



Response to the European Commission Targeted Consultation on Regulation (EU) 2023/1114 (MiCA)

PART 1: SCOPE AND DEFINITIONS, TITLE II CRYPTO-ASSETS

Question 1

Should crypto-assets that qualify as financial instruments continue to be governed by sectoral legislation (MiFID/MiFIR/MAR/Prospectus etc.), or should all assets recorded on DLT be covered by MiCA?

☒ **Yes, they should remain under the main sectoral legislation.**

Question 1.1 Is the distinction between financial instruments governed by MiFID and crypto-assets governed by MiCA sufficiently clear, also taking into account ESMA's guidelines on the conditions and criteria for the qualification of crypto-assets as financial instruments?

☒ **No, clarification is needed.**

Please explain your answer and provide examples (5000 characters maximum):

The distinction between financial instruments governed by MiFID II and crypto-assets governed by MiCA should be preserved and is now broadly clear. The current regulatory framework appropriately reflects the principle that the use of distributed ledger technology does not, in itself, alter the legal nature of an asset.

The first phase of MiCA has therefore largely achieved one of its principal objectives by establishing a coherent boundary between financial instruments governed by the existing EU financial services acquis and crypto-assets falling within the scope of MiCA. The publication of ESMA's Guidelines under Article 2(5) has further reduced legal uncertainty regarding the classification of digital assets.

The next phase of market development is, however, unlikely to be characterized by the emergence of new categories of financial assets. Rather, it will be driven by the progressive integration of financial instruments, regulated digital settlement assets, payment systems and regulated financial services within common DLT-based market infrastructures.

Against this background, the principal source of legal uncertainty at the current stage of market development generally no longer concerns the classification of tokenized versions of existing financial instruments. Rather, it concerns the interaction between MiCA and the existing EU financial services acquis as regulated financial activities increasingly operate within integrated digital infrastructures. At the same time, more advanced forms of programmability and composability may in the future raise distinct questions where technological innovation affects not only the infrastructure through which existing financial

activities are performed, but also the economic or legal characteristics on which existing regulatory categories are based.

The review of MiCA should therefore primarily focus on facilitating the coherent application of the existing legislative framework within DLT-based market environments, while preserving sufficient flexibility to address genuinely new configurations as they emerge, rather than introducing a dedicated regulatory regime for tokenized investment funds as such.

Question 2 (5000 characters maximum)

To what extent have ESMA's MiCA Article 2(5) Guidelines and the ESA classification test reduced uncertainty? Which borderline cases remain difficult?

ESMA's Guidelines under Article 2(5) MiCA, together with the joint ESA classification test, have substantially reduced legal uncertainty regarding the boundary between crypto-assets governed by MiCA and financial instruments governed by the existing EU financial services acquis. Assogestioni considers that the core classification principle is now sufficiently clear: the legal qualification of an asset must depend on its substantive legal and economic characteristics, not on the technology used to issue, record or transfer it.

From the perspective of the asset management industry, the principal remaining issues are therefore generally not borderline classification cases. They concern the application and coordination of existing sectoral rules when regulated activities are performed within DLT-based infrastructures. In Assogestioni's view, the following interpretative principles should guide that coordination.

DLT-based fund registers. Where national law recognizes a DLT register as the legally relevant record for the issuance, transfer and exercise of rights attached to fund units, a UCITS management company or AIFM should be able to rely on that register for the purposes of maintaining the unit-holder register, without having to maintain a fully duplicative off-chain record. Where national law assigns specific statutory duties and responsibilities to a regulated register operator, its role should not automatically be characterized as a delegation of a fund administration function. The asset manager should, however, retain timely access to all relevant information and the powers and verification tools necessary to comply with its own obligations.

Regulated digital settlement assets. EMTs used exclusively for subscriptions, redemptions, settlement or other operational purposes should be treated according to that operational function rather than as investment exposures. Their temporary presence in a UCITS portfolio should therefore be permitted where it is strictly linked to settlement and they are converted or otherwise disposed of as soon as reasonably practicable. The same functional principle should permit a fund to hold a strictly limited amount of a native blockchain token where this is reasonably necessary to pay gas fees or otherwise access the relevant DLT infrastructure, without treating that holding as an investment strategy.

Digital assets held as investments. The technology used to represent an asset should neither expand nor restrict the UCITS eligible-assets universe. Eligibility should continue to depend on the legal and economic characteristics of the relevant asset and on the rules applicable to the particular type of fund. Indirect exposures should likewise be assessed on the basis of substance rather than form, so that tokenization cannot be used either to circumvent or inadvertently to narrow the existing investment framework.

Depository functions. A financial instrument should not cease to be capable of being held in custody merely because it is represented on DLT. Where the depository can exercise the degree of control over the instrument or its means of access that is functionally equivalent to custody in a traditional environment, including through cryptographic keys, wallets, multi-signature arrangements or other technical means, that control should be capable of constituting the technical means through which the custody function is performed. For MiCA-regulated crypto-assets, Assogestioni favours, where possible, a model in which the fund depository, if entitled under MiCA, also provides MiCA-regulated custody of crypto-assets, thereby preserving the unity of the safekeeping chain. An alternative model involving a separate CASP should remain possible, with the depository retaining its sector-specific ownership-verification and record-keeping duties and receiving all information necessary to perform them effectively.

Integrated digital operating models. The emergence of infrastructures in which fund units, portfolio assets, regulated digital settlement assets and operational processes coexist should not, in itself, require a new regulatory category or a separate regime for digital funds. Existing UCITS, AIFMD, MiCA and other sectoral functions should continue to apply according to their respective purposes, with targeted adaptations to the manner in which obligations are performed and without unnecessary duplication of records, controls or supervisory layers.

This approach reflects a technology-neutral but not technology-indifferent application of the existing EU financial services acquis: technology should not alter the legal nature of an asset or the allocation of regulated responsibilities, but its operational characteristics must be taken into account where necessary to ensure that existing rules remain effective and proportionate in a DLT environment.

Question 7 (5000 characters maximum)

Which specific categories remain most difficult to classify in practice? (e.g. hybrid tokens, wrapped assets, tokenized fund interests, tokenized money-market instruments, governance tokens, synthetic exposures, or assets marketed as NFTs but issued in series)?

Following the adoption of MiCA and the publication of ESMA's Guidelines under Article 2(5), Assogestioni considers that very few categories of digital assets remain genuinely difficult to classify. The combination of MiCA and ESMA's interpretative guidance has substantially reduced legal uncertainty by confirming that the legal qualification of an asset depends on its legal characteristics and economic function rather than on the technology used to issue, record or transfer it.



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Accordingly, tokenized fund units, tokenized money market instruments and other tokenized financial instruments should not be regarded as borderline cases. Their legal qualification should continue to be determined under the existing EU financial services acquis irrespective of whether they are issued, recorded or transferred through distributed ledger technology.

From the perspective of the asset management industry, the remaining challenges are therefore primarily functional rather than classificatory where DLT is used to issue, record or transfer existing financial instruments. They arise where financial instruments, regulated digital settlement assets, payment services and regulated market infrastructures increasingly operate within common DLT-based environments.

This does not exclude the possibility that more advanced forms of programmability and composability may raise new classification questions where technology enables the separation and autonomous circulation of economic rights or the creation of new combinations of rights and exposures that do not correspond to existing financial instruments in their traditional form. Such cases should be assessed on the basis of their substantive legal and economic characteristics.

The review of MiCA should therefore concentrate on promoting regulatory consistency through targeted interpretative guidance and supervisory convergence, while preserving the existing distinction between financial instruments and crypto-assets and avoiding the creation of new regulatory categories merely because an existing financial product is issued or operated through DLT.

PART 2: REQUIREMENTS APPLYING TO ASSETS REFERENCED TOKENS (ART) AND ELECTRONIC MONEY TOKENS (EMT) AND THEIR ISSUERS (MICA TITLES III AND IV)

Question 9

Looking 5–10 years ahead, how strongly do you agree with the following visions for the role of stablecoins in the EU?

Vision	Proposed score
Retail payments	5
Wholesale payments	3
Cross-border payments	5
Core infrastructure for tokenized financial markets	5
Transitional product replaced by CBDC	2
No long-term role	1

Please explain your answers to question 9 (5000 characters maximum):

Assogestioni considers that the long-term importance of regulated stablecoins extends well beyond their use as alternative means of payment. From the perspective of the asset management industry, their greatest potential lies in providing the digital settlement leg required for the development of regulated tokenized financial markets.

The most relevant category is represented by MiCA-regulated electronic money tokens (EMTs). As fund units, bonds, equities and other financial instruments are progressively issued, transferred and settled on DLT, efficient delivery-versus-payment and, where technically possible, atomic settlement require regulated digital settlement assets capable of operating within the same technological environment.

In Assogestioni's view, EMTs used exclusively for subscriptions, redemptions, securities settlement, treasury operations or other operational purposes should be treated according to that function. Their temporary presence in a UCITS portfolio should not be treated in the same manner as an investment exposure where the EMT is held only for the time reasonably necessary to complete the relevant transaction and is then converted or otherwise disposed of. EU guidance should establish this common substantive principle irrespective of differences in the technical legal basis used to accommodate such temporary holdings.

This functional distinction is important because rules designed to determine the investment exposure of a fund should not indirectly prevent the use of regulated digital money for operational settlement. The same logic supports the development of integrated workflows in which tokenized fund units, portfolio assets and regulated digital money can interact within interoperable infrastructures.

Over time, EMTs are likely to coexist with tokenized commercial bank deposits and, where introduced, central bank digital currencies. These forms of regulated digital money should



be regarded as complementary rather than mutually exclusive. EU policy should therefore priorities interoperability, legal certainty and consistent treatment of regulated digital settlement assets across sectoral frameworks.

Accordingly, Assogestioni assigns the highest importance to wholesale payments, cross-border payments and the role of regulated stablecoins as core infrastructures for tokenised financial markets. Their value is primarily infrastructural: they can connect regulated investment products and services within a digital market environment while preserving the existing allocation of regulatory responsibilities.

Question 10

The following question explores the current and potential benefits of stablecoins (both EMTs and ARTs) for different use cases. For each use case below, please indicate how beneficial stablecoins would be for EU users:

Proposed scores

Use case	Score
International payments	5
Intra-EU payments	4
Crypto trading	3
Retail P2P	2
Merchant payments	4
B2B payments	4
Wholesale payments	3
Settlement of tokenised securities	5
Corporate treasury	5
DeFi	2
Financial inclusion	2

Please explain shortly your assessment and expectations in question 10 as regards the benefits of stablecoins for EU users and, where relevant, any potential risks: (5000 characters maximum):

From the perspective of the asset management industry, the highest scores have been attributed to use cases in which regulated digital settlement assets can generate concrete efficiencies in regulated financial markets. Wholesale payments, cross-border transactions, corporate treasury and the settlement of tokenized securities have the greatest potential to improve the functioning and integration of European capital markets.

These use cases can support faster and more efficient delivery-versus-payment mechanisms, reduce settlement and counterparty risk and facilitate automated post-trade processes. Their benefits become more significant as investment funds, bonds and other

financial instruments are increasingly issued and transferred through DLT-based infrastructures.

Assogestioni considers that the regulatory treatment of EMTs should distinguish clearly between investment holdings and purely operational use. Where an EMT is used solely to settle subscriptions, redemptions, portfolio transactions or other fund operations, and is held only for the period reasonably necessary to complete that process, the temporary holding should not be treated as an investment exposure. This functional approach would allow UCITS to benefit from digital settlement without altering the substantive limits of the eligible-asset framework.

The same principle should apply to other assets that are technically necessary to operate on DLT. In particular, a fund should be able to hold a strictly limited amount of a native blockchain token where reasonably necessary to pay gas fees or access the relevant infrastructure, and necessary transaction fees should be capable of being borne by the fund subject to the ordinary requirements concerning proper cost allocation and fair treatment of investors.

Tokenized investment fund units may themselves become an important component of digital liquidity and collateral ecosystems. Highly liquid tokenized money market fund units may, where the applicable legal and risk-management requirements are satisfied, be used directly as collateral in DLT-based transactions, potentially reducing the need to redeem fund units solely to generate cash for margin or settlement purposes.

Lower scores have been attributed to retail peer-to-peer payments, financial inclusion and DeFi because these use cases are less directly relevant to regulated investment funds. Crypto trading and merchant payments have received intermediate scores for the same reason: they are unlikely to be the principal drivers of adoption of regulated digital settlement assets by the asset management sector.

Over the longer term, EU policy should facilitate interoperability among EMTs, tokenized commercial bank deposits and central bank money, while ensuring that rules designed for investment exposure do not unnecessarily constrain assets used solely to enable regulated fund operations.

PART 3: THE APPROPRIATENESS OF THE LEGAL FRAMEWORK FOR CRYPTO-ASSET SERVICE PROVIDERS (CASPS)

Question 51

Should the current approach be maintained or should there be enhanced oversight and coordination in relation to entities that in addition to providing crypto-asset services, offer (1) other unregulated services or (2) other types of regulated services, (3) a combination of crypto-asset services?

☒ **The existing approach should be maintained**

☐ **There should be enhanced oversight and coordination in relation to such entities**

☐ **Don't know / no opinion / not applicable**

Please explain your answer to question 51 (5000 characters maximum):

Assogestioni supports maintaining the current supervisory approach. The provision of crypto-asset services by entities already authorized under existing EU financial services legislation does not, in itself, justify additional supervisory layers or new coordination structures. The priority should be the coherent application of MiCA alongside the sector-specific frameworks that continue to govern the regulated entity's other activities.

From the perspective of the asset management industry, the relevant principle should be that the integration of different regulated functions within the same digital operating environment does not alter their legal nature or the allocation of responsibilities established by MiFID II, UCITS, AIFMD or MiCA. At the same time, overlapping requirements should not result in duplicative controls or organizational arrangements where they do not provide additional investor protection.

This is particularly important for the interaction between the UCITS/AIFMD depositary regime and MiCA custody. In Assogestioni's view, where a fund invests in MiCA-regulated crypto-assets and its depositary is entitled under MiCA to provide custody and administration of crypto-assets, the depositary should be able to perform MiCA custody itself. This solution should be facilitated where possible, because it preserves the unity of the safekeeping chain and avoids unnecessary fragmentation.

Where the same entity performs both functions, the MiCA custody service and the depositary's sector-specific duties should remain legally identifiable and subject to their respective requirements and liability regimes. Legal and operational distinction should not, however, be interpreted as requiring duplicative organizational arrangements where the same controls, systems or information can serve both regimes without impairing the independent performance of the depositary function.

An alternative configuration should remain possible where MiCA-regulated crypto-assets are treated as other assets for UCITS/AIFMD purposes and custody is entrusted to a separate authorized CASP. In that case, the management company or the fund should be able to appoint the CASP directly, while the depositary retains ownership-verification and record-keeping duties and receives, without undue delay, all information necessary to perform those duties effectively.

More generally, where a regulated service involves both financial instruments and crypto-assets, or where several regulated functions are performed through a common DLT infrastructure, the applicable rules should continue to follow the legal nature of each service. The use of a common technological infrastructure should not, by itself, create a new regulated activity, transform one regulated function into another or trigger an additional supervisory layer.

Assogestioni therefore considers that the appropriate response to regulatory overlap is targeted interpretative guidance, supervisory convergence and proportionality rather than enhanced oversight structures. This would preserve the existing EU financial services



architecture while enabling regulated entities to operate efficiently across integrated digital infrastructures.

PART 4: POLICY AREAS BEYOND THE CURRENT SCOPE OF MICA

4.6. Legal treatment of tokens

Question 80. Is there legal uncertainty as to the private law treatment of issuance, holding and transfers of tokens, under national law?

☐ Yes

☒ No

Please explain your answer to question 80 (5000 characters maximum):

In Italy, the FinTech Decree (Decree-Law No. 25 of 17 March 2023, converted into Law No. 52 of 10 May 2023) allows for the issuance of digital financial instruments, namely in the form of data representations recorded in a "register" based on distributed ledger technology (DLT). The FinTech Decree lays down a number of requirements that constitute the preconditions for a DLT-based register to support the new regime governing the issuance and transfer of digital financial instruments. These requirements are intended, inter alia, to ensure effects equivalent to the non-reproducibility of the instrument and the exclusivity of possession. Furthermore, the Decree contributes to the establishment of a clear and certain regulatory framework by recognising that entries recorded in authorised DLT registers produce legally effective consequences for the exercise and transfer of rights relating to financial instruments.

Question 81. Would you recommend increasing the legal certainty in the treatment of tokens through EU law?

☒ Yes

☐ No

Question 81.1. What are the 3 most important elements that should be addressed in EU law?

Please explain your answer and provide examples:

Most important element number 1 (5000 characters maximum):

Legal recognition of DLT-based registers for tokenized financial instruments

In Assogestioni's view, where national law recognises a DLT register as the legally relevant record for the issuance, transfer and exercise of rights attached to fund units, the UCITS and AIFMD frameworks should allow the management company to rely on the information

recorded on that register for the purposes of maintaining the unit-holder register, without requiring a fully duplicative off-chain record.

This follows from the fact that UCITS and AIFMD identify the maintenance of the unit-holder register as an administration function but do not prescribe the technological or legal form of the infrastructure through which ownership and entitlement must be recorded. Requiring a second record containing the same information would therefore appear unnecessary where the DLT register is legally recognised, reliable and accessible to the management company and the other relevant regulated entities.

Similarly, where national law assigns specific statutory duties and responsibilities to a regulated entity responsible for operating the DLT register, that entity's role should not automatically be characterised as a delegation of the management company's fund administration function. The more appropriate approach is to distinguish the obligations arising directly under the national regime governing the legally recognised infrastructure from the obligations that UCITS or AIFMD continue to impose on the asset manager.

The management company should remain responsible for the obligations attributable to it under the collective investment framework and should retain timely access to all relevant information, together with the powers and verification tools necessary to perform those obligations effectively. The register operator should remain responsible for the functions and liabilities that national law assigns directly to it.

This approach is consistent with technology neutrality and with the logic already familiar in legally recognised book-entry systems: reliance on an infrastructure to which the law attributes legal effects does not, by itself, amount to delegation of the regulated user's own functions. EU clarification along these lines would avoid unnecessary duplication while preserving clear accountability.

Most important element number 2 (5000 characters maximum):

Regulatory treatment of operational digital settlement assets in tokenized investment funds

In Assogestioni's view, regulated digital settlement assets used exclusively to support fund operations should be treated according to their operational function rather than in the same manner as assets acquired to obtain investment exposure.

This principle is particularly relevant to MiCA-regulated EMTs used for subscriptions, redemptions, portfolio settlement, treasury operations or other DLT-based processes. Where an EMT is held only for the period reasonably necessary to complete the relevant transaction and is then converted or otherwise disposed of, its temporary presence in a UCITS portfolio should be permitted without treating it as an investment position. EU guidance should focus on this common substantive outcome, even if different legal characterisations may be used to accommodate such temporary holdings under the existing framework.

A similar functional approach should apply to native blockchain tokens required to operate a DLT infrastructure. A fund should be able to acquire and hold such a token where, and only to the extent that, this is reasonably necessary to pay gas fees or perform legitimate on-chain operations. A reasonable de minimis balance should also be permissible where necessary to avoid repeated acquisitions and disposals. Such holdings should not be regarded as an investment strategy where no investment exposure is sought.

Necessary DLT transaction fees should likewise be capable of being borne by the fund, subject to the ordinary requirements concerning proper allocation of costs, best interests and fair treatment of investors.

The broader principle is that rules designed to determine the eligible investments and economic exposures of a fund should not inadvertently restrict the technological infrastructure through which otherwise lawful fund operations may be performed. Clarification on this basis would support interoperable digital market infrastructures without expanding the substantive investment powers of UCITS.

Most important element number 3 (5000 characters maximum)

Application of the UCITS and AIFMD depositary function to tokenized assets

The core functions of the depositary - safekeeping, oversight and cash-flow monitoring - remain fully applicable irrespective of the technology used to issue, hold or transfer fund assets. In Assogestioni's view, however, their application in a DLT environment should follow a functional rather than a formal approach.

A financial instrument represented on DLT should not, merely for that reason, cease to be regarded as capable of being held in custody for UCITS/AIFMD purposes. Where control over the instrument is exercised through cryptographic keys, digital wallets, multi-signature arrangements, multi-party computation or other technological means of access, such control should be capable of constituting the technical means through which the depositary performs its custody function, provided that the applicable requirements concerning control, segregation, record-keeping and protection against loss are satisfied.

EU guidance should therefore confirm that the distinction between financial instruments capable of being held in custody and other assets does not depend solely on whether the instrument can be physically delivered or credited to a conventional securities account in the depositary's books. The relevant question should be whether the depositary can exercise a degree of control over the DLT financial instrument or its means of access that is functionally equivalent to custody in a traditional environment. This clarification is particularly important because the classification determines the applicable liability regime, including the depositary's restitution obligation.

The same approach should guide the interaction between the UCITS/AIFMD safekeeping regime and the MiCA service of custody and administration of crypto-assets. Where a fund invests in MiCA-regulated crypto-assets and the depositary is entitled under MiCA to provide that service, Assogestioni considers that the depositary should be able to perform the MiCA-regulated custody itself. This solution should be facilitated where possible



because it preserves the unity of the safekeeping function and avoids unnecessary fragmentation of the custody chain.

At the same time, EU guidance should clarify the alternative configuration in which MiCA-regulated crypto-assets are treated as other assets for UCITS/AIFMD purposes and their MiCA custody is entrusted to a separate authorised CASP. In that case, the management company or the fund should be able to appoint the CASP directly, while the depositary retains ownership-verification and record-keeping duties and receives, without undue delay, all information necessary to perform them effectively.

Where the same entity acts both as fund depositary and MiCA custodian, the two regulatory functions and their respective liability regimes should remain clearly identifiable. This should not, however, require duplicative operational arrangements where common systems or controls can support both functions without impairing the depositary's independent performance of its sector-specific duties.

Similar functional guidance would be useful for cash-flow monitoring where regulated digital settlement assets are used in subscriptions, redemptions and settlement, and for the use of smart contracts or other automated processes to support oversight. In each case, technology should change the manner in which the relevant function is performed, not the allocation of responsibility established by UCITS and AIFMD.

Question 81.2 If you believe there is a lack of legal certainty regarding tokens, can legal certainty (ownership or entitlement, transfer and enforceability of rights recorded as tokens) be achieved under EU law in one of the following manners?

Rank the below possible measures from 1 to 5.

- 1. Strongly disagree**
- 2. Rather disagree**
- 3. Neutral**
- 4. Rather agree**
- 5. Strongly agree**

	1	2	3	4	5
Implementation of a 28th regime recognising legal effects of DLT registers holding tokens, including good-faith acquisition rules and	☐	☐	☐	☒	☐



rules on opposability/enforceability to third parties (erga omnes effects)					
Full harmonisation of private law treatment of tokens in Member States	☐	☒	☐	☐	☐
Partial harmonisation of private law treatment of tokens in Member States	☐	☐	☐	☐	☒
Introducing a conflict of law regime for tokens under EU law	☒	☐	☐	☐	☐
Other model	☒	☐	☐	☐	☐

Please explain your answers to question 81.2 and provide examples, in particular from national law. Where you favour full or partial harmonisation or the introduction of a conflict of laws regime, please specify which legal instrument would be most appropriate for that purpose (a new Regulation or the use of existing regimes, such as MiFID or MiCA). Also consider if there are risks with establishing an ownership regime at EU level and how these risks could be mitigated (5000 characters maximum):

Assogestioni considers that greater legal certainty regarding the private law treatment of tokens should be achieved through a limited and function-based harmonization of the legal effects of authorized DLT registrations, rather than through a comprehensive harmonization of national property law or the introduction of a new European concept of digital ownership.

The current EU regulatory framework already provides a high degree of legal certainty regarding the regulatory classification of tokenized financial instruments. Greater uncertainty remains, however, regarding the legal effects attributed to DLT-based registrations under the private laws of the Member States.

While several Member States, including Italy, have introduced legislation recognizing the legal effectiveness of authorized DLT registers for the issuance and transfer of financial

instruments, other jurisdictions continue to rely on legal concepts developed for traditional intermediated securities. As a result, the legal consequences of DLT registrations may differ across Member States, particularly in relation to investor identification, transfers, protection of good-faith acquirers, enforceability against third parties and the recognition of rights recorded on distributed ledgers.

Rather than harmonizing national property law or introducing a uniform concept of digital ownership, EU legislation should therefore establish common principles governing the legal effects of authorized DLT registrations, while preserving the diversity of national private law systems. A functional approach appears particularly well suited to the European Union, where different traditions of property and securities law coexist.

The Italian FinTech Decree demonstrates that legal certainty can be achieved without redefining proprietary concepts. Instead of creating a new category of digital property, it recognizes that entries made in authorized DLT registers produce legally effective consequences for the exercise and transfer of rights relating to financial instruments. This functional approach could provide a useful reference for future European legislation.

Against this background, an optional 28th regime could provide an appropriate legislative technique for implementing such limited harmonization, provided that it operates as a common framework for the legal effects of DLT registrations rather than as an alternative regulatory regime for the underlying financial instruments. Such a regime could therefore operate alongside national legal regimes.

In particular, the scope of such a regime should also encompass units or shares of collective investment undertakings. Their exclusion would limit the usefulness of the framework for an important use case of tokenization and could preserve legal fragmentation precisely where DLT may generate significant efficiencies in a cross-border context.

This is particularly relevant for UCITS. A tokenized UCITS should remain fully subject to the UCITS Directive, including the rules governing the management company, depositary, investor protection and cross-border marketing. However, the existing UCITS passport could be complemented by a common European framework governing the legal effects of DLT-based registration and transfer of UCITS units or shares.

Without such a common framework, a UCITS distributed across several Member States could remain exposed to different national rules concerning the identification of the person entitled to exercise the rights attached to the units, the effectiveness of transfers recorded on DLT, the protection of good-faith acquirers and enforceability against third parties.

An optional 28th regime could therefore operate as a common European DLT layer, without creating a new category of investment fund or interfering with the allocation of responsibilities established under UCITS and AIFMD.

Accordingly, whether implemented through such an optional regime or another targeted EU instrument, it would be important to achieve a partial harmonization of the aspects that give rise to the most significant frictions, based on common EU principles addressing:

- the identification of the person entitled to exercise the rights attached to tokenised financial instruments, including units or shares of collective investment undertakings;
- the legal effectiveness of transfers recorded in authorised DLT registers;
- the protection of good-faith acquirers;
- the enforceability of rights recorded in authorised DLT registers against third parties; and
- the cross-border recognition of those legal effects.

Such an approach would reduce legal uncertainty and facilitate the cross-border issuance, distribution, transfer and servicing of tokenised financial instruments and investment fund units, while preserving the existing MiFID II, UCITS and AIFMD frameworks and respecting the diversity of Member States' private law systems.

Question 82. There are different “ownership models” that could be used to increase legal certainty over tokens. Please indicate maximum two models listed below that you think EU law could apply if it were to improve the legal certainty of tokens in the EU (Maximum 2 selections):

Ownership model	
Model 1: The token is the asset by law, the law recognises a ledger-based asset and the ownership rights are constituted directly by the ledger entry.	☐
Model 2: The token is the asset by law, where the law recognises that e.g. securities (dematerialised or physical) can be replaced by an entry into a DLT register and by this “replacing” (immobilisation) of the securities the function of the initial security is substituted by entry into a DLT register and the ownership rights are constituted by the representation on the ledger.	☐
Model 3: Token is the asset by law. In this case the law does not actively regulate legal aspects such as what property is or how transfer of ownership occurs, etc. but instructs on the legal consequences of entries in a DLT register (this is often called a functional approach). The law could at EU level stipulate who may exercise rights, i.e. the person recorded in the DLT register as holder of a tokenised asset, that these rights have full third-party effect and protects from competing claims. This also creates legal certainty for collateral use. The EU law would create a uniform rule of “digital entitlement” that functions across all Member States' property law structures.	☒
Model 4: The token is the legal carrier of rights associated with a related (often off-chain) asset. The law defines tokens as legal objects that do not create new rights, but can –like a “container” –represent various kinds of rights, such as membership rights, ownership, intellectual property rights, usage rights or rights of lien, etc.. The token would represent	☐



the rights stemming from the underlying assets and the law would ensure that the transfer of a token on the ledger legally transfers ownership of the rights stemming from the underlying asset.	
Model 5: Any other legal ownership structures, for example based on the approaches taken by different countries, including France, Germany, Luxembourg or adopted in other jurisdictions or internationally, that could be implemented in EU law.	☐

Please explain your answer and provide examples, and in answering the question, please answer the following sub-questions (5000 characters maximum):

- a) What would be the legal interoperability of any such EU level measure with national private laws of Member States, or at least laws of the Member State that you are familiar with?**
- b) Is it preferable to establish constitutive rules of ownership based on the asset being recorded on chain or functional rules regulating the effects of recording an asset on chain?**
- c) Are the different ownership models better suited for native or non-native tokens?**
- d) Can the same ownership model be implemented for all types of tokens (crypto-assets and DLT financial instruments) and if not, what would need to be different depending on the type of the token?**

Assogestioni supports a functional approach based on the legal effects of authorized DLT registrations rather than the introduction of a harmonized European concept of digital ownership. Such an approach would provide greater legal certainty while preserving the diversity of Member States' property law systems.

The existing EU regulatory framework already provides a high degree of certainty regarding the regulatory classification of tokenized financial instruments. MiFID II, the DLT Pilot Regulation and ESMA's Guidelines under Article 2(5) MiCA consistently confirm that the use of distributed ledger technology does not alter the legal nature of a financial instrument. The remaining uncertainty concerns not the regulatory qualification of tokenized assets, but the private law effects of their issuance, holding and transfer under the laws of the Member States.

Several Member States have already introduced legislation recognizing the legal effectiveness of authorized DLT registers. However, significant differences remain regarding the legal consequences attached to DLT registrations, particularly in relation to investor identification, the transfer of rights, enforceability against third parties and the protection of good-faith acquirers. These differences may create unnecessary legal uncertainty in cross-border transactions involving tokenized financial instruments and investment funds.

Rather than harmonizing national property law or establishing a uniform European concept of digital ownership, EU legislation should define the legal effects that Member States



should recognize where financial instruments are recorded in authorized DLT registers. A functional approach would allow common legal outcomes to be achieved while preserving the diversity of national property law systems.

The Italian FinTech Decree provides a useful example of this approach. Rather than redefining proprietary concepts, it recognizes the legal effectiveness of authorized DLT registrations for the exercise and transfer of rights relating to financial instruments. Similar functional solutions could be adopted at European level without requiring comprehensive harmonization of national civil law.

Accordingly, EU legislation could establish common principles concerning:

- the identification of the person entitled to exercise the rights attached to tokenized financial instruments;
- the legal effectiveness of transfers recorded in authorized DLT registers;
- the enforceability of rights recorded in authorized DLT registers against third parties;
- the protection of good-faith acquirers; and
- the mutual recognition across Member States of the legal effects produced by authorized DLT registrations.

Such an approach would significantly reduce legal uncertainty, facilitate the cross-border circulation of tokenized financial instruments and investment funds, strengthen the integration of European digital capital markets and preserve the technology-neutral and function-based approach that characterizes the existing EU financial services acquis.