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Paris EUROPLACE response to the European Commission's public consultation

on an EU framework for markets in crypto-assets

Paris EUROPLACE - which represents the players of the Paris Financial Centre, French and international corporates, investors, banks and financial intermediaries - would like to thank the European Commission for the opportunity to provide their view on an EU framework for markets in crypto-assets.

We welcome this consultation as reflections on this topic are developing at international (the Basel Committee launched a consultation on "Designing a prudential treatment for crypto-assets" in December 2019), regional (rapid developments regarding the regulation of crypto assets are taking place in particular Asia, including China, and the United States) and national levels (France introduced a simple, attractive and protective framework for crypto-assets which are not security tokens through the PACTE law in May 2019).

We would like to underline that crypto-assets lie at the crossroads of technical, legal and political issues. Therefore, when developing a framework for markets in crypto-assets, different overarching considerations will have to be taken into account, such as technological progress and the fight against money laundering and the financing of terrorist activities.

General comments

- We believe that the EU framework for markets in crypto-assets should foster innovation and the development of markets in crypto-assets in the EU and therefore take into account the **competitiveness of the EU**.

- The EU framework for markets in crypto-assets should be based on an EU classification which should:
  - distinguish between **crypto-assets that are already covered by existing EU financial regulation** and **crypto-assets that are not covered by existing EU financial regulation**;

- be designed according to the **economic functionalities** of crypto assets which are not covered by existing EU financial regulation i.e. crypto-assets that **represent** the value of an underlying asset and crypto-assets that allow a **transfer** of value.

- For crypto-assets that are not covered by existing EU financial regulation:

  - **We are of the opinion that a bespoke EU framework will contribute to the development of a crypto-asset ecosystem in the EU.**

  - This EU framework should:
    - take the form of a regulation;
    - **only concern crypto-assets which are not covered by existing EU financial regulation;**
    - cover entities established in the EU which comply with substance requirements;
    - **include a harmonised definition of security tokens**;
    - offer an **optional** visa in order to balance investor protection and innovation;
    - include AML-FT rules;
    - provide for **a passporting regime** throughout the EU;
    - include **an equivalence regime** for third countries.

  - Contractual relationships with service providers should not be regulated specifically in relation to crypto-assets. In our opinion, they should not be governed by financial regulation, as this issue goes beyond the specific case of crypto-assets.

  - In general, we believe that the new EU framework on crypto-assets should be inspired by existing EU regulation. Indeed, there is no reason not to apply the rules applicable to financial assets, **provided that the principles of proportionality and adaptability are applied.**

  - Issuers or sponsors should be required to provide information through **a clear, accurate and not misleading 'white paper'** in order to allow investors to understand the risks of the offering and make informed decisions.

  - We think that **setting limits on the investable amounts in crypto-assets by EU consumers would be counterproductive** and that there should be **no prohibition on investment by EU consumers in crypto-assets issued in third countries** (provided a warning is included in the white paper).

  - To enhance the robustness of the framework, **we propose to involve specialised entities** (such as the National Cybersecurity Agency of France - ANSSI) in the verification of the code used and its compliance with standards such as ISO and SOC. Cooperation between financial regulators and regulators in charge of cybersecurity.

- **The activity of making payment transactions with crypto-assets does not involve any cash and, in our opinion, cannot be considered as a payment service**. Therefore, tailored regulation is required for this service.

- We propose to avoid drafting new regulation from scratch and **to adapt the Market Abuse Regulation to crypto-assets** which are not security tokens and to perform an impact assessment beforehand to assess the relevance of the different provisions of this Regulation to crypto-assets.

- For crypto-assets that are already covered by EU regulation:

  - Markets in crypto-assets are still to develop in the EU and **it is too early at this stage to provide definite answers** to several issues raised in this consultation paper.

  - **A transitional and harmonised regime at EU level, i.e. an "EU regulatory testing zone", would be very beneficial for industry players, innovation and new business models, consumers and investors as well as regulators and supervisors.** Indeed, this would allow experimentation and foster the development of these new markets in the EU (rather than evict activities to the benefit of other jurisdictions). In other words, innovation should not be hampered by hasty regulation.

  - From a general standpoint, we believe that **existing rules and requirements for investment firms should be adapted to the specificities of the DLT environment**.
    - We consider that the transposition of MiFID II or existing market practice would not be incompatible with the use of DLT, to the extent that there is a responsible entity, in relation to security tokens (not to crypto currencies).
    - There are issues in applying trading venue definitions and requirements related to the operation and authorisation of such venues to a DLT environment: indeed, the current definition of MTF is not designed to capture the functioning of platforms in crypto-assets. The latter correspond to different schemes which may fall in the scope of different regulations.
    - The marketing of securities via social media or online should not be specific to security tokens, but rather be covered by rules applicable to securities regardless of their form (crypto or not).
    - **Some investor protection requirements included in MiFID will have to be adjusted in relation to the specificities of security tokens. For instance, obligations on the segregation and restitution of assets will have to be adapted.**
    - We believe that disclosure requirements should be adapted to allow the development of SMEs in general and that their requirements should not be specific to security tokens. Indeed, we think the form (crypto or not) of the issuance is not relevant; rather, it is the size of the issuer that matters.

- **Requirements in relation to insider dealing should be applicable but adapted to crypto-assets**.

- The Prospectus Regulation appears rather compatible with security tokens and, apart from a few practical problems, this legal framework does not seem to prevent the issue of security tokens. However, **the information contained in the prospectus will have to be adapted to the specific features of security tokens**. Moreover, a Prospectus tailored to SMEs is required (regardless of the nature of the securities issued, crypto or not).

- **The book-entry requirements under CSDR are not compatible with security tokens.** More specifically, the organisation of a secondary market for SMEs is not possible under the current European legislative framework **(art. 3.2 of the CSDR).**

- In the DLT environment, institutions often operate in a single-institution environment, making SFD-like legislation redundant from that point of view. **We believe that the law applicable to the registration of a security into a DLT environment should be the law of the country where the investor accesses the DLT.**

- The EMD2 should be updated to take into account the fact that e-money tokens are able to be transferred "peer-to-peer." Legal amendments and supervisory guidance would be needed at least to clarify the application of EMD2 and PSD2 to stablecoins which qualify as electronic money.

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

Yes, we agree that the scope of this initiative should not cover **digital assets** - i.e. "any text or media that is formatted into a binary source and includes the right to use it" - in general but rather should be limited to **crypto-assets** - i.e. digital assets which use cryptography and DLT. Indeed, this will allow a more targeted effort.

It should be noted that **the definition of digital assets set out in the PACTE law in France is slightly different from that proposed by the Commission**.

The EU definitions of crypto assets and digital assets are as follows:

- A crypto-asset is considered as "a digital asset that may depend on cryptography and exists on a distributed ledger".
- The notion of 'digital asset' could cover the digital representation of other assets (such as scriptural money). Strictly speaking, a digital asset is any text or media that is formatted into a binary source and includes the right to use it.

The French PACTE law sets out the following definition: "digital assets include:

i. The tokens mentioned in Article L. 552-2, excluding those that meet the characteristics of financial instruments mentioned in Article L. 211-1 and the savings bonds mentioned in Article L. 223-1 : a token is any intangible property representing, in digital form, one or more rights that may be issued, registered, retained or transferred by means of a shared electronic recording device for identifying, directly or indirectly, the owner of said property."
ii. Any digital representation of a security that is not issued or guaranteed by a central bank or public authority, that is not necessarily attached to a legal currency and that does not have the legal status of a currency, but that is accepted by natural or legal persons as a means of exchange and that can be transferred, stored or exchanged electronically".

In other words, the French definition of digital assets is rather close to the EU definition of crypto-assets, but distinct from the EU definition of digital assets, as it excludes scriptural money.

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

Yes, it would be useful to create a classification of crypto-assets at EU level provided such classification underpins a legal regime for services on crypto-assets. In other words, it would be useful to define different types of crypto-assets in order to allow the application of differentiated rules, appropriate to each type of crypto-assets and depending on their specific nature.

In addition, we believe that such classification should be flexible enough to accommodate for technological progress and that an **"EU regulatory testing zone"** is needed to allow the emergence of a detailed classification. Indeed, we should not rush and set out a classification which would not be appropriate.

7) What would be the features of such a classification? When providing your answer, please indicate the classification of crypto-assets and the definitions of each type of crypto-assets in use in your jurisdiction (if applicable).

We believe that such classification should be **harmonised** at EU level (through the use of a **regulation** rather than a directive) so that **a passporting regime can be established** and at the same time be **flexible** enough to accommodate technological progress (for instance thanks to level 2 regulations).

We are of the opinion that such an **EU classification should be based on the economic functionalities** of crypto-assets. It should also take into account their centralised/decentralised nature.

In France, crypto-assets are split into two categories: crypto-assets which fall under existing regulation and those which do not. Further, crypto currencies - which do not have the legal status of a currency but are accepted as means of exchange - are distinguished from other tokens (PACTE law and Monetary and Financial code art. L. 54-10-1[1]).

[1] Toute représentation numérique d'une valeur qui n'est pas émise ou garantie par une banque centrale ou par une autorité publique, qui n'est pas nécessairement attachée à une monnaie ayant cours légal et qui ne possède pas le statut juridique d'une monnaie, mais qui est acceptée par des personnes physiques ou morales comme un moyen d'échange et qui peut être transférée, stockée ou échangée électroniquement.

A new regulatory framework has recently been introduced for the latter, including assets which do not qualify as "financial securities" as per MiFID II.

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

No, we do not agree that any EU classification of crypto-assets should make such a distinction. Indeed, **the names 'payment tokens' and 'utility tokens' are already outdated and not appropriate.**

Indeed, the name 'payment tokens' is misleading. If 'payment tokens' are considered as means of payment, they should logically fall in the scope of the regulation applicable to such instruments, in order to ensure a level playing field. Which is however not the case.

And the name 'utility tokens' is too vague.

We propose to make a distinction between crypto-assets which are already covered by existing financial regulation and crypto-assets which are not covered by existing EU financial regulation.

In the latter category, we propose to distinguish two types of assets:

- Crypto-assets which **represent the value** of an underlying asset;
- Crypto-assets which allow a **transfer of value**.

It should be noted that some crypto-assets could fulfil both functionalities.

⇨ **The new EU framework should only cover crypto-assets which are not already covered by existing EU regulation.**

For example, stablecoins with automatic redemption rights are considered as electronic money and, as such, they are covered by existing regulation on electronic money. However, if, for example, the redemption right attached to a stablecoin is optional, then the relevant stablecoin is not considered as electronic money and therefore it is not covered by existing regulation on electronic money.

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

No, we do not see any crypto-asset which is marketed and/or could be considered as 'deposit'.

Funds that may be received in the course of activities with crypto-assets, in particular in the form of stable coins, should not fall within the scope of deposits covered by Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes.

It should also be noted that deposits received in the context of a stable coin issue do not fall within the scope of Regulation 575/2013 on prudential requirements (CRR).

And, most probably, it would be difficult to find market players willing to contribute to such a guarantee scheme.

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

We would like to underline that ICOs developed as an alternative means to raise funds and to fill a gap between IPOs and private placement. Indeed, IPOs imply a burdensome, costly and time-consuming process which is not suited to fund raising operations involving limited volumes.

The potential benefits related to crypto-assets are significant, in particular in terms of efficiency. As for them, the potential benefits in terms of cost reduction do not appear as obvious.

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

In our opinion, the four major risks related to crypto-assets are market integrity, AML-FT, data protection and cybersecurity.

12) In your view, what are the benefits of “stablecoins” and “global stablecoins”?

It is extremely difficult to make a distinction between stable coins and global stable coins, as are both can be used in more than one country and both are issued by a single entity (domiciled or incorporated in one country). Even Libra would be issued in one jurisdiction. And a "national stable coin" (whatever that is) could have a basket of underlying currencies or money market funds managed in more than one country.

Regulation also cannot be the appropriate criterion of distinction between a "stable coin" and a "global stable coin", as the "global" (supranational) nature of a stable coin does not mean that it would not be subject to regulation. "National stable coins" and "global stable coins" are simply too similar to justify two separate regulatory frameworks. Indeed, they pose identical types of risk and behave identically economically.

Rather than making a distinction between stable coins and global stable coins, one could isolate **“single purpose” coins,** that exist only for a few hours, **“general purpose” coins & “retail” coins**.

A distinction could be made according to the issuer: a private issuer or a public authority, such as a central bank or a credit institution in which a State holds a majority. It is too early to determine how a stable coin behaves when it is backed directly by a central bank's reserve. Still, plausibly certain topics would be easier to address when the issuer is a public authority. Among those issues, one could think of market integrity (price manipulation), taxation, financial stability and monetary sovereignty.

In our opinion, **the benefits of stable coins and global stable coins mainly relate to financial inclusion and reduced operational and compliance costs.**

13) In your opinion, what are the most important risks related to “stablecoins”?

In our opinion, the most important risk related to 'stable coins' is **monetary sovereignty**.

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, we believe that **a bespoke regime for crypto-assets will contribute to the development of a crypto-asset ecosystem in the EU**. This regime should be attractive for industry players, provide legal certainty and ensure an adequate level of protection for consumers and investors. It should also be flexible enough to accommodate technical progress.

The EU regulation should introduce **a passporting regime** allowing activities relating to crypto-assets to be performed from one Member State throughout the whole EU.

Furthermore, **we are of the opinion that a transitional and harmonised regime at EU level allowing experimentation in this field, while waiting for the finalisation of such bespoke regime, would be very beneficial.**

This transitional regime would be **supervised by the ESAs and implemented by national competent authorities**, and available to all players, whatever their size or status. It would limit the regulatory risk attached to disruptive projects that do not fall within any existing regulatory framework and allow them to raise funding more easily. This transitional regime would thus provide a **derogatory space** within which these products and services could be tested with the lowest level of constraints, in order to allow the use of a lean start-up process, according to which ideas are tested very rapidly with the lowest amount of investment possible. It would allow entrepreneurs to start confronting new product, service or business model ideas with the market without incurring the risk of infringing local or EU regulation, **for a limited time and under certain operating conditions agreed upon by the local regulator and disclosed to ESMA**.

In particular, this "EU regulatory testing zone" would allow lifting some constraints imposed by existing European regulations, such as CSDR, which are not appropriate to crypto-assets, by **granting temporary waivers**.

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

In France, ordinance No. 2017-1674 of Dec. 8, 2017 allows to use DLT (rather than traditional securities accounts) for the issuance, registration and transfer of unlisted securities (i.e. securities which are not admitted to the operations of a central depository). It should be noted that such securities are not considered as security tokens.

In our view, **the measures included in the French PACTE law are an effective approach to crypto-assets regulation**. Indeed, the French regime for ICOs and Digital Asset Service Providers (DASPs) allows both enough **flexibility** for entrepreneurs to develop their ideas – in particular through the

optional nature of the visa - and an appropriate level of **protection** for investors – thanks to the supervision of the AMF: the visa reflects both recognition of reliability and protection both for investors and issuers. And this regime is **simple** - **the AMF is the single point of contact for ICO issuers and DASPs and the sole competent body for granting the visa** (the AMF may liaise with the ACPR).

The AMF publishes a list of registered service providers and of ICOs which received its visa on its website, making this regime **attractive for industry players as well as investors and consumers**.

For further information, please refer to Paris EUROPLACE's brochure entitled "France's New Framework for ICOs and Tokens: Simple, attractive and protective" which is available on our website at the following address: https://paris-europlace.com/en/file/3111/download?token=fhzfymYc.

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)

We believe that the introduction of **an optional visa**, such as the visa delivered by the AMF, **delivered by ESMA and whose implementation is delegated to national competent authorities, would induce innovation and ensure an appropriate level of protection for users of crypto assets**.

For the reasons described previously, **we do not think that such regime should include the "payment, investment and utility tokens" categories but rather should be based on a classification defined according to the crypto-assets' economic functionalities.**

17) Do you think that the use of crypto-assets in the EU would be facilitated by greater clarity as to the prudential treatment of financial institutions' exposures to crypto-assets?

Yes, we 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. We believe that **the risk weight of each crypto-asset should be differentiated according to its functionality**. **For example, the prudential treatment of a stable coin should mainly depend on the counterparty risk of its issuer.**

The International Accounting Standards Board (IASB) is working on the accounting treatment of crypto-assets. Such treatment needs to be **harmonised** to avoid any distortion in the accounting classification of crypto-assets (tangible vs. intangible assets). However, at this stage, France is the only country which introduced an accounting regime for crypto-assets.

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, **a number of topics should be addressed at EU level**, in particular in relation to the protection of EU investors/consumers in case of failure of an intermediary. However, we do not think an EU civil code is required.

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

In France, the PACTE law covers issuers of initial coin offerings (i.e. public token offerings which are not covered by another existing legal regime) and providers offering the following services on digital assets:

- Keep digital assets on behalf of third parties, or access to digital assets, in particular in the form of private cryptographic keys with a view to hold, store and transfer digital asset,
- Purchase or sell digital assets in exchange of legal currencies,
- Exchange digital assets against other digital assets,
- Manage a trading platform for digital assets,
- Receive and transmit orders on digital assets on behalf of third parties,
- Manage portfolios of digital assets on behalf of third parties,
- Provide advice to subscribers in digital assets,
- Underwrite digital assets,
- Make guaranteed investment in digital assets,
- Make non-guaranteed investment in digital assets.

The PACTE law does not cover emerging activities such as staking, crypto-assets lending and repurchasing. **We believe it might be too early to regulate these activities as they still are at an early stage in their development**.

Regarding wallet providers, a distinction should be drawn between **custodial wallet providers** and **non-custodial wallet providers**.

In both cases, a person or a company owns crypto-assets. However, in one case, the owner does not want to be responsible for the technical custody of these assets (i), whereas, in the other case, it does and therefore performs the activity of “self-custody” (ii).

(i) **Custodial wallets**: Wallets used by custodians which hold crypto-assets on behalf of their clients (retail or corporate) are called custodial wallets. It means that, acting on behalf of their clients and only following their instructions (a custodial contract is usually signed), the so-called custodian is the only entity controlling the means (i.e. the private keys) allowing to spend the crypto-assets in the name of the client. The custodian uses its "own" private keys to custody the assets.

(ii) **Non-custodial wallets**: When the client wants to bear the responsibility of keeping the technical means that allow access to its crypto-assets, it generates a set of keys and keeps its own access thanks to its keys.

It is important to note that **the same technology can be used either to custody for third party or to self-custody:** depending on the relevant situation, the private keys that allow access to the crypto-assets are generated either at custodian level or at owner level.

- In one case, the key will be generated at custodian level and kept to have access to the crypto-assets belonging to a third party, i.e. the client.

- In the other case, the key is used by the owner to access its assets and the owner keeps control of its assets.

In each case, **the company manufacturing the wallets (in case of a hardware wallet) or providing the code (in case of software wallet) is a tech company that is not regulated**. These tech companies are often referred to as non-custodial wallet providers. Only the custodian, keeping the assets on behalf of its clients, is to be regulated (as the 5th AML directive does).

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

Yes, we believe that **the issuer or sponsor of crypto-assets marketed to EU investors/consumers should be established or have a physical presence in the EU**. Indeed, this will ensure an appropriate level of protection of EU investors/consumers, as EU authorities only have jurisdiction on entities established in the EU territory. Moreover, this will contribute to attract crypto-assets activities in the EU.

More specifically, **issuers or sponsors of crypto-assets marketed to EU investors/consumers should comply with substance requirements**, in line with ESMA's general opinion published in May 2017[2] and proportionate to their activities.

In order to build a single market and ensure the development of crypto-asset activities, **the EU framework for markets in crypto-assets should include a passporting regime allowing issuers and sponsors to market their crypto-assets throughout the whole EU** i.e. an issuer or sponsor established in one Member State should be authorised to market its activities in the 27 EU Member States.

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

Yes, an issuer or a sponsor of crypto-assets be required to provide information (i.e. through a 'white paper') when issuing crypto-assets.

Such white paper should not be as detailed as a prospectus, but more precise than a KIID. It should be **clear, accurate and not misleading** and **allow investors to understand the risks of the offering and make an informed decision**. It should include the following items:

1/The project of the issuer,
2/ The rights attached to the tokens offered to the public,
3/ The characteristics of the token offering,
4/ The safekeeping and return of the sums and digital assets collected in the context of the offering,
5/ Information on the issuer,
6/ The risk factors specific to the project, tokens and public offering,
7/ The technical modalities of the offering,

[2] https://www.esma.europa.eu/press-news/esma-news/esma-issues-principles-supervisory-approach-relocations-uk

8/ The KYC, anti-money laundering and security schemes,
9/ Applicable law and competent jurisdictions,
10/ Attestation of responsible persons that the document is accurate and not misleading.

Issuers or sponsors of crypto-assets should be allowed to write this document **in English**, with a summary of the offering in the language of the investor/consumer.

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

We believe that these 3 directives should be taken into account. However, it should be noted **that only some - and not all - provisions of these texts should apply, depending on the functionality of the relevant crypto-assets**. For example, **provisions on the right of withdrawal should apply.**

	1	2	3	4	5	No opinion
The Consumer Rights Directive[28]					x	
The E-Commerce Directive[29]					x	
The EU Distance Marketing of Consumer Financial Services Directive[30]					x	
Other (please specify)						

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

	1	2	3	4	5	No opinion
The managers of the issuer or sponsor should be subject to fitness and probity standards					x	
The issuer or sponsor should be subject to advertising rules to avoid misleading marketing/promotions					x	
Where necessary, the issuer or sponsor should put in place a mechanism to safeguard the funds collected such as an escrow account or trust account					x	
Other						

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 refer to our answer to question 12).

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

We consider the reserve as a kind of **collateral**, **which does not belong to the client** and that the client has a right on the reserve only in case of failure of the issuer.

We believe that the obligation to invest the reserve of assets in safe and liquid assets only is more relevant to global stable coins, due to their systemic nature, than to stable coins.

	"Stablecoins"		**"Global stablecoins"**	
	Relevant	**Not relevant**	**Relevant**	**Not relevant**
The reserve of assets should only be invested in safe and liquid assets (such as fiat-currency, short term-government bonds...)		x	x	
The issuer should contain the creation of "stablecoins" so that it is always lower or equal to the value of the funds of the reserve	x		x	
The assets or funds of the reserve should be segregated from the issuer's balance sheet	x		x	
The assets of the reserve should not be encumbered (i.e. not pledged as collateral)	x		x	
The issuer of the reserve should be subject to prudential requirements rules (including capital requirements)		x		x
The issuer and the reserve should be subject to specific requirements in case of insolvency or when it decides to stop operating	x		x	
Obligation for the assets or funds to be held in custody with credit institutions in the EU		x		x
Periodic independent auditing of the assets or funds held in the reserve	x		x	
The issuer should disclose information to the users on (i) how it intends to provide stability to the "stablecoins", (ii) on the claim (or the absence of claim) that users may have on the reserve, (iii) on the underlying assets or funds placed in the reserve	x		x	

The value of the funds or assets held in the reserve and the number of stablecoins should be disclosed periodically	x		x	
Requirements to ensure interoperability across different distributed ledgers or enable access to the technical standards used by the issuer	x		x	
Other				

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

Yes, we consider that wholesale stable coins should receive a different regulatory treatment than retail stable coins. Indeed, **retail stable coins have a functionality of financial inclusion** and therefore require a specific regulatory regime.

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

We understand that trading platforms may hold assets on behalf of third parties and that exchange platforms do not hold third party assets.

Please note that our below responses only relate to **centralised** platforms.

We would like to refer to ESMA's paper published in May 2018 on crypto-assets trading platforms, which proposes to **segregate clients' assets from the platform's own assets**. In line with EMIR, a finer segregation among clients' assets should be allowed but should not be compulsory.

	1	2	3	4	5	No opinion
Absence of accountable entity in the EU					x	
Lack of adequate governance arrangements, including operational resilience and ICT security					x	
Absence or inadequate segregation of assets held on the behalf of clients (e.g. for 'centralised platforms')					x	
Conflicts of interest arising from other activities					x	
Absence/inadequate recordkeeping of transactions					x	
Absence/inadequate complaints or redress procedures are in place					x	
Bankruptcy of the trading platform					x	
Lacks of resources to effectively conduct its activities					x	
Losses of users' crypto-assets through theft or hacking (cyber risks)					x	
Lack of procedures to ensure fair and orderly trading				x		

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

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

	1	2	3	4	5	Comment
Trading platforms should have a physical presence in the EU					x	
Trading platforms should be subject to governance arrangements (e.g. in terms of operational resilience and ICT security)					x	
Trading platforms should segregate the assets of users from those held on own account					x	
Trading platforms should be subject to rules on conflicts of interest					x	
Trading platforms should be required to keep appropriate records of users' transactions					x	
Trading platforms should have an adequate complaints handling and redress procedures					x	
Trading platforms should be subject to prudential requirements (including capital requirements)			x		x	See comment below.
Trading platforms should have adequate rules to ensure fair and orderly trading					x	
Trading platforms should provide access to its services in an undiscriminating way				x		
Trading platforms should have adequate rules, surveillance and enforcement mechanisms to deter potential market abuse					x	
Trading platforms should be subject to reporting requirements (beyond AML/CFT requirements)					x	
Trading platforms should be responsible for screening crypto-assets against the risk of fraud					x	Implement transaction monitoring technology.
Other						

Trading platforms should be subject to prudential requirements (including capital requirements) when there is a counterparty risk. If not (when a DLT is used), we believe that this requirement is not as strong.

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

The difference between trading platform and exchange is very thin. Our understanding is that a trading platform records third party assets in its balance sheet, whereas an exchange does **not** hold any third-party assets in its own account.

This explains why we consider the bankruptcy of an exchange as a low risk, as fiat currencies and crypto assets are not recorded in its balance sheet but only go through it.

This also explains why we consider the loss of users' crypto assets through theft or hacking, as fiat currencies and crypto assets are not kept on the exchange i.e. the exchange does not perform any custody service.

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

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

As explained previously, we understand that a trading platform records third party assets in its balance sheet, whereas an exchange does not hold any third-party assets in its own account.

	1	2	3	4	5	Comment
Absence of accountable entity in the EU					x	

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

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

We assume here that the service of custodial wallet is provided by a service provider to a client (B to C) not by a service provider to another business (B to B).

	1	2	3	4	5	Comment
No physical presence in the EU					x	
Lack of adequate governance arrangements, including operational resilience and ICT security					x	
Absence or inadequate segregation of assets held on the behalf of clients					x	
Conflicts of interest arising from other activities (trading, exchange)					x	
Absence/inadequate recordkeeping of holdings and transactions made on behalf of users					x	
Absence/inadequate complaints or redress procedures are in place					x	
Bankruptcy of the custodial wallet provider					x	
Inadequate own funds to repay the consumers		x				See comment below.

Losses of users' crypto-assets/private keys (e.g. through wallet theft or hacking)					x	
The custodial wallet is compromised or fails to provide expected functionality				x		Except force majeure.
The custodial wallet provider behaves negligently or fraudulently					x	
No contractual binding terms and provisions with the user who holds the wallet					x	
Other						

In case the assets are segregated, there should be no obligation to compensate investors. Also, an insurance cover may be used.

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

	1	2	3	4	5	Comment
Custodial wallet providers should have a physical presence in the EU					x	
Custodial wallet providers should be subject to governance arrangements (e.g. in terms of operational resilience and ICT security)					x	
Custodial wallet providers should segregate the asset of users from those held on own account					x	
Custodial wallet providers should be subject to rules on conflicts of interest					x	
Custodial wallet providers should be required to keep appropriate records of users' holdings and transactions					x	
Custodial wallet providers should have an adequate complaints handling and redress procedures					x	
Custodial wallet providers should be subject to capital requirements						
Custodial wallet providers should be subject					x	
Custodial wallet providers should be subject to certain					x	
Other						

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

Yes, **custodial wallet providers should be authorised to ensure the custody of all crypto-assets**. There is no reason to limit their business provided they have the appropriate processes in place.

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

We are aware of decentralised custody means (whereby keys are split among different knots); however, at this stage of development, **we do not have any opinion** on whether these activities should be regulated or not.

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

	1	2	3	4	5	Comment
Reception and transmission of orders in relation to crypto-assets					x	
Execution of orders on crypto-assets on behalf of clients					x	
Crypto-assets portfolio management					x	
Advice on the acquisition of crypto-assets					x	
Underwriting of crypto-assets on a firm commitment basis					x	
Placing crypto-assets on a firm commitment basis					x	
Placing crypto-assets without a firm commitment basis					x	
Information services (an information provider can make					x	
Processing services, also known as 'mining' or 'validating' services in a DLT environment (e.g. 'miners' or validating 'nodes' constantly work on verifying and confirming transactions)	x					Miners are not service providers; they act for their own account.
Distribution of crypto-assets (some crypto-assets arrangements rely on designated dealers or authorised resellers)		x				
Services provided by developers that are responsible for maintaining/updating the underlying protocol	x					Developers are not service providers; they act for their own account. They do not provide any service to clients; they merely provide technology.

Agent of an issuer (acting as liaison between the issuer and to ensure that the regulatory requirements are complied with)	x					The issuer remains responsible. The relationship between issuer and agent is of contractual nature.
Other services						

In general, we believe that **contractual relationships with service providers should not be regulated specifically in relation to crypto-assets**. In our opinion, they should not be governed by financial regulation, as this issue goes beyond the specific case of crypto-assets.

To enhance the robustness of the framework, **we propose to involve specialised entities** (such as the National Cybersecurity Agency of France - ANSSI) in the verification of the code used and its compliance with standards such as ISO and SOC.

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

No, the activity of making payment transactions with crypto-assets should not be subject to the same or equivalent rules as those currently contained in PSD2.

Indeed, **this activity does not involve any cash and therefore cannot be considered as a payment service;** in our opinion, **tailored regulation is required** to address the activity of making payment transactions with crypto-assets.

From a more global perspective, we would like to note that the U.S. Financial Crimes Enforcement Network's opinion on this issue is different from the position of the Financial Action Task Force (FinCEN considers the activity of payment of transactions with crypto-assets as the provision of a e-money service).

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

	1	2	3	4	5	No opinion
Price manipulation					x	
Volume manipulation (wash trades...)					x	
Pump and dump schemes					x	
Manipulation on basis of quoting and cancellations					x	
Dissemination of misleading information by the crypto-asset issuer or any other market participants					x	
Insider dealings					x	
Other						

We generally believe that, to be efficient, markets should be transparent and trustworthy.

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

We propose to avoid drafting new regulation from scratch and **to adapt the Market Abuse Regulation to crypto-assets** which are not security tokens, as was the case, for example, for greenhouse gas and commodities. An impact assessment should be performed beforehand to assess the relevance of the different provisions of the Regulation to crypto-assets (e.g. insider dealing).

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

We do not understand the aim of this question. Indeed, in order to obtain their authorisation, service providers are required to identify their clients. And, in case no financial intermediary is involved, this question does not apply.

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?

We believe that **EU rules can only apply provided the regulated entity is established in the EU**. Also, requirements and procedures applicable to these entities should be harmonised throughout the EU.

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)?

We would like to recall that we call for an EU classification of crypto-assets based on their economic functionalities (please refer to our response to question 7).

The definition in the EU AML/CFT legal framework only covers the payment function of crypto-assets and does not include their investment function. **We therefore propose to adopt the FAFT definition**, which is wider and more realistic.

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.

- We acknowledge that **the scope of the EU AML/CFT framework currently includes fiat-to-crypto exchanges and wallet providers**.

In compliance with the 5th Anti-Money Laundering Directive, **the PACTE law covers these two services**. In other words, in France, digital asset service providers which:

- purchase or sell digital assets in exchange of legal currencies; or
- keep digital assets on behalf of third parties, or access to digital assets, in particular in the form of private cryptographic keys with a view to hold, store and transfer digital assets

are required to comply with AML/CFT obligations.

In addition, under the PACTE law, **token issuers are required to have the proper procedures in place to ensure that their providers (i.e. exchange platform or a wallet provider) meet their obligations to combat money laundering and terrorist financing**, as investors that wish to subscribe to an ICO use either an exchange platform or a wallet provider to realize their subscription.

- We understand that **the FAFT obligations currently have a wider scope than the 5th directive** and also cover exchanges of digital assets against other digital assets and platforms for digital assets.

We call for the EU rules to be made consistent with the FAFT rules so that they also cover these two additional services. In turn, the extended EU AML/CFT framework would cover the four following services:

- Purchase or sell digital assets in exchange of legal currencies;
- Keep digital assets on behalf of third parties, or access to digital assets, in particular in the form of private cryptographic keys with a view to hold, store and transfer digital assets;
- Exchange digital assets against other digital assets,
- Manage a trading platform for digital assets.

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

Yes, we consider that all crypto-asset service providers covered by this potential framework should become 'obliged entities' under the EU AML/CFT framework.

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?

No. In our opinion, peer-to-peer transactions should not be regulated. Individual freedom should prevail.

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 have **no opinion** on this issue, as we do not know what requirements and what additional details on their practical implementation this question refers to.

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?

	1	2	3	4	5	No opinion
Directors and senior management of such providers should be subject to fit and proper test from a money laundering point of view, meaning that they should not have any convictions or suspicions on money laundering and related offences					x	

Service providers must be able to demonstrate their ability to have all the controls in place in order to be able to comply with their obligations under the anti-money laundering framework					x	

In general, if a regulation is introduced for crypto-assets, there is no reason not to apply the rules applicable to financial assets in general, **provided that the principles of proportionality and adaptability are applied.**

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

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

As a preliminary comment, we would like to highlight that we agree with the objective of ensuring an adequate level of consumer protection.

However, we would like to raise the attention of the Commission on an important difference between the world of crowdfunding and the world of crypto-assets. Indeed, to perform crowdfunding activities, consumers are required to use a regulated intermediary (they have no choice). Whereas, with regards crypto-assets, consumers can choose to perform their activities either in a regulated framework or an unregulated environment.

Therefore, in the world of crowdfunding, there are benefits in setting limits to the amounts that consumers can invest, as they will not be able to circumvent this limit.

Conversely, we believe that **setting limits on the investable amounts in crypto-assets by EU consumers would be counterproductive.** Indeed, consumers, as they are not required to use a regulated intermediary to invest in crypto-assets, would be driven away from the regulated into the unregulated world, which is open to peer-to-peer activities and riskier. In any case, a limit in absolute terms would be meaningless.

Rather, we are convinced that the quality of information provided to consumers is key, as the latter should be able to make **informed decisions**.

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

Yes, in principle, we agree that different standards should apply depending on the functionalities of the relevant crypto-assets. These standards will have to be designed based on the classification of the crypto-assets which will be established (we would like to recall that propose a different classification to that outlined by the Commission in this consultation paper – please refer to our answer to question 8 for further detail).

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

Yes, in principle, we agree that different standards should be applied depending on whether crypto-assets are bought in a public sale or in a private sale. Indeed, there is no reason not to apply the same standards, provided that the principles of proportionality, adaptability and transparency are applied.

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)?

We do not have any opinion on this issue as air drops cover different realities.

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

	1	2	3	4	5	No opinion
Those crypto-assets should be banned	x					
Those crypto-assets should be still accessible to EU consumers/investors				x		Warnings and/or limitations should be put in place.
Those crypto-assets should be still accessible to EU consumers/investors but accompanied by a warning that they do not necessarily comply with EU rules					x	

In our opinion, there should be **no prohibition** on crypto-assets issued in third countries; rather, **restrictions** inspired from the world of financial assets, such as the qualification of investors, should be put in place.

We believe that an equivalence regime is desirable, and this regime should provide for **warnings** aimed at consumers when equivalence is not met.

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

We believe that the following services should be subject to supervisory coordination or supervision by the ESAs in cooperation with the ESCB where relevant:

- Offer to the public tokens which are not covered by another legal regime, in particular offerings of tokens which are not considered as financial securities,

- Keep digital assets on behalf of third parties, or access to digital assets, in particular in the form of private cryptographic keys, with a view to hold, store and transfer digital asset,
- Purchase or sell digital assets in exchange of legal currencies.
- Exchange digital assets against other digital assets,
- Manage a trading platform for digital assets,
- Receive and transmit orders on digital assets on behalf of third parties,
- Manage portfolios of digital assets on behalf of third parties,
- Provide advice to subscribers in digital assets,
- Underwrite digital assets,
- Make guaranteed investment in digital assets,
- Make non-guaranteed investment in digital assets.

We would like to underline that **an "EU regulatory testing zone" is required** in order to allow the market to develop and EU supervisors to reinforce their competence in the field of crypto-assets, which is still new and growing.

In line with the principle of subsidiarity, **national competent authorities should remain in charge**, except for global stable coins, due to their systemic nature.

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

EU regulators need increased financial (in the form of fees paid by licensed entities), human (engineers) and technical resources.

Cooperation between financial regulators and regulators in charge of cybersecurity (e.g. ANSII in France) should be encouraged.

Peer to peer reviews among regulators should be put in place and ESMA should ensure a centralised control of regulators' competences, before taking charge itself.

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

A few initiatives have arisen in France in relation to security tokens, as the French legislator has enacted several statutes providing for a legal framework for securities credited to a (legally defined) blockchain.

Remarkably, **the initiatives all focus on the primary market or on short-term instruments** since the organisation of a secondary market for SMEs is not possible under the current European legislative framework (art. 3.2 of the CSDR). Trading on a trading platform leads to the entirety of capital markets infrastructures and intermediaries, overly costly and burdensome for the low values and volumes of trading in securities issued by SME's. We urge the EU Commission to allow certain low-volume and low-value transactions to settle in the issuer's register directly.

The initiatives include:

- Iznes, a subscription - redemption & register for UCITS, allowing fund managers to hold the unit holders register and allowing investors to instruct subscriptions and redemptions.
- LiquidShare, a consortium of 8 established market players building a platform for the tokenisation of securities issued by SME's, registering ownership and effecting delivery versus payment settlement against settlement coins.
- Kriptown, a primary market and secondary market platform for utility tokens made to address the lack of early stage funding in Europe.
- Onbrane, an OTC marketplace for short term commercial paper held in a register.
- NowCP, an OTC marketplace for short term commercial paper, settling in ID2S.
- Capbloc, a shareholders' register management platform for SME's, tokenising securities.
- RegistrAccess, a shareholders' register management platform created by a consortium of established market players.
- Mipise, a crowdfunding and securities tokenisation platform, including for private equity players.
- Forge, an initiative by Société Générale for the issuance of covered bonds
- Utocat, a utility for the entire facilitation of investing in unlisted securities, based on blockchain technology
- Registregeneral, a shareholders' register management platform for SME's, tokenising securities
- Initiae.com, a shareholders' register management platform for a given type of limited liability companies.

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

Yes, we completely agree.

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

We rather disagree.

Indeed, on the one hand, the limited number of clearing houses and their limited own funds induce some risk to financial stability. On the other hand, when a DLT is used, it concentrates the risks, in particular in terms of liquidity.

It seems too early at this stage to make a definite opinion, especially as the current regulation prevents the development of practical experiences. **An "EU regulatory testing zone" is required** to be in a better position to assess the risks implied by the use of DLT.

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

Yes, we believe that DLT will significantly impact the role and operation of trading venues and post-trade financial market infrastructures in the future. Cards will be reshuffled to the benefit of existing and new players.

Literature on his topic is vast and includes for example reports by the ECB, the Bank of Japan and Euroclear.

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

Yes, we completely agree that a gradual regulatory approach in these areas would be appropriate.

More precisely, we call for an **"EU regulatory testing zone"** which would allow lifting some constraints imposed by existing European regulations which are not appropriate to crypto-assets, by granting temporary waivers.

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

Yes, we completely agree that the absence of a common approach on when a security token constitutes a financial instrument is an impediment to the effective development of security tokens.

In its definition of financial instruments, the MiFID includes transferable securities. MiFID article 4 para 1 point 15 defines financial instruments as "those instruments specified in Section C of Annex I". However, **the definition of transferable securities is not harmonised at EU level**. As a consequence, each Member State has its own definition of financial securities and in turn of security tokens.

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

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

The best remedy would be to harmonise the definition of transferable securities at EU level. However, this does not seem possible. We therefore propose **a functional approach** which would lead to **a European definition of security tokens relying on exemptions to national regulations on transferable securities[3].**

3 As per article 2 paragraph 1 letter n of the UCITS directive "transferable securities" means: (i) shares in companies and other securities equivalent to shares in companies (shares); (ii) bonds and other forms of securitised debt (debt securities); (iii) any other negotiable securities which carry the right to acquire any such transferable securities by subscription or exchange.

At this stage, we propose to define security tokens as instruments registered in a DLT which are recognised as financial instruments.

In any case, we believe that **the definition of security tokens should be introduced in the upcoming EU regulation on crypto-assets** (rather than, for example, in the MiFID).

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

	1	2	3	4	5	Comment
Hybrid tokens should qualify as financial instruments/security tokens					x	Using the definition used by the Commission (we however propose a different definition).
Hybrid tokens should qualify as unregulated crypto-assets (i.e. like those considered in section III. of the public consultation document)	x					
The assessment should be done on a case-by-case basis (with guidance at EU level)					x	
Other						

There should be **full harmonisation among all Member States** in order to avoid regulatory arbitrage.

We propose to **define "hybrid tokens" as tokens with both functionalities** (i.e. payment and investment). The quality of financial instrument should prevail.

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

We rather agree. In our opinion, **existing rules and requirements for investment firms should be adapted to the specificities of the DLT environment**. For instance, own funds requirements, obligations relating to the experience and honourability should be adjusted because the risks implied and the maturity of markets in crypto assets, respectively, are different.

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

It would be **rather appropriate**. Q&A and guidelines will be required. As for investment services, ESMA should issue clarifications and guidance to fulfil the needs of markets in crypto-assets.

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

We think it would be **rather appropriate**. Notions such as best execution, advice, management, market-making and repo appear relevant to markets in security tokens. However, notions such as placement, guaranteed placement and reception and transmission of orders seem less relevant.

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

We consider that the transposition of MiFID II or existing market practice would not be incompatible with **the use of DLT, to the extent that there is a responsible entity,** in relation to **security tokens** (not to crypto currencies).

As described previously, we believe that, for instance, best execution could apply to security tokens provided the rules are adjusted to their specificities.

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

Yes, there are issues in applying trading venue definitions and requirements related to the operation and authorisation of such venues to a DLT environment: indeed, **the current definition of MTF is not designed to capture the functioning of platforms in crypto-assets**. Platforms in crypto-assets correspond to different schemes which may fall in the scope of different regulations.

So far, to our knowledge, **there exists no trading platform listing security tokens in Europe**. It is therefore hard to imagine what would be the form taken by security token trading in a secondary market. This could be based on the various ICO token trading procedures for which numerous models of trading platform already exist. Accordingly, if security tokens were to be traded on a platform like these tokens, **a distinction could be made between three types of platforms**:

- Peer-to-peer or OTC exchange platforms: these exchange venues allow two parties having opposite interests to enter into a relationship, bilaterally agree on a price, and use the blockchain to conclude their transaction;
- Platforms built on a brokerage model implying own-account intermediation like in the Anglo-Saxon broker-dealer model;
- Platforms whose operation is similar to that of a multilateral system within the meaning of MiFID II (order book, absence of discretion, execution of transactions). These platforms can themselves be classified in three categories:
    - Centralised: The entire transaction process takes place outside the blockchain (off-chain): trading (establishing a relationship between buying and selling interests), execution of transactions and custody of security tokens, only settlement and delivery being performed on the blockchain which acts as a security recording ledger. This recording on the blockchain takes place when the investor leaves the platform, and not at each transaction;
    - Decentralised: The entire transaction process takes place on the blockchain (trading, execution and settlement/delivery) via the use of smart contracts. There is no custody of security tokens by the platform. Unlike the centralised platforms, transaction

management is not entrusted to a central operator but to the members of the blockchain network called "nodes";

- Hybrid or semi-centralised: These are all the platforms having a mixed model borrowing from the previous two models depending on the various procedures for trading, transaction execution, security token custody and settlement/delivery. Some platforms have a centralised manager and others not. This is a hotchpotch category, and the application of the Regulation to these platforms requires analysis on a case-by-case basis.

The issue is therefore whether, when security tokens are listed on a platform, that platform is subject to specific regulations. If, finally, the platform's activity can be likened to a trading facility within the meaning of MiFID, then, depending on the case, it will have to comply with the MiFID rules applicable to these trading facilities.

1. Requirements applicable to platforms of the OTC or brokerage type

For OTC or brokerage platforms, it is likely that the services provided will be governed by the MiFID regulations as investment services. It could be the third-party order receipt and transmission service or third-party order execution service (for OTC platforms) or the proprietary trading service (for brokerage platforms).This type of platform, although not, in the legal sense, exploiting a trading facility within the meaning of MiFID, will undoubtedly have to apply for an authorisation as investment service provider (ISP) or financial investment adviser (FIA) depending on the investment service that they provide. The regulatory constraints applicable to the services of order receipt and transmission, third-party order execution and proprietary trading are relatively light and would allow security token platforms to develop with little constraint in the current legislative framework.

2. Classification of token platforms and trading venues within the meaning of MiFID

MiFID II defines trading venues as "[…] a system or facility in which multiple third-party buying and selling interests in financial instruments are able to interact". The directive adds that these "systems" or "facilities" should be organised "in a way that results in a contract".

- Two concepts can give rise to interpretation in this definition: the concept of interaction between multiple buying and selling interests and the concept of resulting in a contract.

  It could be considered, as the FCA did in a consultation of December 2015 on the implementation of MiFID II, confirmed in guidance in its handbook, that "Any system that only receives, pools, aggregates and broadcasts indications of interest, bids and offers or prices shall not be considered a multilateral system for the purpose of MiFID II. To illustrate its analysis, the FCA refers the bulletin boards mentioned in Recital 8 of MiFIR which specifies that a platform should not be termed a "multilateral system" when there is no genuine "trade execution or arranging taking place in the system". According to this Recital, this is the case of "bulletin boards used for advertising buying and selling interests, other entities aggregating or pooling potential buying or selling interests, electronic post-trade confirmation services, or portfolio compression". (see Recital 8 of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments).The FCA

adopts an extensive interpretation because it apparently recognises the description of bulletin board for Seedrs, a crowdfunding platform which develops its own secondary market (for more information click here).

In the same way, the AMF could consider that platforms for security tokens (or conventional financial instruments) which merely show buying and selling interests without any interaction could not be considered as trading venues within the meaning of MiFID and could therefore be exempted from the regulatory obligations relating to such venues. However, they would still not be exempted from all the provisions of MiFID, because their business of establishing relations between investors would probably oblige them to apply for an authorisation for the supply of another investment service (RTO, third-party order execution), although admittedly less constraining.

- Second, the concept of resulting in a contract could also be subject to interpretation and open up possibilities for the development of security token platforms.

  In particular, it could be considered that, in the case of hybrid platforms, they are not organised "in a way that results in a contract" to the extent that transactions are executed outside the facility on which trading took place. However, a Q&A from ESMA on MiFID II, updated on 2 April 2019, suggests that whenever the trading venue provides for and describes in its rules in a sufficiently detailed manner procedures for the execution of transactions, the platform should be considered a trading venue within the meaning of MiFID.

To conclude, only security token platforms organised in the form of a bulletin board could be considered as not being trading venues within the meaning of MiFID and therefore be exempted from the MiFID requirements regarding venues. As a consequence, this model would be already applicable without any other legal problem. On the other hand, these platforms would undoubtedly be subject to the ISP authorisation for RTO or third-party order execution. A publication by the AMF of this interpretation of the legislation, like that of the FCA, could provide legal security for the operators.

3. Legal obstacles relating to the trading of security tokens on a trading venue within the meaning of MiFID

For platforms which are considered as trading venues within the meaning of MiFID, the present requirements of MiFID do not seem incompatible with the trading of security tokens on certain conditions.

- Identification of a platform manager

The manager must be an entity which has a legal personality. While it is possible to identify a manager for centralised platforms that is impossible for hybrid and decentralised platforms which rely on a public blockchain for the execution of transactions. There is no blockchain manager because of the decentralised nature of the blockchain, which inherently implies no legal link or shared responsibility between participants. The absence of a manager also makes it difficult to apply the European Regulation on market abuse.

- Intermediation conditions for MTFs

A transaction on an MTF implies the presence of at least three members having either ISP status or having sufficient respectability and competence, and having reached an admission agreement with the platform. The requirement of intermediation by an ISP would be extremely inappropriate for the crypto-asset universe insofar as clients have access to the platform directly, without going through intermediaries. It could be envisaged for professional users but apparently does not correspond to the current conditions of organisation of the platforms.

- Limited scope for OTFs

In order to overcome the drawbacks of MTF status, a security token platform could decide to apply for OTF status. OTF clients can access the platform directly, on the sole condition that there be at least three active clients. The disadvantage of this status is that it does not allow trading of equities and units or shares in CIUs on the platform, which is probably a major obstacle to the organisation of a security token secondary market. This status would be useful only for trading bond security tokens.

- Other rules laid down by MiFID II (best execution, transparency, tick size, etc.)

These conditions laid down by MiFID seem at first sight reconcilable with the business model of security token platforms. The best execution requirements should not pose any problems different from those encountered by conventional financial instruments, except for obtaining data to determine in what way the offer proposed by the platform is better than that of the competition with regard to clients' interests. The transparency requirements should not pose problems either, since French platforms are likely to be below the transparency thresholds. However, it will not be easy to calculate these thresholds due to the lack of data to calculate the benchmark market in terms of liquidity. The supervision of tick sizes should not apply to security token platforms either if they are below the liquidity thresholds. From a more general standpoint, and in the same way as for conventional financial instruments, these various obligations are of limited interest if most of the liquidity for the securities is located in a third country.

To conclude, the only security token platforms within the meaning of MiFID which could develop without major constraints under the present regulations are centralised platforms based on a public or private blockchain which adopted MTF status (existence of a manager). Clients would obtain access either in an intermediated manner via an ISP or directly provided that they are trading on their own account and that they meet conditions of respectability, competence and sufficient financial resources. The latter possibility would deserve to be brought to the attention of the market participants concerned who are not necessarily aware of it, for example in the form of a publication (Article L. 424-5 of the Monetary and Financial Code).

Centralised platforms in the form of an OTF with direct access for clients could develop legally, but with significant constraints which could call into question their business model. In particular, these platforms could not propose trading in equities (or units or shares in CIUs). They could only allow the trading of bond security tokens, requiring another type of authorisation to be able to trade equities.

At the other end of the chain, on the other hand, **the development of security token trading platforms of the hybrid or decentralised type seems impossible in the current state of the law if they are not operated by an identified manager.** An adaptation of the financial regulations in the medium term to address the specific requirements of security token trading platforms would be a necessary condition for the development of platforms of the hybrid or decentralised type and platforms based on a public blockchain.

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

It would be worth clarifying what rules this question refers to. From a general standpoint**, we find no reason to modify the rules on conflicts of interest**, etc. We agree that financial information as required under MiFID II should be disclosed (however, we believe that a prospectus would not be appropriate).

68) Would you see any merit in establishing specific requirements on the marketing of security tokens via social media or online?

In our opinion, **the marketing of securities via social media or online should not be specific security tokens**. However, at this stage, there are no specific rules at EU level on the marketing of financial instruments via social media or online. EU guidelines would be useful, in particular in relation to pre-marketing. In France, the AMF issued some rules on the marketing of financial instruments.

69) Would you see any particular issue (legal, operational,) in applying MiFID investor protection requirements to security tokens?

Some investor protection requirements included in MiFID will have to be adjusted in relation to the specificities of security tokens. For instance, the obligations on the segregation and restitution of assets will have to be adapted.

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

We believe that disclosure requirements should be adapted to allow the development of SMEs. However, these requirements should not be specific to security tokens; rather, they should be designed for both securities and security tokens issued by SMEs.

SMEs should be subject to minimum disclosure requirements (including information on the issuer of the security tokens, such as its own capital, assets, investors…). However, these requirements should not be as heavy as a full prospectus; they could take the form of a "light prospectus". Disclosure requirement applicable to crowdfunding activities could be taken as an example.

For instance, information related to the market (pre and post trade) should be more flexible on MTF than on regulated markets. In other words, to allow their development, requirements should not be too burdensome for illiquid markets.

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

The use of DLT reduces the number of intermediaries involved. **If direct access to the DLT is not allowed, then the benefits of using the DLT are significantly reduced.** The platform should perform the relevant suitability tests itself and, for example, only allow access to qualified investors.

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

Regarding questions 72 to 76, we would like to underline that, currently, there are no markets in security tokens. Therefore, we believe that an EU regulatory testing zone is required so that the EU framework can foster their development and that the final EU regulatory framework is appropriate.

In general, there is no reason to set out requirements which are specific to security tokens issued on a DLT.

However, more generally, we would like to underline here that **the overall objective is to facilitate listing for SMEs** (currently, many SMEs cannot afford listing on regulated markets of MTF). Therefore, we believe that disclosure requirements applicable to the listing of SMEs should be adapted to the size of these entities and take into account the costs they can support.

73) What are the risks and benefits of allowing direct access to trading venues to a broader base of clients?

The issue here does not relate to the form of the securities (crypto or not), but rather to the size and liquidity of the relevant market.

DLT is mostly used by SMEs and mid-caps and **disclosure requirements should be adapted to the size of these entities** and the costs they can support. **Transaction prices should be disclosed** but information on the order book appears less relevant as the volumes traded are limited (these markets are not liquid).

Currently, SMEs and mid-caps cannot benefit from a transparent price discovery as they cannot afford the use of intermediaries such as CCPs and CSDs.

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

We rather disagree. Transparency should apply in relation to the price of the transactions, not to the order book. Please see above.

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

We believe that transaction prices should be disclosed. In our opinion, other pieces of information are less useful. Again, we would like to highlight that **these issues are not specific to security tokens - i.e. the form (crypto or not) of the securities is not relevant - rather, it is the size of the issuer that matters** (large companies could also issue security tokens, not only SMEs and mid-caps).

76) Would you see any particular issue (legal, operational) in applying these requirements to security tokens which should be addressed?

These requirements are burdensome for financial securities. They will be even more so for security tokens.

77) Do you think that the current scope of Article 8 of MAR on insider dealing is appropriate to cover all cases of insider dealing for security tokens?

No. The definition of insider information is not adapted to markets in security tokens as the latter are not liquid. Requirements in relation to insider dealing should be introduced but tailored to the specificities of security tokens.

78) Do you think that the notion of market manipulation as defined in Article 12 of MAR is sufficiently wide to cover instances of market manipulation of security tokens?

Yes.

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

Manipulative trading in crypto-assets could be facilitated by the limited liquidity of markets in crypto assets. However, this issue is more general and is not specific to the form of the assets (crypto or not).

In any case, markets in crypto assets are still to emerge and **it is too early at this stage to provide a definite answer**. We do not know whether they will be liquid or not. The industry is developing progressively, and innovation should not be hampered by hasty regulation. We believe that an EU regulatory testing zone would be very useful.

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

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

We believe it is too early to say.

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

No. **It is too early to regulate.** We should not introduce too much complexity too early or the industry will not develop.

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

We rather agree. The scope of the Prospectus regulation should be identical, provided the requirements are **adapted** to the specific nature of security tokens. Such tailoring should be made on a case-by-case basis.

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

Yes. We agree that the fields of the Prospectus Regulation should be adapted to the specificities of security tokens.

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

Issuers of security tokens should have the choice to request an ISIN or not. If they choose to do so, issues could arise, such as long and costly negotiations, due to the monopolistic situation of Euroclear, a private entity which is not regulated for the activity of issuing such identification numbers.

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

No, we have not identified any difficulties, as markets in security tokens are yet to develop in the EU. **It is too early at this stage to make an opinion as the market is not mature enough.**

Issues which fall in the scope of the Regulation have to comply with heavy requirements, which are not adapted to growth markets.

In theory, regarding the issuance of security tokens, the Prospectus Regulation appears compatible with security tokens. Apart from a few practical problems, the legal framework does not seem to prevent the issue of security tokens. However, the information contained in the prospectus will have to be adapted to the specific features of security tokens.

- The applicability of the Prospectus Regulation with regard to the legal classification of security tokens

There are still relatively few STO projects and, for European projects, they share the common characteristic of being issued by a public offer below certain thresholds which exempt them from the obligation of producing a prospectus, probably because of the legal uncertainty surrounding security tokens (see question above).

The first challenge concerning security tokens is to determine whether the token in question has the specific characteristics of transferable securities within the meaning of MiFID, in which case its issue is subject to compliance with the Prospectus Regulation. This classification of security tokens as transferable securities depends on the rights attached to the token (financial rights and political rights). Since most of the tokens examined so far have hybrid characteristics, this stage of legal classification of the token is not without difficulty.

Regulation (EU) 2017/1129 of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (hereinafter, "Prospectus 3") applies to "offers of securities to the public". In addition, Directive 2014/65/EU of 15 May 2014 on markets in financial instruments, better known as MiFID II, defines "securities". In practice, as recalled by the

French Treasury Department's consultation on the reform of the system of public offers of securities, "the definition of securities within the meaning of MiFID generally comprises financial securities except for those which do not constitute a fungible "security class" (e.g. negotiable debt securities)."

Whenever securities offered to the public via an STO are covered by the concept of a security within the meaning of European law, the Prospectus Regulation shall be applicable, which implies, barring exemptions, the obligation for the issuer to establish a prospectus approved by the AMF.

- Practical problems resulting from application of the Prospectus Regulation to STOs

We can observe diverging interpretations; however, these are not specific to crypto assets, rather they relate to the Prospectus Regulation.

In practice, the question is whether the prospectus schedules defined by the Prospectus Regulation are appropriate for STOs.

Given the lack of historical data concerning some security token issuers (newly registered), it should be noted that some prospectuses could contain succinct or cursory information, from an accounting and financial viewpoint in particular, which – without being disqualifying – could raise questions regarding market information and protection of savings.

The analysis of this prospectus highlights certain problems resulting from this type of offer. And yet, these difficulties are not specific to security tokens and these questions are generally posed in the same way for conventional financial instruments.

– Definition of the territory in which the offer is made

As part of the information which should appear in the prospectus concerning the conditions of the offer, the countries in which the public offer is made are specified. Just like for ICOs, the question of the territory in which the offer is made can be posed for STOs to the extent that the public offer is made to all net surfers once it is accessible on a website. It therefore seems difficult in practice to limit the potential recipients of the offer.

We note that the issuer Bitbond Finance considered that the public offer concerned Germany only. Moreover, the prospectus states that "any country in which the offer is illegal" is excluded from the scope of the prospectus. Likewise, investors who are US or Canadian residents for tax purposes have been excluded from the offer.

However, we note that insofar as it is possible for anyone to obtain access to the website, it could be appropriate to consider that the public offer extends beyond the borders of Germany. If it were to consider that an offer on the internet entails making a public offer beyond France, then a passported prospectus of the issuer would be required and, on behalf of the issuer, a summary of the prospectus should be sent to the authorities of the other relevant Member States. This problem is not specific to security tokens but to marketing on the internet, and it is posed in the same way for conventional financial instruments.

- Information concerning token listing

  The Prospectus Regulation requires the issuer to provide information regarding the markets on which the securities will be listed or admitted to trading.

  As part of an STO, **token listing is problematic**. In this respect, the lesson of the prospectus prepared by Bitbond Finance is interesting. This issuer stated that this factor was "not applicable", specifying that the token would not be admitted to trading on a regulated market within the meaning of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 or on any other equivalent market. The issuer also specified that on the date of the prospectus, it did not intend to carry out such an admission of tokens to trading on a regulated market or on any other market, and had no intention of doing so in the future. However, the issuer specifies that it cannot be ruled out that token holders may exchange their tokens directly with other people or that the tokens could be listed at the request of investors or any other person on an unregulated online crypto-asset platform.

  In any case, the issuer should provide information on the token's listing, in accordance with the legal framework applicable to this listing.

- Information on the tax regime relating to withholding tax in the country or countries in which the offer is made

  The Prospectus Regulation requires that the issuer provide information on tax treatment. Regarding this, Prospectus Regulation 3 requires that the issuer provide information concerning any withholding tax applicable to income from the securities in question from the viewpoints of both the country in which the issuer has its head office and the country or countries in which the offer is made. However, Prospectus Regulation III specifies that "warning that the tax legislation of the investor's Member State and of the issuer's Member State of incorporation may have an impact on the income received from the securities. However, the prospectus should still contain appropriate information on taxation where the proposed investment entails a specific tax regime, for instance in the case of investments in securities granting investors a favourable tax treatment." The issuer must insert in the prospectus a "warning on tax consequences" of the offer.

  Since an STO distributed via the internet is sent to an unspecified group of persons, a description by the issuer of the applicable tax regime is likely to cause practical problems resulting from the diversity of tax regimes potentially applicable to investors. Under these conditions, the question may be asked as to whether it would be acceptable for certain information concerning the tax regime to be omitted from the prospectus by the issuer. However, the same question arises in the case of public offers of conventional financial securities on the internet, in the same way as for security tokens.

- Multiple subscription prices

Offers sent on a blockchain generally propose prices that are differentiated depending on the date on which the investor subscribes to the offer. But Prospectus Regulation III requires that the issuer indicate in the prospectus "the price at which the securities are offered".

We would like to raise the issue of principal markets in relation to STO markets. It may be noted that the STO prospectus approved by the BaFin mentions various prices for the offer. It will have to be determined whether it is possible to accept an offer made at various prices, provided that this be mentioned in the prospectus, or whether the issuer should be required to provide a single price for a given offer. If this second option were chosen, then the prospectus should present to investors no longer a single offer but a series of several offers.

- The absence of an investment service provider as intermediary

At present, investment service providers operate as intermediaries when making an offer of securities to the public. **It is they who are responsible for verifying compliance with the obligations regarding anti-money laundering and combating the financing of terrorism on behalf of the issuer** at the time of subscribing to the securities.

On blockchain, there is no intermediary which can check AML-FT obligations. And, within the framework of STOs, if they are organised on the same model as ICOs, it is unlikely that the issuer will use an ISP as intermediary for the subscription. Therefore, **the issuer is not obliged to comply with the same AML/CFT obligations as ISPs, and no check will be made on security token subscribers.** It should be noted that this fact is already applicable to issuers who decide to keep the issued securities ledger themselves. In the case of ICOs, on the contrary, it was chosen to make verification of the AML/CFT requirements by the issuer compulsory.

To conclude, **in theory, the Prospectus Regulation appears rather compatible with security tokens.** Apart from **a few practical problems**, the legal framework does not seem to prevent the issue of security tokens. However, **the information contained in the prospectus will have to be adapted to the specific features of security tokens**.

In this respect, we believe that **ESMA guidance** would be more appropriate than an ad hoc Prospectus.

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

Yes, of course. Markets in security tokens should not be reserved to SMEs (even though SMEs represent their highest potential for growth). As explained previously, a Prospectus tailored to SMEs is required (regardless of the nature of the securities issued, crypto or not).

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

Yes. ESMA guidelines should be updated and include risk factors specific to the use of DLT.

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

	1	2	3	4	5	No opinion
definition of 'central securities depository' and whether platforms can be authorised as a CSD operating a securities settlement system which is designated under the SFD					X	DLT can lead to the absence of a CSD.
definition of 'securities settlement system' and whether a DLT platform can be qualified as securities settlement system under the SFD					X	Definitions in SFD do not allow to cover the issue of DLT, in particular the cash leg.
whether records on a DLT platform can be qualified as securities accounts and what can be qualified as credits and debits to such an account;					X	In France, the registrar is assimilated to a securities account (legal fiction).
definition of 'book-entry form' and 'dematerialised' form					X	Book entry assumes registration in an account. Dematerialisation is not digitalisation. Therefore, this point is not relevant.
definition of settlement (meaning the completion of a securities transaction where it is concluded with the aim of discharging the obligations of the parties to that transaction through the transfer of cash or securities, or both);				X		Is delivery relevant in respect of digital securities, if there is no debit/credit entry? Such a definition would be relevant only if construed restrictively (i.e. there is no obligation to deliver and no debit/credit entry).

what could constitute delivery versus payment in a DLT network, considering that the cash leg is not processed in the network				X		This issue is technical and complex. Two different technologies are involved. First, the issue is technical: in practice, stable coins (or, more precisely, settlement coins) are used. To ensure the simultaneity of the two technologies, the transfer of the assets should be made under the condition of the relevant cash payment.
what entity could qualify as a settlement internaliser	X					Does this issue relate to CSDR? In any case, it is not relevant in relation to DLT as it would imply a centralised functioning.
Other						

The elements above address a small part of the problem only. **The organisation of a secondary market for SMEs is not possible under the current European legislative framework** (art. 3.2 of the CSDR). Trading on a trading platform leads to the entirety of capital markets infrastructures and intermediaries, overly costly and burdensome for the low values and volumes of trading in securities issued by SMEs. **We urge the Commission to allow certain low-volume and low-value transactions to settle in the DLT environment as opposed to the incumbent entirety of capital markets infrastructures** (CSD, CCP, …).

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

No. There are no book-entries in a DLT but a registration of securities tokens into a ledger. **The very concept of "book entry" does not correspond to the operations in a DLT environment.**

Security tokens are credited to a blockchain to which issuers and investors participate directly or indirectly. That blockchain is a ledger. By crediting securities to the ledger, the investor does not entrust them with a third party (custodian). Rather, **the investor's service provider operates the securities position in the ledger for the investor. He is a mere agent.** Therefore, **the obligations of that agent cannot be compared to the obligations of a securities intermediary** (custodian or central securities depository) who actually takes control and accountability for the securities.

The entire manner in which securities creation, securities issuance, securities transfers and securities holdings are organised in a DLT environment differ entirely from the CCP – CSD – central bank structures.

It is necessary to examine the possibilities of DLT, the regulatory obstacles, the appetite in the market for given structures and to adjust the existing regulation.

As explained previously, **the organisation of a secondary market for SMEs is not possible under the current European legislative framework (art. 3.2 of the CSDR).** Trading on a trading platform leads to the entirety of capital markets infrastructures and intermediaries, overly costly and burdensome for the low values and volumes of trading in securities issued by SMEs. We urge the EU Commission, for example, to allow certain low-volume and low-value transactions to settle in the issuer's register directly or to apply requirements on the issuer, in the context of a regulatory testing zone.

Under certain thresholds, the issuer must have the choice to issue in a CSD or a ledger of its choice. **This is currently not possible due to art. 3.2 of the CSDR.** That article alone leads to the application of the entirety of the capital markets infrastructures applying to all public trades.

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

Facilitate. The French legislator has introduced a realistic and appropriate framework for securities tokens (loi Sapin 2).

However, we have a substantial problem with European regulatory framework.

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

RULES (NOT DEFINITIONS SUPRA)

	1	2	3	4	5	No opinion
Rules on settlement periods for the settlement of certain types of financial instruments in a securities settlement system				X		
Rules on measures to prevent settlement fails				X		
Organisational requirements for CSDs				X		X
Rules on outsourcing of services or activities to a third party				X		
Rules on communication procedures with market participants and other market infrastructures				X		
Rules on the protection of securities of participants and those				x		

of their clients						
Rules regarding the integrity of the issue and appropriate reconciliation measures			X			
Rules on cash settlement					X	
Rules on requirements for participation		X				
Rules on requirements for CSD links						X
Rules on access between CSDs and access between a CSD and another market infrastructure					X	
Other (including other provisions of CSDR, national rules Applying the EU acquis, supervisory practices, interpretation, applications…)						

92) In your Member State, does your national law set out additional requirements to be taken into consideration, e.g. regarding the transfer of ownership?

No additional requirements but substitution.

Art. L211-3 and L211-7 of the French monetary and financial code provide that registrations to a legally defined DLT (i.e. "DEEP") must be in the name of the owner and the registration evidences title in the securities. We are not asking for additional requirements.

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

	1	2	3	4	5	No opinion
definition of a securities settlement system					X	
definition of system operator					X	There cannot be any operator.
definition of participant			X			
definition of institution		x				Should we add other legal entities?
definition of transfer order		X				
what could constitute a settlement account					X	
what could constitute collateral security		x				
Other						

First, the SFD is based on a book-entry concept, i.e. on the credit of securities to securities accounts, which does not exist in a DLT environment. **The assumptions of SFD are fundamentally different from the DLT environment.**

Then, the very concept of "SSS" (SECURITIES SETTLEMENT SYSTEM) is necessary as, at central level, the cash leg and the securities leg settle in two distinct institutions, respectively the central bank and the

CSD. Legislation was necessary to the securities settlement risk is reduced to the same very low level of liquidity risk in the central bank. Fundamentally, this is the benefit of the SFD.

Where cash and securities settle in the same institution (a commercial bank for example), the default of one leg, cash or securities, allows that institution to withhold the settlement of the other leg.

In the DLT environment, institutions SHOULD operate in a single-institution environment, making SFD-like legislation redundant from that point of view. Sometimes it can happen that the settlement-delivery takes place directly in DLT, with no intermediaries.

However, legislation that makes credits, holdings and settlements in a DLT environment bankruptcy-remote is necessary, i.e. a rule that provides that in the case of the default of a stable coins issuer or a blockchain node operator or a cryptographic key vault, the securities or cash owner can claim restitution of its assets.

It is necessary to have a restrictive definition of participants, considering the immunity regime of SFD applicable to participants.

94) SFD sets out rules on conflicts of laws. According to you, would there be a need for clarification when applying these rules in a DLT network?

Yes [Hague Conference on conflicts of law].

SFD includes a specific rule on conflicts of law and the applicable law is determined depending on the location of the account. This rule (set out in SFD article 9) should be reviewed, as it is based on the location of the account: indeed, in the context of DLT, there is no account.

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

There are no such requirements in French law. More precisely, French private international law does not include any rule applicable to DLT.

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

Yes.

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

France has already adapted its collateral law (in particular pledges) to STOs.

	1	2	3	4	5	No opinion

if crypto-assets qualify as assets that can be subject to financial collateral arrangements as defined in the FCD						In principle, the is no impediment for STOs to be pledged under the Directive; however, some of the concepts of the directive would be hindrances (in particular, dispossession and control would be difficult in the context of DLT).
if crypto-assets qualify as book-entry securities collateral					x	Not applicable as there is no book entry on DLT.

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

In some cases. The current conflict of law rule provides that the law applicable to the proprietary aspects of the credit of securities to a securities account is the law of the country where the account is located. In the DLT environment, this is not always transposable as:

- Securities accounts don't exist as such in the DLT network and
- The possible distribution might point to several jurisdictions.

We therefore think that **a distinction must be made between permissioned and permissionless blockchains**.

In the case of permissioned blockchains, the FCD principles can be transposed to the main DLT operator, i.e. the applicable law should be the law of the country where the main DLT operator registers the securities to the DLT.

In the same way there are conflicts of law under SFD, this is an issue under CFD.

SFD includes a specific rule on conflicts of law and the applicable law is determined depending on the location of the account. This rule (set out in SFD article 9) should be reviewed, as it is based on the location of the account: indeed, in the context of DLT, there is no account.

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

There are no such requirements in French law. More precisely, French private international law does not include any rule applicable to DLT.

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

Notwithstanding our answers to questions 97 and 98, we cannot see any limitation or constraint in FCD on the use of a DLT solution.

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

Rather inappropriate.

To the extent that this question applied to derivatives contracts and that central clearing is intent to reduce counterparty risk, **we do not believe that central clearing is as of today necessary** taking also into account limited trading volumes.

This would be particularly inoperative as DLT settles operations one after the other, thus removing any counterparty risk.

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

	1	2	3	4	5	No opinion
Rules on margin requirements, collateral requirements and requirements regarding the CCP's investment policy					X	
Rules on settlement	X					
Organisational requirements for CCPs and for TRs	X					
Rules on segregation and portability of clearing members' and clients' assets and positions	X					
Rules on requirements for participation	X					
Reporting requirements	X					
Other (including other provisions of EMIR, national rules applying the EU acquis, supervisory practices, interpretation, applications...)	X					

None of these requirements appears relevant to the extent that **settlement is operated though a decentralized DLT and/or smart contracts specifically designed to secure settlement**. For transactions that require the posting of collateral to cover counterparty risk, DLT could facilitate reconciliation and accelerate collateral movements.

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

No need identified for cases mentioned in question 102.

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

One possible issue could be around **managing initial collateral deposits and subsequently margin posting**, although it could be investigated whether this might not be resolved though smart contracts. In any event, considering our answers to questions 101 & 102, **we do not see that any need for margin requirements need apply at least to the same extent as for other categories of derivatives**.

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

	1	2	3	4	5	Comment
AIFMD provisions pertaining to the requirement to appoint a depositary, safe-keeping and the requirements of the depositary, as applied to security tokens;			x			
AIFMD provisions requiring AIFMs to maintain and operate effective organisational and administrative arrangements, including with respect to identifying, managing and monitoring the conflicts of interest;				x		
Employing liquidity management systems to monitor the liquidity risk of the AIF, conducting stress tests, under normal and exceptional liquidity conditions, and ensuring that the liquidity profile and the redemption policy are consistent;				x		
AIFMD requirements that appropriate and consistent procedures are established for a proper and independent valuation of the assets;				x		
Transparency and reporting provisions of the AIFMD legal framework requiring to report certain information on the principal markets and instruments.				x		
Other						

The issue of the bookkeeping regime applicable to security tokens was discussed at length by our members. However, no consensus has been reached yet and this debate remains open, in particular concerning registered shares. The main point of contention relates to the existence or not of an obligation to return the assets i.e. whether the applicable regime is that of “pure” registered shares (“tenue de compte en nominatif pur”), whereby the issuer acts as account keeper, or that of bearer shares (“titre au porteur”). Indeed, it appears that neither regime, in its current form, can adequately fit security tokens. To sum it up, **it is difficult at this stage to draw a conclusion on this issue.** It will therefore be necessary to deepen our reflections on this point.

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

We believe that some of the AIFMD provisions will have to be adapted to DLT solutions/the use of security tokens.

107) Do the provisions of the EU UCITS Directive legal framework in the following areas are appropriately suited for the effective functioning of DLT solutions and the use of security tokens? Please rate each proposal from 1 to 5, 1 standing for "not suited" and 5 for "very suited".

	1	2	3	4	5	Comment
Provisions of the UCITS Directive pertaining to the eligibility of assets, including cases where such provisions are applied in conjunction with the notion "financial instrument" and/or "transferable security"						
Rules set out in the UCITS Directive pertaining to the valuation of assets and the rules for calculating the sale or issue price and the repurchase or redemption price of the units of a UCITS, including where such rules are laid down in the applicable national law, in the fund rules or in the instruments of incorporation of the investment company;				x		
UCITS Directive rules on the arrangements for the identification, management and monitoring of the conflicts of interest, including between the management company and its clients, between two of its clients, between one of its clients and a UCITS, or between two -UCITS;				x		
UCITS Directive provisions pertaining to the requirement to appoint a depositary, safe-keeping and the requirements of the depositary, as applied to security tokens;			x			
Disclosure and reporting requirements set out in the UCITS Directive				x		
Other						

Regarding the responsibilities of depositaries with respect to security tokens, the same reasoning as the one explained in Question 105 applies, since the provisions of the UCITS and AIFM Directives are substantially similar.

As for crypto-assets which are not security tokens, UCITS are not allowed to invest in such assets (Article 50 of the UCITS Directive). We wonder whether crypto-assets should not, in any case, qualify as "ancillary liquid assets".

As for the rest, we consider that security tokens should be treated as transferable securities as soon as they qualify as such. **Whether a transferable security is registered in a financial instruments account or in a distributed ledger should not affect its eligibility for a UCITS' investment.**

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

Considering that the market is not mature yet, we should allow innovation.

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

On permissionless blockchains, some issues may arise due to the absence of a responsible entity.

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

We believe that DLT may lead to systems combining trading and post-trading activities. Therefore, distinguishing these two activities may hinder the development of the market.

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

We do not have any opinion on this issue.

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

No.

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

Yes.

The regulation of electronic money does not take into account the possibility for holders of electronic money to transfer it to other holders without the intermediation of the electronic money issuer (or another regulated entity).

If a crypto-asset which qualifies as electronic money is based upon a public blockchain protocol (e.g. Ethereum-based stablecoins), then the issuer would not be able to control the transfer and the use of its electronic money.

Quasi-financial services using stablecoins have emerged over the last year and allow, for example, to earn interest by depositing stablecoins or to borrow stablecoins. Article 12 of the EMD2 prohibits "the granting of interest or any other benefit related to the length of time during which an electronic money holder holds the electronic money."

Therefore, **the EMD2 should be updated to take into account the fact that e-money tokens are able to be transferred "peer-to-peer."**

Stablecoins should not automatically fall under the definition of e-money. Flexibility is required in assessing the different use cases. Operators should be allowed to fall outside the scope of EMD. Distinguishing global stable coins from others would be more relevant.

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

No.

Although the issue outlined above still applies in relation with PSD2, the fact that individuals and companies may transfer e-money tokens (*i.e.* stable coins which qualify as electronic money) in a peer-to-peer way should not prevent the effectiveness of the payment services regulation.

In any case, payment institutions which would open e-money tokens accounts or realize payment transactions in relation with e-money tokens should remain within the scope of PSD2.

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

Yes.

As explained above, **legal amendments and supervisory guidance would be needed at least to clarify the application of EMD2 and PSD2 to stable coins which qualify as electronic money**.

These clarifications should at least apply to (i) the status of individuals and companies which transfer e-money tokens to other individuals or companies in a peer-to-peer way, and (ii) the ability for a company to pay interest on deposits of e-money tokens and/or lend e-money tokens.

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

As explained in our answer to question 12, **it is extremely difficult to make a distinction between stable coins and global stable coins,** as are both can be used in more than one country and both are issued by a single entity (domiciled or incorporated in one country). Even the undertaken Libra would be issued in one jurisdiction. And a "national stable coin" (whatever that is) could have a basket of underlying currencies or money market funds managed in more than one country.

This issue relates more to monetary stability than to a legal definition, in the same way there are SIFIs.

	1	2	3	4	5	Comment
Initial capital and ongoing funds			X			Method D of Article 5 of EMD2 provides that the own funds of an electronic money institution shall amount to at least 2% of the average outstanding electronic money.
Safeguarding requirements				X		Global stablecoins issuers should be able to invest funds received in exchange for electronic money in "secure, low-risk assets" mentioned in Article 7(2) of EMD2.
Issuance		X				

Redeemability			X			Redeemability right is essential for stability and confidence. We should allow the market to determine what is most appropriate.
Use of agents			X			Gobal stablecoins may not use nay agents. We should allow the market to determine what is most appropriate.
Out of court complaint and redress procedures						What does this question refer to?
Other						

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

There is no reason to distinguish global stablecoins from other stablecoins.

Completely appropriate	
Rather appropriate	x
Neutral	
Rather inappropriate	
Completely inappropriate	
Don't know / No opinion	

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