Izba Gospodarcza Blockchain i Nowych Technologii (Blockchain and New Technologies Chamber of Commerce) – IGBiNT

Position Paper on the Review of the Markets in Crypto-Assets Regulation (MiCA)

Supplementary material to the European Commission targeted consultation

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Research provenance and doctoral work

The legal theses, analytical constructs, comparative observations and regulatory proposals presented in this paper are derived from, and form part of, Robert Wojciechowski's ongoing doctoral research in law at Lazarski University. They constitute selected elements of the scientific work developed for his doctoral dissertation concerning the legal and regulatory framework for crypto-assets, including Regulation (EU) 2023/1114 on markets in crypto-assets (MiCA). Publication in this position paper is a deliberate public disclosure of selected results of that research for the purposes of the European Commission consultation and the wider public-policy debate.

The underlying research methodology, full doctrinal analysis, comparative matrices, research tests, source mapping and unpublished scholarly development remain part of the author's doctoral work and are not reproduced in this public paper. The public text therefore records selected conclusions and regulatory recommendations without exhausting the underlying scientific analysis.

Authorship, provenance and chronology. The substantive analysis, legal theses, terminology, arguments and regulatory recommendations contained in this paper were developed by Robert Wojciechowski. Institutional adoption, submission or publication by Izba Gospodarcza Blockchain i Nowych Technologii (Blockchain and New Technologies Chamber of Commerce) – IGBiNT does not alter authorship of the underlying scientific work or transfer authorship of that work.

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Purpose and status

This position paper complements the detailed responses submitted by Izba Gospodarcza Blockchain i Nowych Technologii (Blockchain and New Technologies Chamber of Commerce) – IGBiNT through EUSurvey. It consolidates the principal policy positions and cross-cutting recommendations in a public form. It is not intended to reproduce every rating or every field of the questionnaire, and it does not replace the submitted questionnaire answers where those are more granular.

The paper preserves the distinction between public-law regulation, sector-specific financial-services law and the private-law effects of tokenisation. It is a public policy document derived from selected conclusions of the author's doctoral research. It intentionally does not reproduce the unpublished methodology, full doctrinal proof, comparative matrices, research tests or complete evidential analysis retained within the author's unpublished doctoral research materials.

Executive summary

- **Preserve sectoral primacy and technology neutrality.** Crypto-assets that are financial instruments should remain within MiFID II/MiFIR, MAR, the Prospectus Regulation and related sectoral law; genuine deposits should remain within banking law. DLT should not itself determine the legal regime.

- **Make classification operational and portable.** The Union needs a common functional classification gateway, a reusable classification dossier and a classification passport with an ESMA/EBA coordination mechanism for material disputes.
- **Strengthen Title II selectively, not through general prior approval.** White-paper presentation, material-update triggers and digital marketing controls can be improved while preserving the Article 8 notification model and avoiding national reconstruction of prior approval.
- **Keep the stablecoin core, but improve risk sensitivity.** Full backing, redemption, audit, custody and segregation remain fundamental. Fixed reserve-deposit percentages for significant tokens should be reviewed against liquidity, concentration and interconnectedness risk.
- **Extend Level 1 rules where the service catalogue has real gaps.** Crypto-asset lending and borrowing intermediation and staking-as-a-service require express, activity-specific treatment; Q&As should not substitute permanently for missing Level 1 categories.
- **Regulate DeFi by function and control.** The relevant question is whether an identifiable person or coordinated group operates, controls or commercially organises a regulated service. Certification can support due diligence but should not become a licence for software or a substitute for CASP authorisation.
- **Protect the internal-market passport.** A host Member State should not impose duplicative substantive assessment, registration, fees or equivalent market-access conditions not provided for by Union law.
- **Create an EU continuity mechanism for institutional failure.** Where national legislation or institutional arrangements do not provide an operational route to a MiCA decision, a temporary Union fallback should prevent firms from losing effective access to the single authorisation framework.
- **Treat tokenised deposits according to legal substance.** A genuine tokenised deposit should remain a bank deposit where the depositor's claim against the credit institution continues; DLT representation alone should not reclassify it as a MiCA crypto-asset.
- **Add a horizontal private-law layer.** IGBiNT proposes a directly applicable EU Digital Entitlement Regulation combining a functional regime for qualifying DLT records, minimum proprietary safeguards and a uniform conflict-of-laws rule.
- **Measure implementation outcomes.** The Commission and ESAs should publish comparable data on application completeness, decision times, withdrawals, refusals, costs, supervisory conditions and cross-border passport use.

1. Scope, classification and Title II

IGBiNT supports the continued sectoral allocation established by MiCA. Article 2 excludes financial instruments and deposits from MiCA, and ESMA's classification guidelines are designed to clarify the MiCA-MiFID boundary. The legal and economic rights created by an arrangement should remain decisive; the use of DLT is a recording and transfer technology, not a regulatory category in itself.

Classification remains materially difficult for hybrid tokens, wrapped assets, synthetic exposures, tokenised fund interests, tokenised money-market instruments, governance arrangements and assets marketed as NFTs but issued in series or otherwise economically interchangeable. The correct response is not to collapse the sectoral regimes into MiCA, but to make the classification process more operational and reusable.

IGBiNT therefore supports a common Union classification dossier and a "classification passport". A reasoned home-authority classification should record the relevant rights, linked arrangements, applicable sectoral regime and material-change triggers. Other authorities should be able to challenge that outcome through a defined ESMA/EBA coordination procedure rather than through unstructured, duplicative national reassessment.

Title II: targeted strengthening

The Title II architecture should be retained. The Article 8 notification model should not be transformed into general ex ante product approval. The priority is to improve the comparability and reusability of information: a concise key-information layer, structured data and versioned material updates are preferable to additional pages of disclosure.

Marketing rules should be strengthened where conduct materially impairs informed decision-making - for example undisclosed paid promotion, misleading influencer communications, artificial urgency or gamified promotion of highly speculative assets. This should remain risk-based rather than become a general advertising prohibition.

Investor protection also requires clearer treatment of post-issuance change, enforceable holder rights and the practical operation of civil liability. A white paper can disclose rights, but disclosure alone does not establish proprietary title, effective transfer, segregation or insolvency protection. Those questions require the separate private-law treatment discussed below.

2. ARTs, EMTs and stablecoin architecture

IGBiNT does not support replacing the stablecoin framework wholesale. The core safeguards - legally available reserve assets, credible redemption, segregation, audit, custody and governance - remain necessary. The EBA's 24 September 2026 response likewise describes the existing ART/EMT framework as broadly appropriate while identifying specific areas for review, including reserve-deposit requirements, classification and third-country multi-issuer schemes.

Prudential calibration should nevertheless distinguish ARTs, ordinary EMTs issued by electronic money institutions and significant EMTs. Reserve assets, issuer own funds and the holder's redemption claim perform different legal and prudential functions and should not be collapsed into one requirement.

For significant tokens, IGBiNT favours stronger liquidity management, stress testing, concentration controls and operational portability rather than an automatic increase in nominal reserve percentages. Fixed minimum bank-deposit requirements may themselves create concentration and interconnectedness risk. Any redesign should preserve full backing and redemption capacity while permitting equivalent or better same-currency liquidity through high-quality, short-dated and readily realisable assets where the legal framework allows it.

The distinction between ART and EMT redemption should remain clear: ART redemption is linked to the market value of the referenced assets under Article 39, while EMT holders have a claim at par under Article 49. The review should also refine significance criteria and address multi-issuer arrangements prospectively at Level 1 rather than by retroactive or purely interpretative expansion.

3. CASPs, proportionality and supervisory reuse

The CASP regime should remain a credible authorisation and market-conduct framework. Simplification should remove duplication and divergent practice, not substantive safeguards. IGBiNT would keep the Annex IV minimum capital amounts broadly unchanged for now, while making the overall prudential stance more risk-sensitive through targeted indicators and supervisory add-ons where custody, settlement, counterparty, leverage or concentration risk justifies them.

A wholesale import of the investment-firm K-factor regime is not warranted. Equivalent prudential safeguards already maintained under another Union framework should be recognised rather than double-counted. Governance and evidence should scale with the nature, size and complexity of the services actually provided.

For multi-function groups, IGBiNT supports group-level reporting and stronger ESA/NCA cooperation, but not automatic consolidated supervision or a new college for every group. A single group activities-and-risks map shared among relevant authorities, with a lead or coordinating authority for material cross-border or multi-function cases, would improve visibility without unnecessary institutional duplication.

Across MiCA, DORA, AML/CFT, the TFR and payment-services law, the operational objective should be “report once, use many times”. One authoritative record, one core evidential package and interoperable supervisory data should be reusable wherever the legal purpose is equivalent. DORA should remain the horizontal ICT and operational-resilience baseline, with MiCA adding only crypto-asset-specific requirements.

4. DeFi, staking, lending and NFTs

The DeFi perimeter should be functional and control-based. Recital 22 correctly recognises that services provided in a fully decentralised manner without an intermediary should fall outside MiCA, but labels such as “DAO”, “open source” or “permissionless” do not determine whether an identifiable intermediary exists. Relevant indicators include control of admin or upgrade keys, governance concentration, treasury control, fee capture, dominant interfaces, oracle or bridge selection, incident-response responsibility and continuing contractual commitments to users.

For regulated CASPs that actively select, recommend or integrate a DeFi protocol, obligations should increase with the CASP’s role. Neutral user-directed connectivity should attract baseline warnings and security controls; presentation or ranking should add selection and conflict disclosures; recommendation or active facilitation should trigger protocol due diligence and monitoring; integration or control should trigger responsibility for the CASP’s own regulated role. Certification may be useful evidence of assurance, but it should not become an exclusive access condition or a substitute for authorisation.

Crypto-asset lending and borrowing intermediation should be brought within a clear Level 1 framework. The EBA's 24 September 2026 response explicitly recommends considering regulation of crypto-asset lending, including CASP facilitation of access to decentralised lending protocols. Rules should address title or control transfer, counterparty structure, collateral and valuation, liquidation, rehypothecation, liquidity and concentration, disclosure of yield and cost, client protection and insolvency treatment.

Staking-as-a-service requires similarly specific treatment. Direct proprietary staking with a protocol should remain outside CASP authorisation where no intermediary provides a regulated service. Client-facing staking intermediation, by contrast, should address consent, custody status, validator selection, delegation chains, lock-up and unbonding, slashing, reward allocation, concentration, conflicts, exit and wind-down.

NFT treatment should remain substance-based. A separate NFT service regime is not justified merely because an asset is described as non-fungible. Classification should examine uniqueness, substitutability, interdependence, fractionalisation, standardised rights, marketing and the economic function of the arrangement.

5. Prediction markets, perpetual contracts and regulatory perimeter

Novel market structures should be classified by legal and economic function rather than by the presence of a token or smart contract. Where an event-linked or perpetual contract qualifies as a financial instrument or derivative, MiFID II and the related MiFIR, MAR and EMIR architecture should remain primary. Where a product is legally a bet, national gambling law may apply. MiCA should govern only separately qualifying crypto-assets or crypto-asset services.

For event contracts, key regulatory questions include the admission and description of the event, resolution source and dispute mechanism, manipulation and oracle risk, conflicts, collateral, retail product governance, market surveillance and redress. For perpetual contracts, equivalent attention is required for leverage, funding rates, liquidation and auto-deleveraging, index/oracle design, collateral title and reuse, 24/7 surveillance, operational resilience and wind-down.

6. Tokenised deposits and settlement

A genuine tokenised deposit should remain a deposit where tokenisation changes the record or transfer mechanism without creating a second independent asset. The decisive questions are whether the credit institution remains the debtor, whether the holder has the same direct deposit claim, whether the depositor is identifiable, whether repayment remains at par, and whether the DLT record is authoritative or reliably synchronised with the bank's legal books.

IGBiNT supports greater harmonisation of the concept of "deposit" at the CRD/CRR-MiCA boundary. MiCA expressly excludes deposits, but the legal classification should not depend on technical representation alone. Where a token is separately transferable after extinguishing or replacing the conventional deposit claim, a fresh classification analysis is required.

The strongest current use cases are wholesale: delivery-versus-payment and atomic settlement, intraday liquidity, treasury management and programmable settlement of tokenised financial instruments. Public settlement in central bank money and private tokenised money should be designed as interoperable parts of a two-tier monetary system rather than treated as mutually exclusive models.

7. Private-law certainty: digital entitlement and conflict of laws

MiCA compliance does not itself establish ownership, proprietary transfer or third-party effectiveness. The same technical arrangement can produce different private-law outcomes depending on national law. Poland, France and Germany illustrate different techniques: general civil-law treatment without a comprehensive token property regime, a sector-specific statutory bridge for qualifying DLT securities, and a register-based electronic-securities regime with a statutory property-law fiction.

IGBiNT therefore supports a modular horizontal solution rather than full harmonisation of Member State property law. The preferred architecture combines: (i) an optional functional regime for qualifying digital entitlements and DLT registers; (ii) mandatory minimum outcomes for third-party effects, custody, segregation, collateral, enforcement and intermediary insolvency; and (iii) a uniform EU conflict-of-laws rule for proprietary aspects of tokens.

IGBiNT refers to this proposed instrument as an "EU Digital Entitlement Regulation". This is an IGBiNT policy proposal, not an existing EU legal category. It should be a directly applicable Regulation rather than an attempt to turn MiCA or MiFID into a general code of property law.

For native tokens, a functional "digital entitlement" model is preferable: EU law should specify the legal consequences of a qualifying ledger entry, including entitlement, transfer, third-party effects, good-faith acquisition where appropriate, custody, collateral and enforcement. For non-native tokens, the token can operate as a legal carrier only where the law governing the underlying asset recognises the bridge. "Backing" alone should never be assumed to transfer ownership of the referenced asset.

The conflict-of-laws rule should use a hierarchy rather than physical technical location. IGBiNT's preferred order is: a clear law specified in the token or constituting instrument; the law specified by the relevant system; the law of a supervised qualifying register; then appropriate issuer-based connecting factors. Node, server, technology-provider or private-key location should not operate as primary connecting factors. Mandatory law governing the underlying asset, regulated system or insolvency must remain effective.

A standard token legal-architecture statement should make the structure discoverable: regulatory category; native/non-native status; holder rights and obligor; legal effect of ledger entries and transfers; applicable proprietary and underlying-asset law; custody and control model; segregation and insolvency; collateral; forks, wrapping, bridges and migrations; legal finality; and transfer restrictions. Material lifecycle changes should trigger reassessment.

8. Internal-market effectiveness and the Polish implementation case

The MiCA passport must have practical Union-wide effect. Article 65 is structured as a home-state notification procedure. A host Member State should not be able to reconstruct market access through a second substantive assessment, additional registration, duplicative fee or an equivalent condition not provided for by Union law. IGBiNT therefore supports an exhaustive Union framework for permissible

MiCA charges and an accelerated coordination mechanism where a national measure materially restricts the cross-border activity of a duly authorised CASP.

The Polish legislative process demonstrates a separate continuity risk. The Act of 15 May 2026 on the crypto-asset market was vetoed on 11 June 2026 and was not re-enacted by the Sejm on 4 September 2026. A new presidential draft, RPW/30028/2026, was submitted on 8 September 2026 and remained in the legislative process as at the date of this paper. The point is not to create an exception for Poland, but to address the Union-level consequence of a Member State failing to provide an operational institutional or procedural route to a MiCA decision.

IGBiNT proposes a temporary continuity mechanism triggered by objectively defined institutional failure. An applicant should be able to submit through a Union gateway or another designated competent authority, and a lawfully granted fallback authorisation should be recognised throughout the Union. The mechanism should be exceptional, temporary and limited to continuity of access to the Union authorisation framework.

The review should also harmonise minimum procedural safeguards for measures affecting online infrastructure under Article 94(1)(aa). Such measures should remain a last resort, be necessary and proportionate, identify the infringement and affected interface precisely, prefer a less intrusive effective measure where available, allow rapid judicial review and interim relief, and be reviewed periodically. Infrastructure powers should not function as a substitute host-state licensing regime.

9. Implementation outcomes, proportionality and evidence

A formally harmonised rulebook can still produce materially different market outcomes if application completeness, evidence requirements, processing times, supervisory conditions and fees vary substantially across Member States. The Commission and ESAs should therefore measure and publish implementation outcomes, not merely the existence of national procedures.

Comparable Union data should cover application completeness, processing and decision times, withdrawals, refusals, lawful fees, conditions attached to authorisations, supervisory findings and use of cross-border passporting. Those data would allow the Commission to identify whether friction reflects legitimate risk differentiation, avoidable duplication or divergent national practice.

Proportionality should operate through risk- and service-based evidence, staged permissions where appropriate, reuse of information and elimination of duplicate reporting. It should not weaken custody, AML/CFT, consumer protection or market-integrity safeguards. The objective is competitive neutrality: equivalent functions and risks should face equivalent requirements, without making the cost of navigation itself a barrier that favours only the largest incumbents.

Conclusion

MiCA should evolve from a largely closed taxonomy of token categories towards a coherent system of functional classification, activity-based obligations, effective mutual recognition and private-law certainty. The next stage of EU digital-asset law should ensure that an instrument is regulated according to the rights and risks it creates, that one valid authorisation and one reasoned classification work across the internal market, and that holding or transferring a token has predictable legal consequences.

Technological neutrality is not achieved by applying the same legal label to every DLT arrangement. It is achieved by regulating equivalent functions and risks equivalently while recognising legally material differences in rights, control, counterparties and institutional responsibility.

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