.</p> <p>Statement: Periodic independent auditing of the assets or funds held in the reserve</p> <p>Response: Agreed.</p> <p>Statement: 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.</p>

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No	Question	Response
		<p>Response: Yes, these are key disclosure requirements, and must be presented in a clear and understandable language.</p> <p>Statement: The value of the funds or assets held in the reserve and the number of stablecoins should be disclosed periodically.</p> <p>Response: This is good practice and is supported.</p> <p>Statement: Requirements to ensure interoperability across different distributed ledgers or enable access to the technical standards used by the issuer.</p> <p>Response: Interoperability, common standards and access to standards are all supported.</p> <p>Statement: Are there any other requirements not mentioned above that could be imposed on stablecoins issuers and/or the manager of the reserve? Please specify which one(s) and explain your reasoning.</p> <p>Response: Issuers merit a prudential regulatory framework including capital requirements, governance, internal controls and fit and proper tests for qualifying holders and for directors. Additionally, and in relation to crypto-assets specifically, issues of governance, criteria for validation of transactions, access to the</p>

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No	Question	Response
		<p>system by new participants and third-party developers all merit additional consideration.</p> <p>Management of the reserve, if undertaken by a separate entity can also be made subject to a conduct of business regime, addressing limitations on investments, fit and proper tests, disclosure obligations and transparency obligations.</p>
25.I	<p>Is there any other requirements not mentioned above that could be imposed on “stablecoins” issuers and/or the manager of the reserve? Please specify which one(s) and explain your reasoning</p> <p>Please illustrate your responses to question.</p>	<p>For reserves comprising fiat currency, then the requirements set out above can apply. If the reserve is made up of some other commodity such as a precious metal for example, then obligations relating to custody may additionally be appropriate. Other stabilisation mechanisms such as algorithms or the use of another crypto-currency will require transparency of rules, algorithms and a description of boundary conditions that would result in the scheme being closed.</p>
26	<p>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”?</p>	<p>Yes, this is a reasonable approach, consistent with existing regulatory principles. By restricting availability or offers to certain classes of users, general retail risks can be excluded, and a fit for purpose regulatory treatment is possible. This is likely to be more</p>

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No	Question	Response
	Please explain your reasoning (if needed).	permissive, allowing for the fact that wholesale buyers or financial institutions better understand the risks.
27	<p>In your opinion and beyond market integrity risks (see section III. C. I. 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".</p> <p>Absence of accountable entity in the EU</p> <p>Lack of adequate governance arrangements, including operational resilience and ICT security</p> <p>Absence or inadequate segregation of assets held on the behalf of clients (e.g. for 'centralised platforms')</p> <p>Conflicts of interest arising from other activities</p> <p>Absence/inadequate recordkeeping of transactions</p> <p>Absence/inadequate complaints or redress procedures are in place</p> <p>Bankruptcy of the trading platform</p>	<p>The areas of risk proposed in relation to platforms are reasonable. As set out in our response to question 13 above, the categories of risk will be broadly similar for all financial institutions, with some specific risks that attach to crypto businesses.</p> <p>The level of relevance will in our view be subjective and dependent on the product offering, customer profile, business case etc.</p> <p>The offering of services from third countries merits particular consideration, including whether bilateral arrangements can be entered into between the EU and third countries that would enable some degree of mutual recognition or equivalence to be found. This will likely encourage the emergence of a global approach to the regulation of crypto-asset service providers, including trading platforms.</p>

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No	Question	Response
	<p>Lack of resources to effectively conduct its activities</p> <p>Losses of users' crypto-assets through theft or hacking (cyber risks)</p> <p>Lack of procedures to ensure fair and orderly trading</p> <p>Access to the trading platform is not provided in an undiscriminating way</p> <p>Delays in the processing of transactions</p> <p>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)</p> <p>Lack of rules, surveillance and enforcement mechanisms to deter potential market abuse</p> <p>Other</p>	<p>It will also serve to mitigate the risks associated with the offering of services from unregulated or poorly regulated jurisdictions, as these will become more easily identifiable.</p>
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	We believe that an effective regulatory regime for trading platforms, exchanges and custodian wallet services for crypto-assets should combine appropriate elements of the requirements

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No	Question	Response
	<p>standing for "completely irrelevant" and 5 for "highly relevant".</p> <p>Trading platforms should have a physical presence in the EU</p> <p>Trading platforms should be subject to governance arrangements (e.g. in terms of operational resilience and ICT security)</p> <p>Trading platforms should segregate the assets of users from those held on own account</p> <p>Trading platforms should be subject to rules on conflicts of interest</p> <p>Trading platforms should be required to keep appropriate records of users' transactions</p> <p>Trading platforms should have an adequate complaints handling and redress procedures</p> <p>Trading platforms should be subject to prudential requirements (including capital requirements)</p> <p>Trading platforms should have adequate rules to ensure fair and orderly trading</p> <p>Trading platforms should provide access to its services in an undiscriminating way</p>	<p>listed in the questions 28, 30, and 32, with the exception that a physical presence in the EU should not be required.</p> <p>Having identified the risks that relate to platforms, risk mitigation strategies can be put in place. We concur with the proposals in the question, but urge that these be applied on a case-by-case basis, addressing different types of services offered and using a proportionate and risk-based approach.</p> <p>As set out in our response to question 27, we are not in favour of restricting service providers from outside of the Union from offering services in the EU, but rather recommend the development of bilateral equivalence or mutual recognition agreements.</p>

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No	Question	Response
	<p>Trading platforms should have adequate rules, surveillance and enforcement mechanisms to deter potential market abuse</p> <p>Trading platforms should be subject to reporting requirements (beyond AML/CFT requirements)</p> <p>Trading platforms should be responsible for screening crypto-assets against the risk of fraud</p> <p>Other</p> <p>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).</p>	
29	<p>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".</p> <p>Absence of accountable entity in the EU</p> <p>Lack of adequate governance arrangements, including operational resilience and ICT security</p>	We take the view that the risks will be specific to each product offering, even if the categories of risk will be common with other financial services sectors. We therefore propose a prudential framework that responds to the various risk categories, but specifically addresses the various crypto-related attributes.

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No	Question	Response
	<p>Conflicts of interest arising from other activities</p> <p>Absence/inadequate recordkeeping of transactions</p> <p>Absence/inadequate complaints or redress procedures are in place</p> <p>Bankruptcy of the exchange Inadequate own funds to repay the consumers</p> <p>Losses of users' crypto-assets through theft or hacking</p> <p>Users suffer loss when the exchange they interact with does not exchange crypto-assets against fiat currency (conversion risk)</p> <p>Absence of transparent information on the cryptoassets proposed for exchange</p> <p>Other</p>	
30	<p>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".</p> <p>Absence of accountable entity in the EU</p>	<p>We take the view that the risks will be specific to each product offering, even if the categories of risk will be common with other financial services sectors. We therefore propose a prudential framework that responds to the various risk categories, but specifically addresses the various crypto-related attributes.</p>

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	<p>Exchanges should be subject to governance arrangements (e.g. in terms of operational resilience and ICT security)</p> <p>Exchanges should segregate the assets of users from those held on own account</p> <p>Exchanges should be subject to rules on conflicts of interest</p> <p>Exchanges should be required to keep appropriate records of users' transactions</p> <p>Exchanges should have an adequate complaints handling and redress procedures</p> <p>Exchanges should be subject to prudential requirements (including capital requirements)</p> <p>Exchanges should be subject to advertising rules to avoid misleading marketing/promotions</p> <p>Exchanges should be subject to reporting requirements (beyond AML/CFT requirements)</p> <p>Exchanges should be responsible for screening cryptoassets against the risk of fraud</p> <p>Other</p>	

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No	Question	Response
	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).	
31	<p>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".</p> <p>No physical presence in the EU</p> <p>Lack of adequate governance arrangements, including operational resilience and ICT security</p> <p>Absence or inadequate segregation of assets held on the behalf of clients Conflicts of interest arising from other activities (trading, exchange)</p> <p>Absence/inadequate recordkeeping of holdings and transactions made on behalf of users Absence/inadequate complaints or redress procedures are in place</p> <p>Bankruptcy of the custodial wallet provider Inadequate own funds to repay the consumers</p> <p>Losses of users' crypto-assets/private keys (e.g. through wallet theft or hacking)</p>	We take the view that the risks will be specific to each product offering, even if the categories of risk will be common with other financial services sectors. We therefore propose a prudential framework that responds to the various risk categories, but specifically addresses the various crypto-related attributes.

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No	Question	Response
	<p>The custodial wallet is compromised or fails to provide expected functionality</p> <p>The custodial wallet provider behaves negligently or fraudulently</p> <p>No contractual binding terms and provisions with the user who holds the wallet</p> <p>Other</p>	
32	<p>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".</p> <p>Custodial wallet providers should have a physical presence in the EU</p> <p>Custodial wallet providers should be subject to governance arrangements (e.g. in terms of operational resilience and ICT security)</p> <p>Custodial wallet providers should segregate the asset of users from those held on own account</p>	We take the view that the risks will be specific to each product offering, even if the categories of risk will be common with other financial services sectors. We therefore propose a prudential framework that responds to the various risk categories, but specifically addresses the various crypto-related attributes.

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No	Question	Response
	<p>Custodial wallet providers should be subject to rules on conflicts of interest</p> <p>Custodial wallet providers should be required to keep appropriate records of users' holdings and transactions</p> <p>Custodial wallet providers should have an adequate complaints handling and redress procedures</p> <p>Custodial wallet providers should be subject to capital requirements</p> <p>Custodial wallet providers should be subject to advertising rules to avoid misleading marketing/promotions</p> <p>Custodial wallet providers should be subject to certain minimum conditions for their contractual relationship with the consumers/investors</p> <p>Other</p> <p>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</p>	

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No	Question	Response
36	<p>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?</p> <p>Please explain your reasoning (if needed).</p>	<p>There is a precedent for treating different types of payment products in a similar way in respect of service level, user rights and disclosure obligations. These are set out mostly in titles III (transparency) and IV (rights and obligations), and apply equally to bank payments, e-money, credit cards and money transfers.</p> <p>There is also a precedent for distinguishing certain products from the general requirements where their attributes do not allow for compliance with the general service levels. Article 42 of PSD2, for example, exempts anonymous payment products or those where this is not technically feasible, from compliance with disclosure obligations in relation to transactions set out at articles 57 and 58. Similarly, and more significantly, Article 63 provides for exemption from the provisions of Articles 72 and 73 addressing the provision of evidence of authentication and on the payment service provider's liability for unauthorised transactions.</p> <p>There is a good basis therefore to seek to identify those parts of PSD2 that are common to all payment products including crypto payments, and to identify those provisions that cannot be applied to crypto-based payments on technical or similar grounds. This allows for recognition of the different characteristics of crypto</p>

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No	Question	Response
		<p>payments, rather than seeking to amend the technology to make it consistent with that of existing payment products.</p> <p>Immutability and the ability to make P2P payments are features of most crypto products that may benefit from being exempt from some of the provisions of Articles 71-74 that address liability for unauthorised and incorrectly executed transactions.</p> <p>It should be noted that these issues could arise for both those products that qualify as e-money and those that do not. This is because the challenges raised by the technology are shared by both types of products.</p> <p>Permissionless systems will also give rise to challenges in relation to technology and compliance with some security provisions, such as those for SCA.</p>
39	<p>Do you see the need for supervisors to be able to formally identify the parties to transactions in crypto-assets?</p> <p>Please explain your reasoning (if needed). If yes, please explain how you would see this best achieved in practice.</p>	<p>The requirement to identify and verify users could be made subject to a reasonable de minimis allowance, or providers could be allowed to benefit from Simplified Due Diligence (SDD) guidance issued by the EBA. Current AML assessments at national and supra-national level suggest higher risks to be associated with crypto-asset transactions. Regulations should enable the</p>

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No	Question	Response
		categorisation of some transactions as low risk and enable SDD to be applied.
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?	<p>Crypto-asset systems pose a challenge in relation to both: the offering of services off-shore from third countries, and the use of peer-to-peer wallets to make payments. A combination of reasonable expectations in legislation and cross-jurisdictional cooperation should reduce the impact of these risks.</p> <p>Furthermore, crypto-asset exchanges and custodian wallet providers established in the EU may be made subject to requirements that discourage the use of exchanges in non-equivalent third countries by EU users.</p>
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)?	<p>We have reviewed the definition of crypto-assets provided in the consultation paper and that in the FATF. The FATF definition is somewhat narrower, focusing on regulated payment services, while that in the paper’s definition is broader and could include services in relation to potentially unregulated crypto-asset products – such as those benefiting from a limited network exemption under PSD2, for example.</p> <p>We are therefore in favour of adopting the FATF approach, and focusing on services in relation to crypto-asset products that give</p>

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No	Question	Response
		rise to relevant AML risks. The 5MLD definition could therefore be broadened to accommodate that of the FATF.
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.	The scope of the FATF Guidance includes crypto-to-crypto exchanges, service providers enabling the transfer of crypto-assets, and service providers enabling the issuance or offer of sale of crypto-assets. We propose consistency with the FATF guidance to ensure member state meet minimum FATF technical requirements.
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? Please explain your reasoning (if needed).	With the exception of services that adopt a crypto-technological solution for currently unregulated products, such as loyalty points and similar corporate incentive products, we suggest that the AML regime be extended to all crypto-asset service providers.
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?	Peer-to-peer payments can be restricted in terms of value or volume where the system is permissioned, and this may provide a means of mitigating this risk. Such limits are routinely used in the payments industry to limit risks for various payment products.

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No	Question	Response
		For permissionless systems, the challenge is greater and will need to be addressed by making hosted wallet transactions more attractive and perhaps providing specific advantages.
45	Do you consider that these requirements should be introduced in the EU AML/CFT legal framework with additional details on their practical implementation?	We are in favour of flexibility and the adoption of guidance by industry. The EMA of which we are a member has issued guidance on AML compliance for crypto service providers, and we believe an industry-led approach is more able to react to technological developments as well as developments in financial crime.
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".	<p>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.</p> <p>Response: We concur with this approach, which is consistent with existing regulatory requirements.</p> <p>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.</p>

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No	Question	Response
		<p>Response: We concur with this approach, which is consistent with existing regulatory requirements.</p>
47	<p>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"</p> <p>Information provided by the issuer of crypto-assets (the so-called 'white papers')</p> <p>Limits on the investable amounts in crypto-assets by EU consumers</p> <p>Suitability checks by the crypto-asset service providers (including exchanges, wallet providers...)</p> <p>Warnings on the risks by the crypto-asset service providers (including exchanges, platforms, custodial wallet providers...)</p> <p>Other</p>	<p>The suggested consumer protection measures are all supported in principle. The appropriateness of each in practice will, however, depend on the crypto-asset being considered. For stablecoins such as Libra, we believe that the disclosure obligations associated with payment services would be adequate, together with a simple-to-understand description of the product, including user rights and dispute resolution mechanisms.</p>
47.I	<p>Is there any other type of consumer protection measures that could be taken as regards crypto-assets? Please specify which one(s) and explain your reasoning</p>	<p>We are also supportive of adopting a strict approach resulting in the customer contract being void if disclosure and suitability criteria are not met.</p>

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No	Question	Response
47.2	Please explain your reasoning for your answer to question 47 and indicate if those requirements should apply to all types of crypto assets or only to some of them.	We have addressed our response to question 47 to payments using stablecoins.
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?	We concur and also support the view that given the variety and hybrid attributes of assets that are offered, a regulatory response that is able to address specific attributes in a tailored manner would have an advantage to a strict categorisation of assets. This applies equally to consumer protection provisions.
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)?  Please explain your reasoning (if needed).	This will depend on whether the crypto-asset offered for free will then be fungible with other units of value for which payment is required. If they are a distinct class, then standards can differ, but if offered for free merely as part of a promotion, then standards should not vary.
51	In your opinion, how should the crypto-assets issued in third countries and that would not comply with EU	Our view is that crypto-assets are likely to be offered on a global basis, and where these are permissionless in particular, it will be

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No	Question	Response
	<p>requirements be treated? Please rate each proposal from 1 to 5, 1 standing for "not relevant factor" and 5 for "very relevant factor".</p> <p>Those crypto-assets should be banned</p> <p>Those crypto-assets should be still accessible to EU consumers/investors</p> <p>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</p> <p>Other</p>	<p>difficult to enforce any obligations in their respect. In such circumstances, obligations can be met by exchanges, custodians and other service providers within the EU to mitigate such shortcomings. This cannot impact the protocol for example, but the processes adopted by a custodian, including AML obligations, and disclosure requirements can mitigate ML and consumer risk.</p> <p>In the event that the product is regarded as being unsafe or fraudulent, then member states can proscribe its acceptance by service providers within their jurisdiction, and issue consumer warnings.</p> <p>We would suggest the second alternative of allowing access to such products and only issuing warnings where a significant risk is identified.</p>
I13	<p>Have you detected any issue in EMD2 that could constitute impediments to the effective functioning and/or use of e-money tokens?</p> <p>Please provide specific examples (EMD2 provisions, national provisions, implementation of EU acquis,</p>	<p>Where crypto-assets meet the definition of e-money and amount to e-money tokens, then much of the prudential obligations in EMD2 would be appropriate where the issuer is established in the EU. This will be a permissioned system, and the issuer will be clearly identifiable. The role of a custodian is not, however, contemplated by EMD2, and there will need to be a debate on whether custodians in an e-money context act as outsourced</p>

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No	Question	Response
	<p>supervisory practice, interpretation, application...). Please explain your reasoning (if needed).</p>	<p>service providers of the EMI or whether they act in their own capacity. Our preference would be for the choice to be available for service providers, with both arrangements possible.</p> <p>It would, however, not be appropriate to treat distributors of crypto-e-money tokens as exchanges, and to seek to regulate them, where the non-crypto equivalent is not subject to regulation.</p>
114	<p>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?</p> <p>Please provide specific examples (PSD2 provisions, national provisions, implementation of EU acquis, supervisory practice, interpretation, application...). Please explain your reasoning (if needed).</p>	<p>Please refer to our answer to question 36, where we set out the precedence for exempting products from some of the provisions of PSD2 on technological grounds.</p> <p>Areas where we think that PSD2 could be reviewed in the context of crypto-e-money tokens include:</p> <ul style="list-style-type: none"><li>(i) provisions relating to liability for unauthorized and incorrectly executed transactions, where the issuer has no control over the process.</li><li>(ii) Similarly, information provision before and after transactions; where the issuer is unaware of transactions.</li><li>(iii) Provisions on strong customer authentication where the issuer is not involved in the transaction.</li><li>(iv) Access to accounts for account information and payment initiation service provisions, where no account is offered.</li></ul>

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No	Question	Response
		<p>There are undoubtedly other restrictions that will be identified upon a closer review of the text.</p> <p>Areas that do not arise for conventional products and may merit attention for crypto products include the level of consensus required to validate transactions, as well as governance in this regard.</p>
I15	<p>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?</p> <p>Please provide specific examples and explain your reasoning (if needed).</p>	<p>There are a range of areas that merit review including the scope of regulation of the ecosystem, the manner of application of conduct of business provisions to a distributed ledger product, the impact of transaction finality and immutability, issuers' inability to see transactions if not conducted through a hosted wallet etc.</p>
I16	<p>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").</p> <p>Initial capital and ongoing funds</p> <p>Safeguarding requirements</p> <p>Issuance</p> <p>Redeemability</p>	<p>The challenge in regulating global stablecoins as e-money is that there will be multiple regulatory regimes operated by many countries, each requiring an establishment, for reserve funds to be held locally and for the system to meet regulatory expectations for that jurisdiction. Whilst this is also the case for non crypto products, the advantages of crypto systems are rapidly lost if they are restricted and reproduced jurisdiction by jurisdiction.</p> <p>This will result in the fragmentation of the system as multiple standards need to be complied with, multiple arrangements for issuance put in place, and intercompany arrangements organized to enable the transfer of coins issued by one entity to be accepted</p>

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No	Question	Response
	<p>Use of agents</p> <p>Out of court complaint and redress procedures</p> <p>Other</p> <p>Please explain your reasoning (if needed).</p>	<p>by another. This could result in a great deal of complexity and a loss of the advantages of a crypto-asset model.</p> <p>It would be far more preferable for a single issuer to be established in a given jurisdiction and for the other parts of the ecosystem to be regulated locally in the different jurisdictions. The custodians and, if exchanges are employed, such entities could be subject to oversight locally, meeting relevant regulatory obligations.</p> <p>There could be obligations to report on issuance and redemption in relation to users in given member states, and there could be obligations to report to countries in whose currencies the e-money is denominated; or in the case of the EURO to the ECB.</p> <p>This would be a more practical and effective approach, built on supervisory cooperation and contemplating increased global service offerings.</p> <p>For a firm regulated in the EU, initial capital and ongoing funds requirements as well as issuance and redeemability and out of court redress procedure are unlikely to be significantly impacted. The role of agents, PSD2 related obligations (as set out at Q 114), are, however, likely to require revision.</p>
117	Do you think that the current requirements under PSD2 which are applicable to e-money tokens are appropriate	As described in our response to questions 114 and 116, regulation of such products as e-money will result in complex multi-

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No	Question	Response
	<p>for “global stablecoins” (i.e. those that reach global reach)?</p> <p>Completely appropriate</p> <p>Rather appropriate</p> <p>Neutral</p> <p>Rather inappropriate</p> <p>Completely inappropriate</p> <p>Don't know / No opinion</p> <p>Please explain your reasoning (if needed).</p>	<p>jurisdictional authorization requirements for the issuer; whereas for crypto systems, the entity that is privy to the transactions is the custodian. Furthermore, given the need to reinterpret many of the provisions of PSD2 and similar global provisions in the context of crypto systems, the likely divergence is material. This will likely result in fragmentation, inefficiencies in the operation of the system, and duplication/multiplication of resources.</p>