

# Blockchain Ecosystem's Response to MiCA Regulation Proposal

**SURVEY & STAKEHOLDERS' ENGAGEMENT SESSIONS**

MiCA Task Force — INATBA



International Association for  
Trusted Blockchain Applications

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## Introduction

On 24 September 2020, the European Commission introduced the Markets in Crypto-assets Regulation Proposal (hereinafter MiCA), and thus took an unprecedented step towards the legitimisation of the new asset class, crypto-assets.<sup>1</sup> MiCA represents a comprehensive and ambitious regulatory initiative, which establishes the formal status of crypto-assets, creates disclosure and compliance regimes of many crypto-asset issuers and service-providers, and aims to prevent illicit activities connected to crypto-asset issuance, custody and trading. The blockchain community expressed its overwhelming support for a regulatory framework that infuses a sense of legal certainty and validation to an ecosystem that since its inception operated, to a large extent, in the regulatory grey areas. Nevertheless, after the initial analysis of its full legislative text, it became clear that some aspects of MiCA may not be sufficiently tailored to the nature of crypto-assets or the operation of the service providers in the crypto industry. INATBA, backed by its extensive membership base, was one of the first industry representatives that reflected on the positives and shortcomings of MiCA in its “Initial Response to the European Commission’s MiCA regulation”.<sup>2</sup>

In its first commentary, INATBA emphasised that some of the provisions of the regulation may be contradictory to its inherent objectives. For instance, rather extensive disclosure and compliance regimes may overburden emerging innovative companies and provide a disproportionate advantage to incumbents. Furthermore, INATBA pinpointed that the principle of technology neutrality declared as one of the objectives does not always materialise in the provisions of the regulation or its implications. The regulation also adopts a traditional entity-centric allocation of liabilities, which may come in stride with purely decentralised protocols and applications, for instance in the DeFi industry. After the initial response, INATBA decided to take further steps to provide a more comprehensive and inclusive platform, where INATBA members and non-members would provide feedback on the proposed regulatory framework and thus enable continuous discussion not only with the regulator, but also within the ecosystem.

<sup>1</sup> Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in Crypto-assets, and amending Directive (EU) 2019/1937/COM/2020/593 final.

<sup>2</sup> INATBA, ‘INATBA’s Initial Response to European Commission’s MiCA Regulation’ (25 September 2020), <https://inatba.org/news/inatbas-initial-response-to-european-commissions-mica-regulation> (accessed 24 January 2021).



## About MiCA Task Force

The MiCA Task Force was created as an ad-hoc initiative to collect and process the ecosystem-wide response to the MiCA Regulation proposal. To realise its objectives, MiCA Task Force created several opportunities for ecosystem stakeholders to comment on the strengths and weaknesses of the proposed regulation.

The objectives of the MiCA Task Force are (i) to provide a platform for voices in the blockchain ecosystem to be heard, (ii) to evaluate and gather feedback on the proposed regulations, (iii) to present community feedback to EU member states, the European Commission, and European Parliament and (iv) to leverage INATBA's platform to ensure feedback reaches decision-makers.

## Authors and Contributors

The authors and contributors of this report are members of INATBA's Academic Advisory Board.

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## Objectives of the Stakeholders' Engagement

Although this regulatory initiative included the public consultation and intensive knowledge exchange between the European Commission and ecosystem stakeholders, INATBA believes that the interaction between policymakers and industry representatives should continue throughout the whole regulatory process. The period between the publication of the proposal and the enactment of the regulation is estimated to be three years.<sup>3</sup> Within this time, many aspects of the blockchain (and DLT) ecosystem may change, the rather nascent technology may further evolve in unexpected ways and novel business models may emerge. MiCA Regulation will face the difficult task of balancing its protectionist objectives (particularly consumers' protection, protection of the financial stability) and innovation-enabling objectives against the expected rapid expansion of the blockchain ecosystem.<sup>4</sup> We contend that uninterrupted dialogue, particularly among the representatives of the quadruple helix (industry, universities, regulators, and civil society) is essential in keeping MiCA relevant at the time of its enactment and entry into force. The main objectives of the stakeholders' engagement encapsulated in this study were to:

- Compile the initial industry-wide response to MiCA;
- Compare the responses to the points mentioned in the INATBA's initial response to MiCA;
- Observe the level of regulatory awareness of the respondents;
- Collect quantitative evidence and measure the frequency of positive and negative opinions on particular aspects of MiCA; and
- Collect qualitative evidence through direct engagement with stakeholders.

<sup>3</sup> It is estimated that if the current course of legislative procedure continues without hindrances, MiCA could enter into force at the beginning of 2024.

<sup>4</sup> For the purposes of this report we will use blockchain and DLT technologies as interchangeable terms.



## Methodology

To achieve the objectives of the task force, we decided to employ two different methods, namely a survey and a series of stakeholders' engagement sessions. The two methods are complementary as they enabled us to quantify the views of the stakeholders on the prepared questions and statements, while also providing us with more in-depth comments and argumentation which underlined the context of the expressed opinions. The survey consisted of 35 questions and was divided into four parts, namely (i) the profile of the respondents, (ii) their regulatory awareness, (iii) a number of questions related to selected MiCA's provisions (and definitions), and (iv) statements related to MiCA's impact on the ecosystem. The survey was promoted through INATBA's network of members, partners, and social media for several weeks. In the given time, we recorded 44 sufficiently-completed answers that could be used for the research.<sup>5</sup> Besides the survey, we organised two stakeholders' engagement sessions on 9 and 10 December 2020. We invited the parties that previously showed interest to participate in MiCA-related research and activities and further promoted the sessions with INATBA's network. Dr. Ivona Skultetyova conducted the sessions with two objectives: (i) to collect the feedback on selected MiCA-related statements (primarily statements related to MiCA's impact identical to the third part of the survey) and (ii) to gather more elaborate views of the participants on these statements. The interactive nature of the sessions facilitated a vivid discussion among the participants that further enhanced the quality of the feedback. In total, 21 stakeholders attended the stakeholder engagement sessions.<sup>6</sup> In the last step, we combined the results of the survey and the engagement sessions to provide an integrated research outcome.<sup>7</sup> In Annex 1, you can find the overview of the number of respondents per question.

It is important to note that a wide range of stakeholders could participate in the study, including industry associations, non-profits, think-tanks, DLT companies (including startups and larger corporations), with interest or ongoing projects in the blockchain area, government agencies and also regular citizens. In that way, we were able to give a voice not only to the private (commercial) sector but to a broader public that participates and plays a role in the DLT ecosystem.

<sup>5</sup> According to our survey software, more than 70 stakeholders previewed the survey, but we decided to eliminate those answers that were not sufficiently complete. E.g. those that did not provide answers to any of the material parts of the survey, for instance they filled in their profile information but did not continue further with the survey.

<sup>6</sup> Some of the respondents kindly agreed to be mentioned in the report. You can find the overview of the respondents at the end of the report in List of the respondents/participants.

<sup>7</sup> Obviously, the scope of the survey and engagement sessions was different. In essence, the stakeholder engagement sessions set forth a selected number of statements from the survey (mostly related to MiCA's impact) whilst the survey respondents had to answer a broader set of questions and provide much more detailed information about their profile. In Annex 1, we provide a transparent overview of questions, where we indicate results from the survey and stakeholders' engagement sessions, completed with a number of responses per question.





## Limitations of the Study

In this study, we utilised more than one method of data collection and provided significant space for stakeholders to voice their opinions, approval, and concerns related to the MiCA Regulation proposal. The study had limitations, some of which we were aware of in advance; others became apparent during the research. Naturally, MiCA is currently in the proposal stage and the ecosystem stakeholders may not be able to foresee or observe all potential implications that may occur upon its implementation. At the time we conducted this study, there were not many sources providing a systemic overview of the Regulation proposal and its potential implications. Therefore, the overall awareness might have been subjectively rather high, but objectively rather low. Consequently, it may have been rather difficult for all stakeholders to capture the breadth of MiCA's implications and impact, especially for those without a legal or regulatory background. Secondly, the study suffers from so-called non-response bias. The survey and the stakeholder engagement sessions were able to capture opinions of a self-selected group of respondents that decided to engage with the MiCA Task Force, which means that we cannot ascertain whether our respondents form a sufficiently representative sample corresponding with the heterogeneity of the blockchain ecosystem. Furthermore, especially in the survey, some participants did not complete all the questions, they skipped some of the questions or did not continue filling them in. We can only speculate about the reasons why the respondents did not fully answer the survey. One of the reasons may be the relative complexity of the topic. Throughout the research, we noticed that many stakeholders are interested in MiCA, but their objective was to gain more information about MiCA rather than express informed opinions on its content. Unfortunately, the scope of this research did not include activities purely focused on awareness-raising in the blockchain community. Last, but not least, the number of respondents/participants was rather low, however, this is not extraordinary for the survey method.

Despite the limitations of the study, we believe that, to date, it presents the most comprehensive and detailed study that gauges the sentiment of the blockchain ecosystem toward the MiCA Regulation proposal.





## Profiles of the Stakeholders

In the first part of the survey, we focused on the profiles of the stakeholders. As mentioned before, we took into consideration that the participants may be representatives of organisations, but also individuals who are either interested or already active in the crypto space. In the case of representatives of organisations, we did not collect personal data.

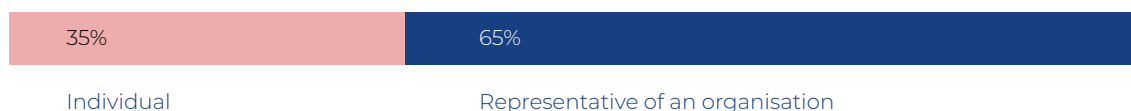
### Q2. Active Participation in the Crypto Space

Are you or your organisation already active in the crypto space?



### Q3. Type of respondents

Are you an individual or do you represent an organisation?

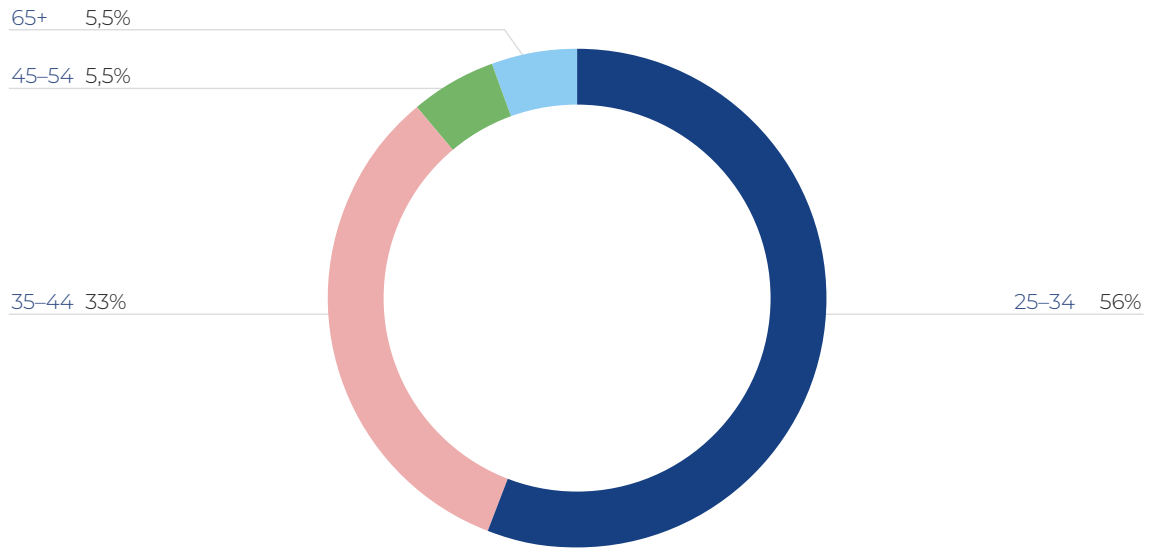


The vast majority of the respondents—80%—are active in the crypto-space. This percentage suggests direct involvement in issuing, providing, consuming or investing crypto-asset or crypto-asset related services. The remaining 20% of stakeholders, despite not yet being active in the crypto space may fall into various categories, such as corporations that are interested in, but not yet conducting DLT projects, or individuals who are looking into the crypto-space for future investments and engagement. When it comes to the type of respondents, the vast majority of the sample (65%) is composed of the representatives of organisations and a minority of individuals (35%). Nevertheless, we consider this as a relatively good mix, since MiCA will impact both organisations and individuals active in the crypto space.

# Profile of Individuals (Q4–6)

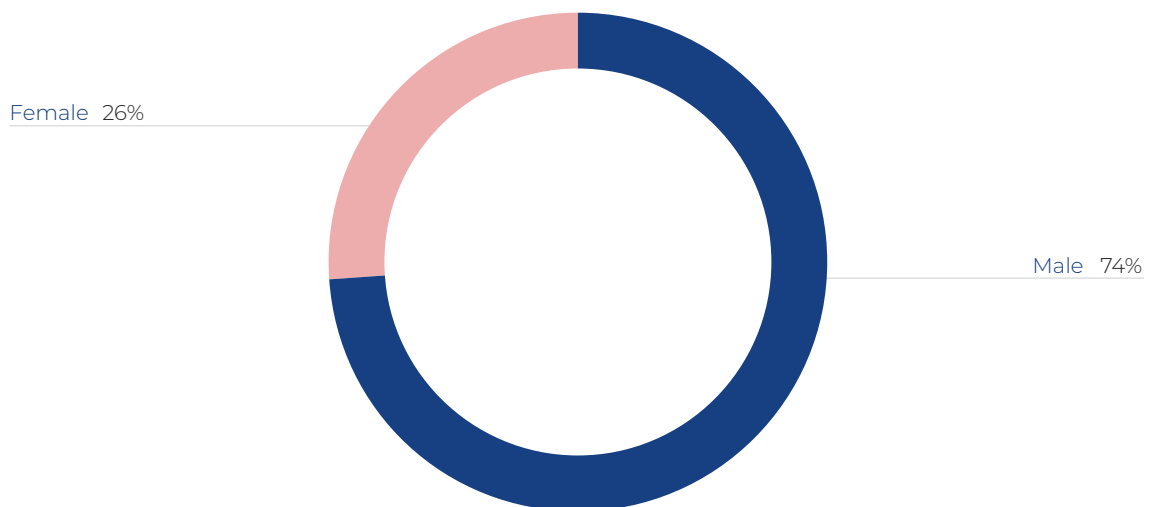
## Q4. Age Group

In which age group do you belong?



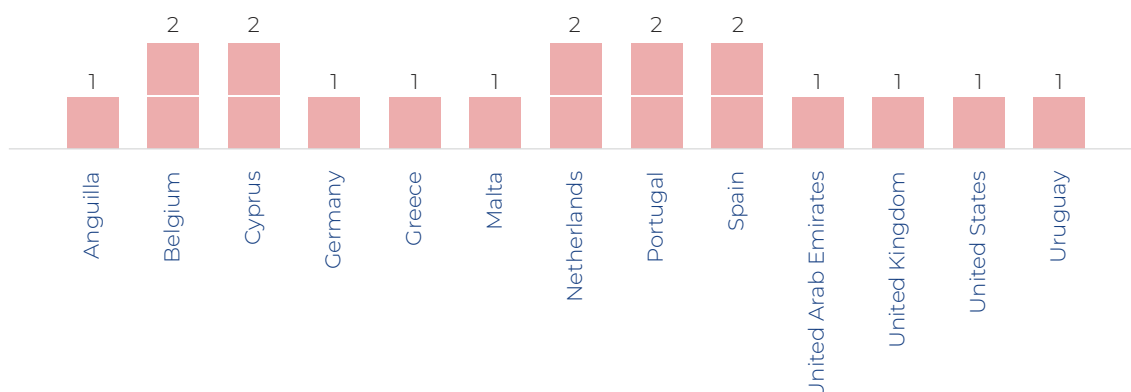
## Q5. Gender

What is your gender?



## Q6. Location

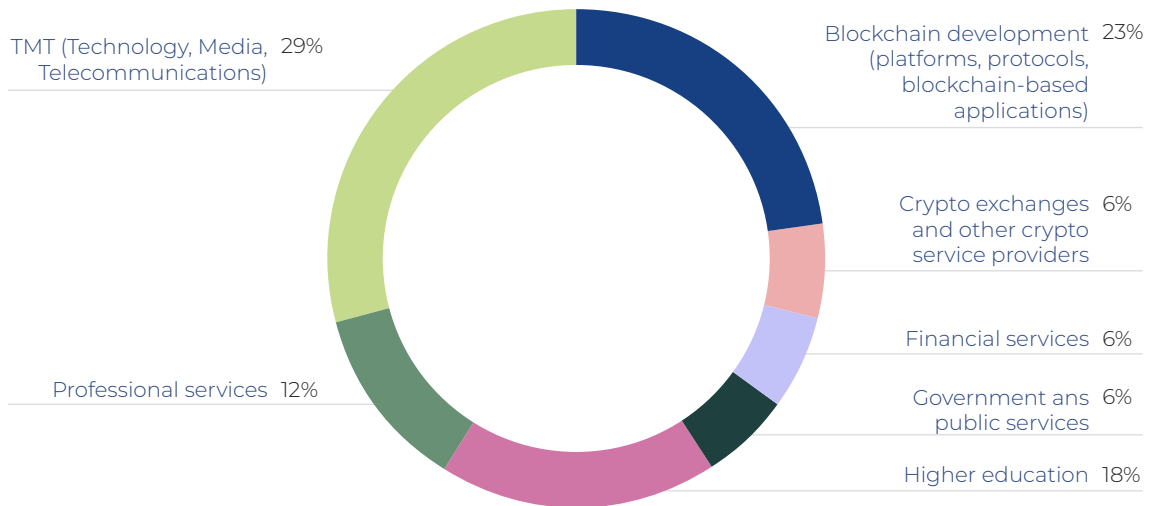
### Where are you located?



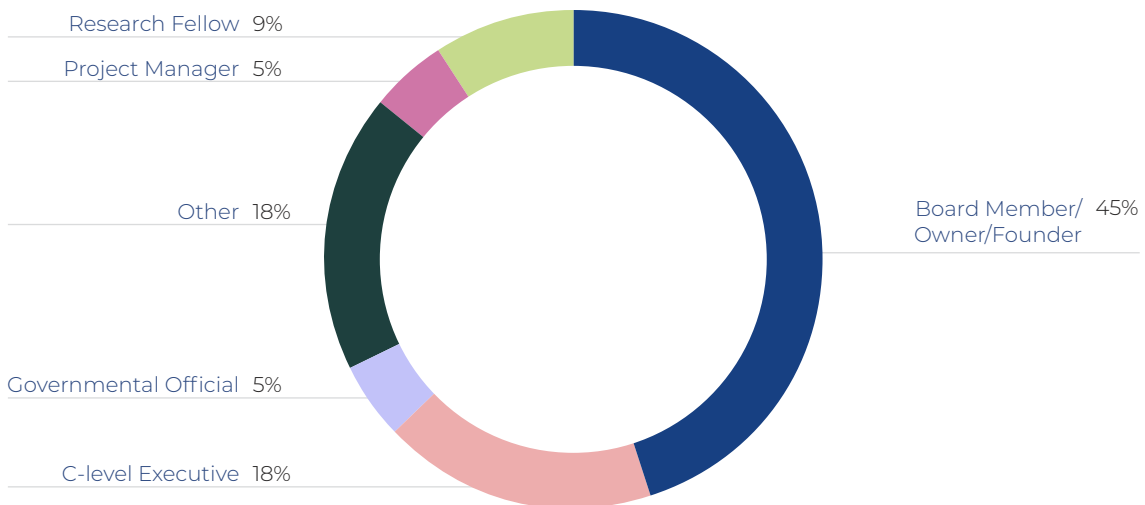
The age profile of respondents spans several age groups: 56% are between 25 and 34, 33% between 35 and 44, and the remaining 11% are older than 44 years. We offered participants a full range of age categories, from 18 up to 65 and older. As expected, millennials showed that they play the most dominant role in the ecosystem, which is in line with the expectations and previous research. As for the gender profile, the vast majority of respondents are male (74%) and only 26% are women, which is a rather normal occurrence in the blockchain ecosystem. The most important outcome is that more than the majority of individuals who participated in the survey (and answered the question about their location), are residents in the EU and thus are likely to be impacted by the regulation once it is enacted. Not surprisingly, this corresponds with the scope of MiCA's regulatory proposal. Five respondents are from non-EU jurisdictions. Non-European organisations and individuals should also be interested in this framework as it impacts any company aiming to operate or offer services/products on the EU territory.

## Profile of Organisations (Q8–12)

### Q8. What is the primary field of your organisation's operations?



### Q9. What function/position within your organisation do you hold?



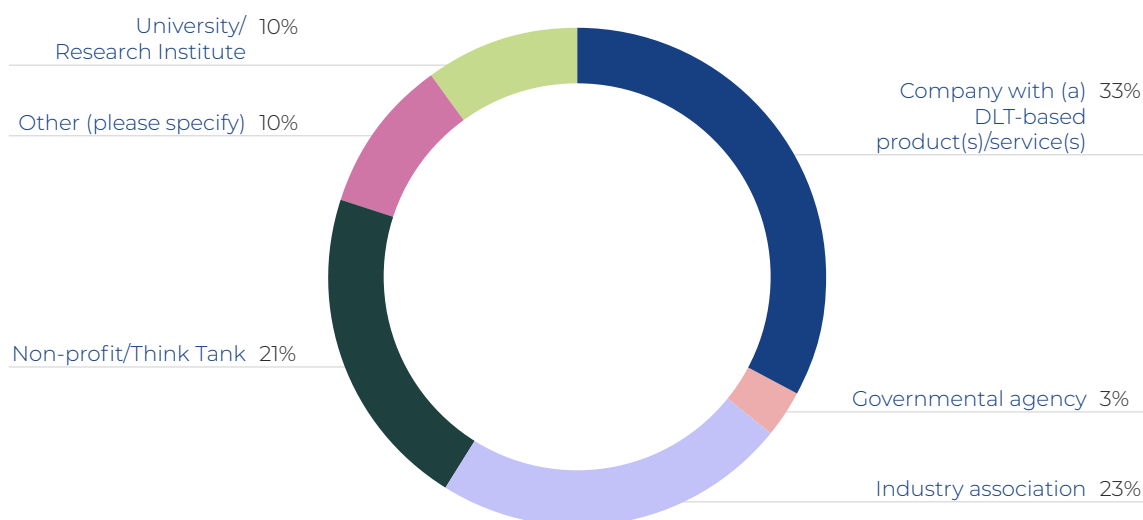
The MiCA Task Force attracted quite a wide spectrum of organisations, ranging from entities active in the blockchain development and TMT fields, to representatives of higher education, professional services and governments. Most of the representatives of organisations that participated in the survey were entities active in the field of Technology, Media, Telecommunications (29%), and in the field of blockchain development (23%). It is noteworthy that a relatively small number of respondents represented crypto exchanges and other crypto service providers (6%) or organisations providing financial services (6%). Interestingly, 18% of the organisations operate in the higher education field, which



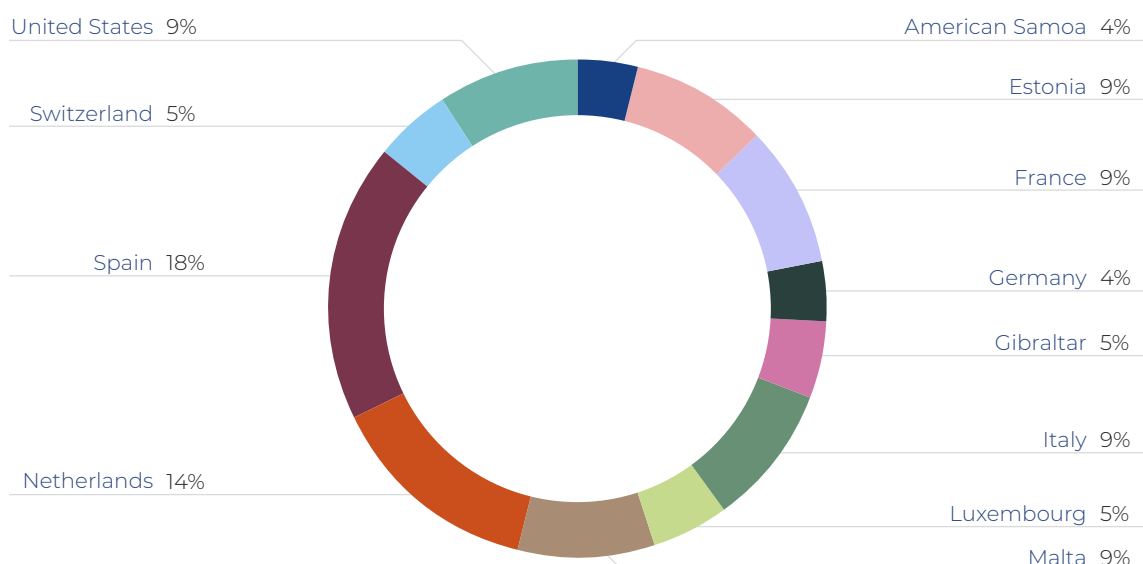
means that MiCA sparked a lot of interest also within universities and research institutes. Furthermore, the vast majority of representatives (63%) occupy a decision making position in their respective organisations.

### Q10. What type of organisation do you represent?

The organisations that are represented the most in our sample are companies with (a) DLT-based product (s)/service(s) (33%), industry associations (23%), and non-profits/Think Tanks (21%). It is noteworthy that industry associations and think-tanks formed around 45% of the participants. Especially in the case of industry associations, we can assume that they represent a larger group of their members and in this survey serve as a proxy for their voices.



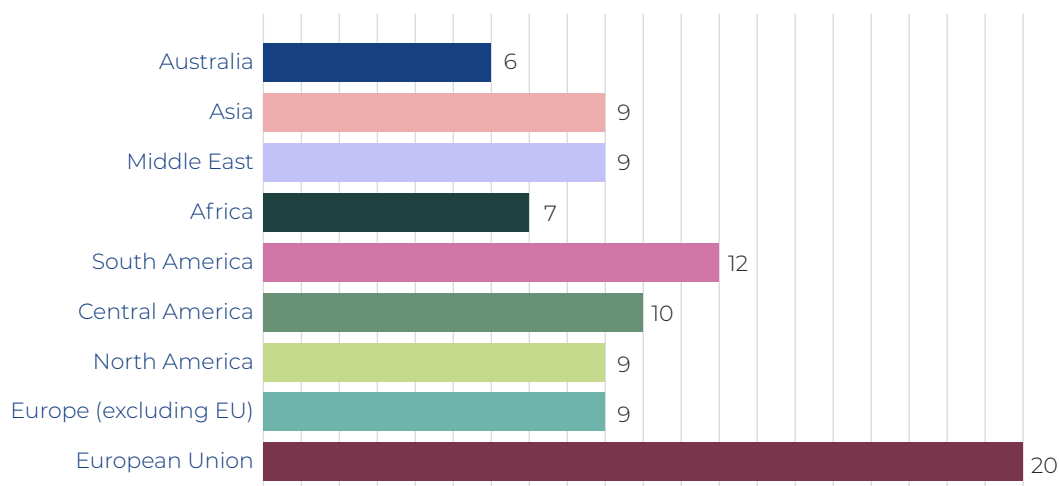
### Q11. In which country is your organisation formally registered?



As evidenced by the graph, the organisations/respondents are incorporated in many jurisdictions, however mainly in the Member States of the EU. This is a rather expected outcome, as MiCA, if enacted, will be applicable and enforceable

across the EU Member States. Nevertheless, we have also noticed some interest from other jurisdictions, which may be curious about MiCA, either from the regulatory perspective or as a potential alternative jurisdiction for business activities in the crypto area. Moreover, we also inquired about the geographical markets in which these organisations are active. Since many of them are active globally or in a multitude of geographical markets, we may assume that the spill-over effect of MiCA's regulatory standards is not just possible, but rather likely.

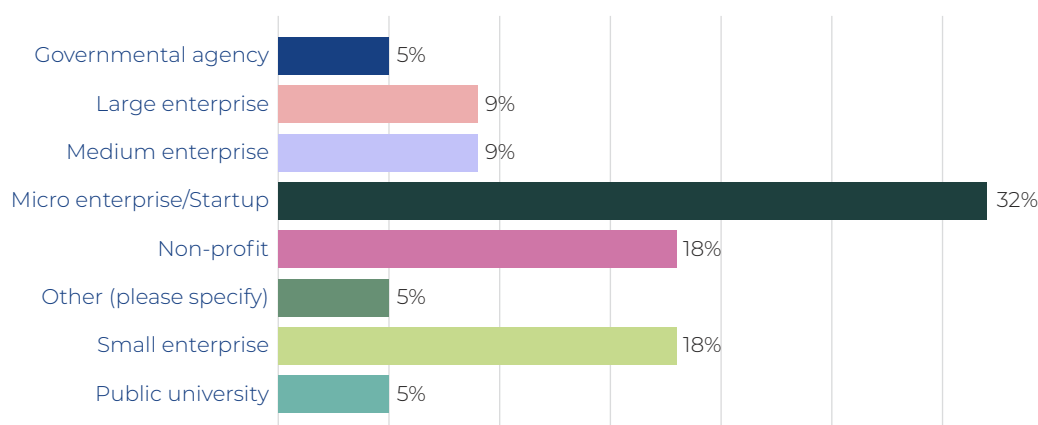
## Q12. Which geographical markets do you cover?



## Q13. What size is your organisation?

### Possible Answers:

1. Governmental Agency
2. Large Enterprise (>250 staff, >€50M turnover, >€43M balance sheet total)
3. Medium Enterprise (<250 staff, <€50M turnover, €43M balance sheet total)
4. Micro Enterprise/Startup (<10 staff, <€2M turnover, €2M balance sheet total)
5. Non-profit
6. Other
7. Small Enterprise (<50 staff, <€10M turnover, €10M balance sheet total)





In terms of size, 32% of the respondents/organisations are micro-enterprises/startups, which may be heavily impacted by MiCA, especially in the context of the compliance and disclosure regimes. It is therefore natural that they are interested in regulatory developments and closely monitor the legislative process.



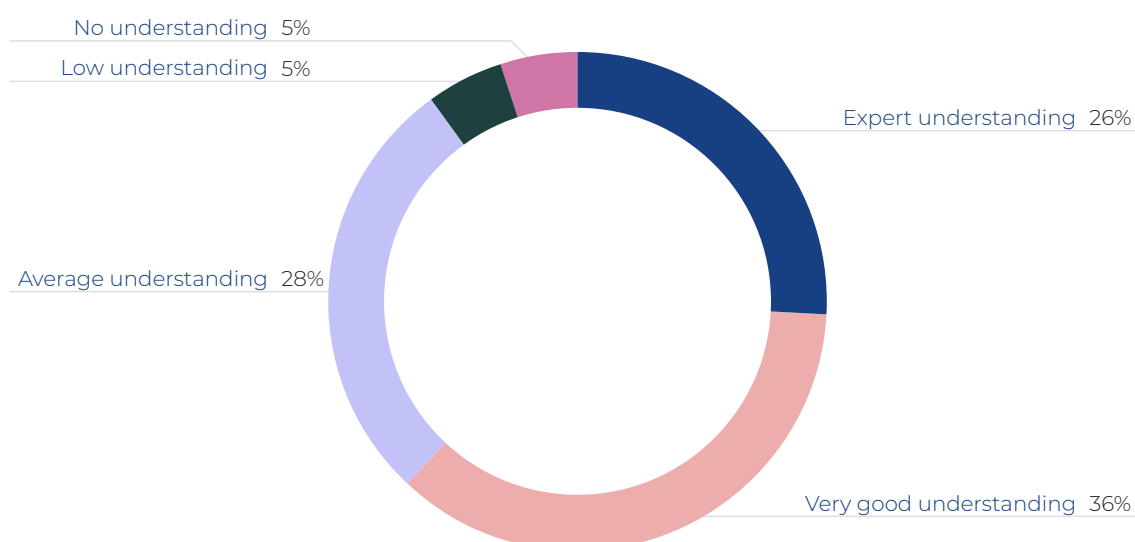
## Regulatory Awareness (Q14–17)

In the Limitations of the study section, we noted that the participants of the survey may have various backgrounds and experiences with regulatory texts and thus different understanding and interpretation of the proposed legislation. Therefore, we included a set of questions, which was focused on the self-assessment of their understanding of MiCA, further complemented by a series of control questions to account for discrepancies.

### Q14. What is the level of your understanding of the MiCA Regulation proposal?

#### Possible Answers

1. Average understanding (understanding of main points of the proposal and some implications)
2. Expert understanding (on the level of a regulatory expert)
3. Low understanding (understanding of the main theme of the proposal, but no understanding of details or implications)
4. No understanding (no understanding of the proposal or its implications)
5. Very good understanding (full understanding of provisions and implications of the proposal)

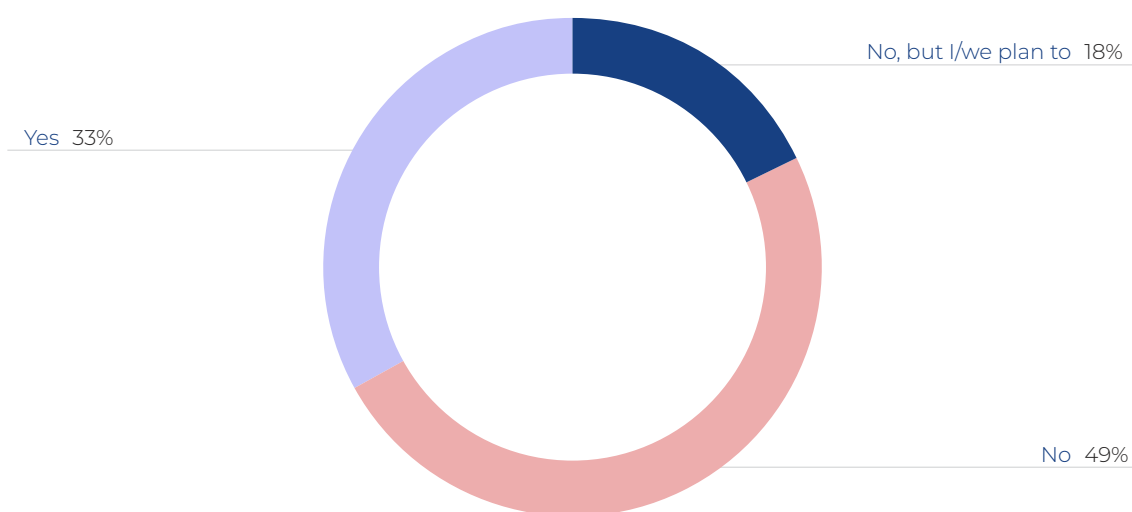


Surprisingly, 62% of the participants claim to have a very good and expert level of understanding of MiCA. This result is quite high and unlikely to correspond to reality. Naturally, this type of question is dependent on the self-assessment of the individual respondents and thus prone to a personal bias. Therefore we have to analyse it in the context of other control questions. In the following question, we inquired whether the respondents consulted MiCA with the

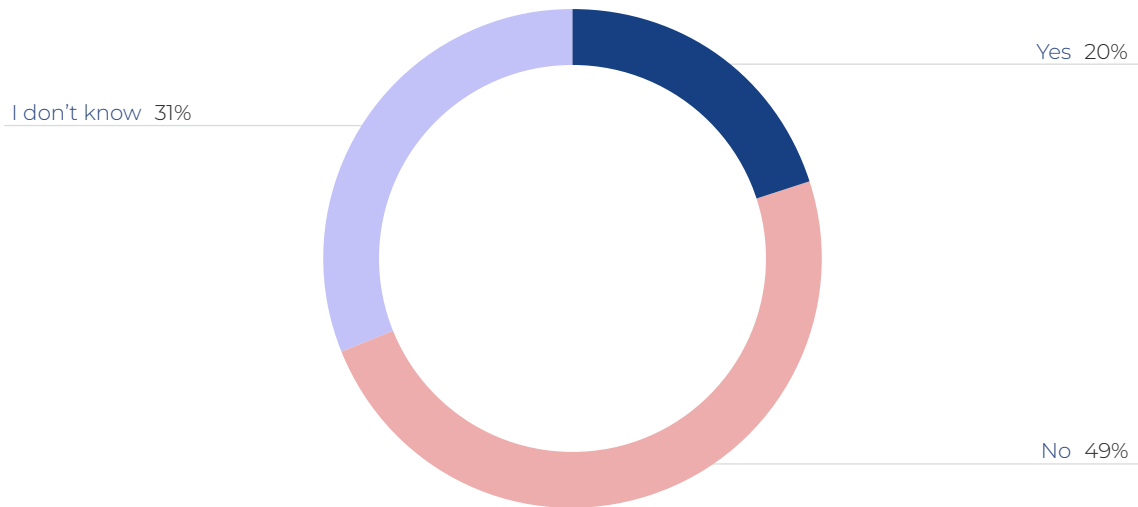


regulatory experts (internal or external lawyers or other expert consultants), who could potentially correct wrong perceptions or interpretations of the regulatory text and also inform the respondents on the full scope of relevant implications. The result shows that 67% of the respondents did not approach such a regulatory expert at the time they engaged with the survey. The potential for a biased view is even higher due to the fact that the MiCA proposal is at the moment purely theoretical and no one has practical experience with its application. The last question in this section investigates if participants know whether they will be subject to MiCA or not. Naturally, being able to answer this question is an indirect indication of the understanding of MiCA. Even a person with an average understanding of MiCA, as defined by Q14, has to be able to determine the applicability of MiCA. Surprisingly, 31% of respondents do not know whether they will be subject to MiCA's provisions and only 20% claimed to be directly regulated by MiCA. With the next control question, we inquired whether the respondents understand in what ways MiCA will impact them or their organisations. In this case, 55% answered that they understand, 29% also understand that MiCA will not impact them, and only 16% claim that they do not have such understanding. This shows a discrepancy, since in the previous question, which was rather similar, 31% of respondents answered that they are not sure if they will be regulated by MiCA. The conclusion that we had to draw in this section, particularly due to inconsistency of answers, is that the survey respondents may be overly confident when it comes to their understanding of the regulatory text of MiCA and its implications to their situation. Such a result is far from surprising. As mentioned before, at this point, MiCA is a regulation "on paper" and the Commission still has to provide additional explanations, interpretations and guidelines on how MiCA shall be applied in practice.

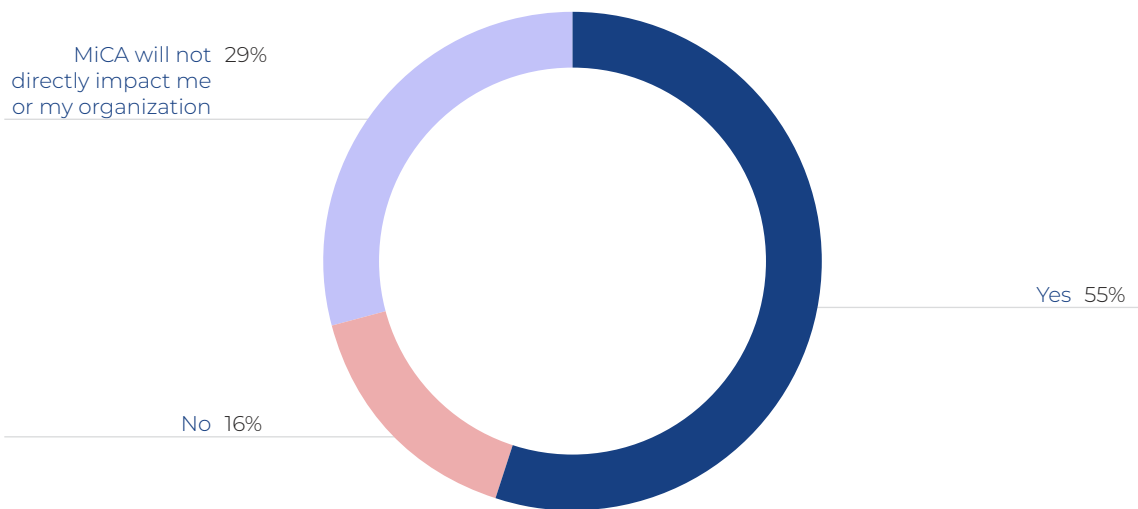
### **Q15. Have you or your organisation consulted the provisions of MiCA with a regulatory expert (internal or external lawyer, consultant)?**



### Q16. If enacted, will MiCA regulate your activities or activities of your organisation?



### Q17. Do you understand how MiCA's provisions will impact you or your organisation?

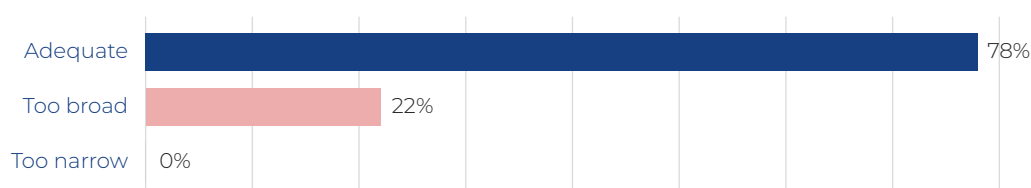


## MiCA Provisions (Q18–24)

In this section of the survey, we investigated a selected number of provisions that form fundamental concepts of MiCA, particularly the definition and categorisation of crypto-assets, regulatory regimes for crypto-assets' stakeholders and MiCA's regime for the protection of consumers.

### Q18. Definition of Crypto-assets

The definition of crypto-assets is...



The MiCA proposal introduces several crypto-asset-related definitions; out of which the definition of crypto-assets, as well as different crypto-asset categories, were the focus of our investigation. The aforementioned definitions are the following:

- **“Crypto-assets”** are defined as digital representations of value or rights that may be transferred and stored electronically using distributed ledger technology or similar technology.
- **“Utility Token”** is defined as a type of crypto-asset which is intended to provide digital access to a good or service, available on DLT and is only accepted by the issuer of that token.
- **“Asset-referenced token”** is defined as a type of crypto-asset that purports to maintain a stable value by referring to the value of several fiat currencies that are legal tender, one or several commodities, or one or several crypto-assets, or a combination of such assets.
- **“Electronic money token”** (e-money token) is defined as a type of crypto-asset the main purpose of which is to be used as a means of exchange and that purports to maintain a stable value by referring to the value of a fiat currency that is legal tender.

The survey shows that 78% of respondents think that the definition of crypto-assets is adequate and only 22% believe that these definitions might be too broad. None of the respondents view the definition as too narrow. Respondents understand that one of the main goals of the MiCA's proposal should be bringing legal certainty to the crypto-assets' sphere whilst avoiding burdensome requirements jeopardising the efficiency of the crypto-based solutions. To that extent, excessively narrow definitions might not be desired. However, excessively broad definitions may impose ambiguity and as a consequence increase legal uncertainty.



On the other hand, participants in the focus-group are more critical to the adequacy of the definitions. They raised concerns about the fact that the definitions were heavily technology-oriented. If crypto-assets are defined by the technology and not by the rights, obligations or value that they carry, it might fail to accurately regulate their use, allowing considerable room for interpretation.

Adding to the ambiguity argument, MiCA's proposal categorises non-financial crypto-assets into three main groups: e-money tokens, asset-referenced tokens and other tokens, which are neither asset-referenced tokens, nor e-money tokens, but still, fall under the umbrella term of crypto-assets. This catch-all category also includes utility tokens. In contrast, previous attempts to define crypto-assets have just divided them into two groups: *payment tokens* and *utility tokens (excluding investment-security tokens that fall under the financial regulation)*. MiCA's categories suggest that an asset-referenced token is not a utility and vice-versa. Overlapping definitions would significantly decrease legal certainty and diminish the advantages of a proper token categorisation. According to some of the focus-group participants, an asset-referenced token is defined according to its technical structure (design) whilst utility tokens (and e-money tokens) are defined according to their use. Are these categories then mutually exclusive or can it be possible to have a utility token or an e-money token that are simultaneously asset-referenced tokens? The regulation is unclear on this matter.

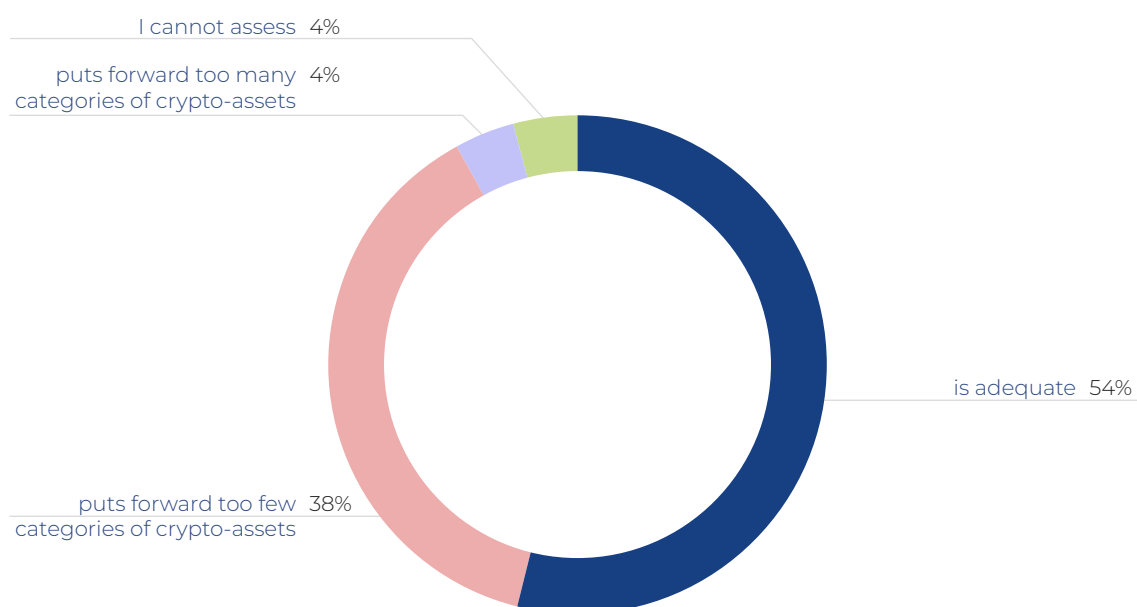
It is also yet to be seen whether some tokens, who may bear features of several categories, will create ambiguities. This uncertainty may lead to different interpretations among EU member states, reducing the consistency in the application of the regulation. Participants also raised concerns about the unclear distinction of non-fungible tokens (NFT). An example of an NFT are those tokens that represent artwork, and they are used to represent this non-fungible asset to be traded through a DLT platform. NFTs are mentioned twice in the MiCA's regulation; however, participants are concerned that broad definitions could lead to overregulation and hinder the tokenisation and trade of certain tangible assets.

Security tokens do not fall into the scope of MiCA's regulatory framework, however, some security tokens share features with utility tokens. These tokens have been described as *hybrid tokens*. As utility tokens, they offer a limited supply and can be used to unlock the utility from a network or decentralised application. Thereby they act as means of exchange within a certain network. Moreover, the lack of an early utility for the token holders in such applications or networks is mitigated by the additional potential for financial gains through the appreciation of a token's value when the network becomes more widely adopted. MiCA's proposal does not mention the hybrid tokens in any of its 168 pages. However, we could assume that hybrid tokens are legally classified as securities and therefore they fall outside of MiCA's scope. Nevertheless, the lack of a specific definition, both for security and hybrid tokens, may lead to uncertainty and heterogeneous interpretations.

One conflicting matter that focus-group participants have identified is secondary markets trading. The definition of utility tokens does not clearly determine whether the tokens may or may not be traded in a secondary market. The definition of a utility token specifies that this type of token can only be accepted by the issuer. Hence, participants were uncertain with respect to the trading capacities of the different categories of tokens, or how trading is affected by this regulation.

## Q19. Categorisation of Crypto-assets

**The categorisation of crypto-assets into not-asset-referenced or e-money tokens including utility tokens, asset-referenced tokens, and e-money tokens...**



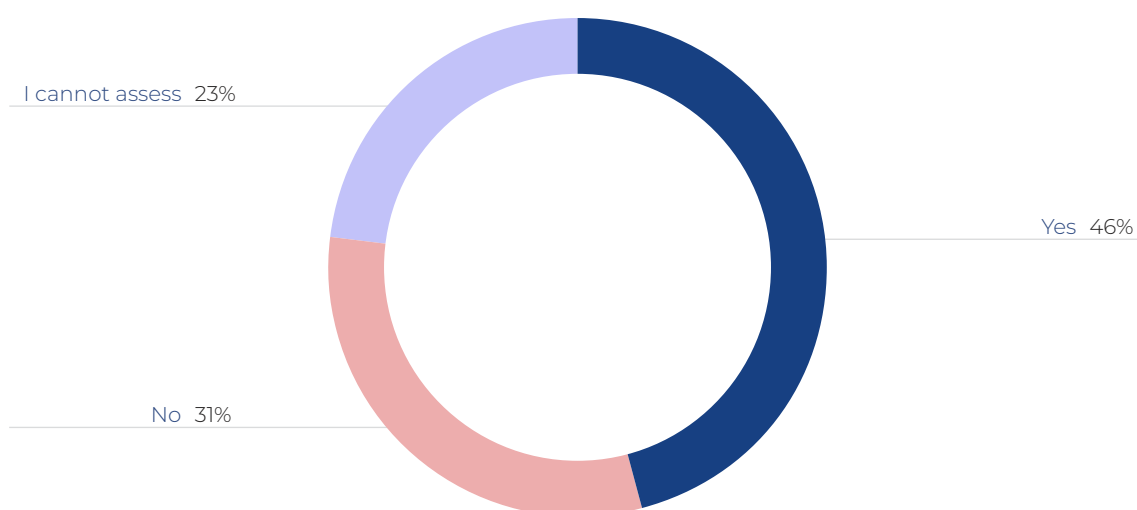
Concerning the categorisation of crypto-assets into the aforementioned categories, 54% of the respondents consider that the categorisation of crypto-assets as listed by MiCA is adequate, whilst 38% consider that the regulation proposal puts forward too few categories of crypto-assets.

The answers show a clear division of opinions. Half of the respondents agree with the categorisation provided in MiCA's proposal, however, 38% demand further unfolding of the crypto-asset types. This result suggests that there is a considerable demand for a higher scope and detail at least within a significant group of respondents. These respondents seem to think that MiCA's categorisation is overlooking some crypto-assets which might not fit into the given options.

Regulators face a relevant trade-off. Broad definitions cover a larger set of crypto-assets, however, they may be unclear and perpetuate uncertainty. On the other hand, narrow definitions bring certainty at the cost of efficiency and complexity. We think that regulators have likely opted for the former approach. It has to be noted that the categorisation has to be functional and thus lead to a different regime for a different type of token. It is not the goal of the regulation to enumerate all different types of tokens unless they lead to different regulatory requirements or have other functions in the context of the regulation.

## Q20. Crypto-assets and Financial Instruments: Interpretation discrepancies

**MiCA provides for a definition of crypto-assets (including different types of crypto-assets). Financial instruments are explicitly excluded from MiCA's application. Do you expect any interpretation differences that could cause overlap/uncertainty as to which assets fall under which regulatory regime?**



Financial instruments are expressly excluded from the application of MiCA.<sup>8</sup> The proposal to amend MIFID II stems from the need to include financial instruments issued and managed by DLT in this legislative framework.<sup>9</sup> If it excludes from the legal discussion whether a DLT could tokenise financial instruments, it does not prevent financial products from being issued at all in the context of the crypto-asset procedure provided by MiCA. How to implement it and how national regulators should deal with it remains in the hands of the Member States' legislators. On the one hand, we have a regulation which follows the regulatory scheme for financial instruments. Alternatively, we have an amended directive to guarantee the principle of technological neutrality. The result is not evident because individual jurisdictions could interpret the same European

<sup>8</sup> MiCA, Article 2 (2) (a).

<sup>9</sup> Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2006/43/EC, 2009/65/EC, 2009/138/EU, 2011/61/EU, EU/2013/36, 2014/65/EU, (EU) 2015/2366 and EU/2016/2341–COM(2020)596 final, Article 6 (1).

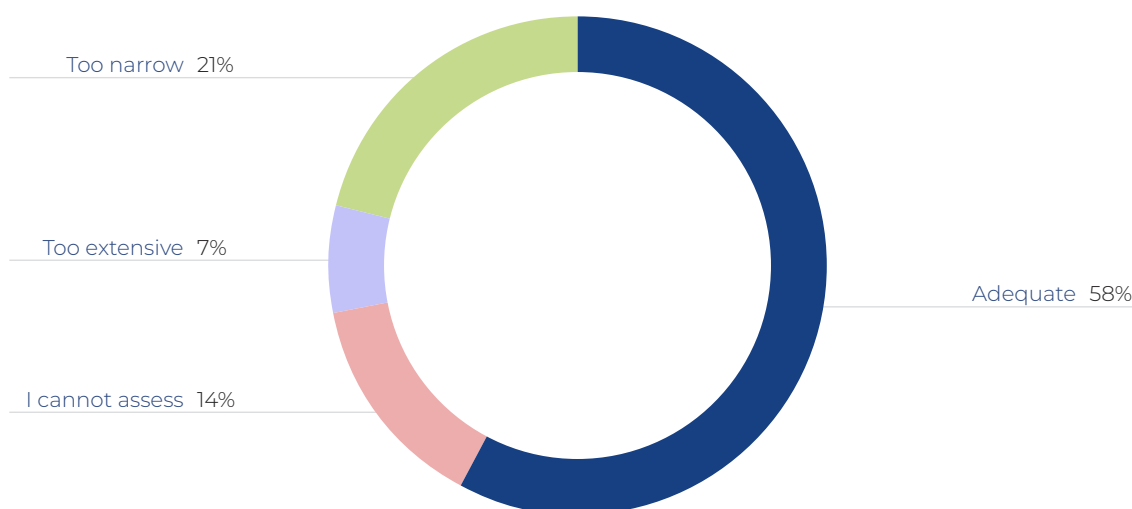


rules differently, creating regulatory competition. Respondents to the survey would strive to eliminate any possible differences in interpretation that might arise from these legislative proposals. The regulatory scheme, by distinguishing between means of payment, e-money, financial instruments, crypto-assets and, hypothetically, in the future, CBDCs, is understandable, but probably not helpful to definitively eliminate the ambiguities. They are based on insufficient clarity and consistency about the legal nature of the tokens created by the DLTs and the blockchain. Standard guidelines from European regulators like ESMA and EBA could help, but would be a compromise. Companies need legal certainty and simultaneously accommodating crypto-regulation.<sup>10</sup> Indeed, tokens can seemingly fall under financial instruments and also a particular type of a crypto-asset. As one respondent comments . . . *“There are tokens that are utility tokens but merely act as equity [financial instruments]; for example a token of a central crypto exchange which allows you to share in the revenue of trading fees. It is tokens on the edge of crypto and conventional regulations that might need additional attention.”*

## Q22. Disclosure Regime for Issuers of Crypto-assets

The issuer of crypto-assets refers to a legal person who offers to the public any type of crypto-assets or seeks the admission of such crypto-assets to a trading platform for crypto-assets.

### The disclosure regime for issuers of crypto-assets is...



According to MiCA, the issuers of crypto-assets are required to submit a whitepaper to the supervisory authorities along with an assessment or a legal opinion as to whether the tokens described in the whitepaper constitute a financial instrument or e-money (other than an e-money token), deposits, structured deposits or securitisations. Whether the authorisation is needed, depends, to a large extent, on the type of token in question. The majority of respondents

<sup>10</sup> See also: Q26.



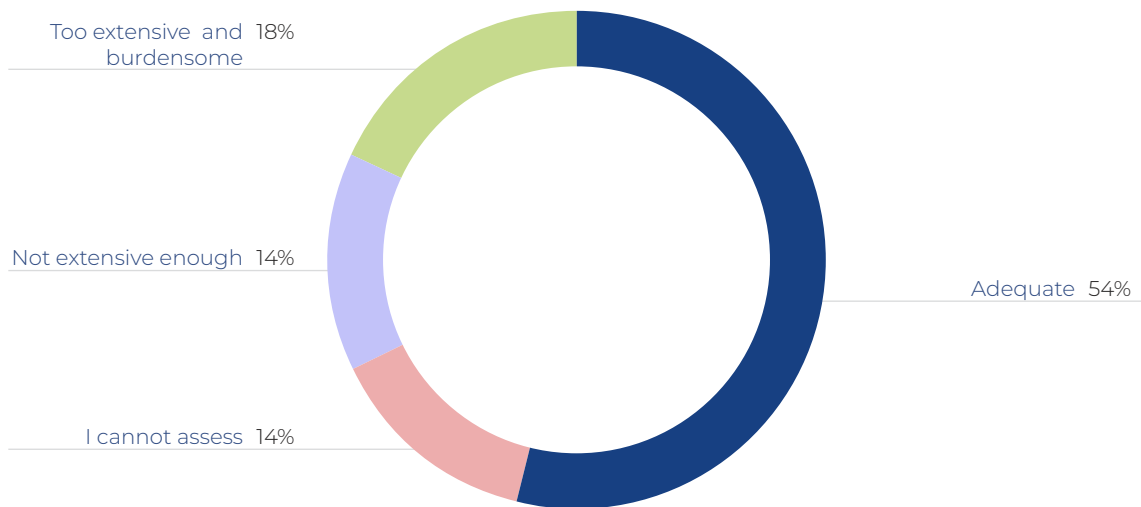
(58%) believe that the requirements for issuers of crypto-assets are adequate; interestingly, a relatively large proportion (21%) believes that the regime is too narrow and should be more extensive.

MiCA's requirements aim to increase transparency and regulatory oversight to level the playing field between the traditional and crypto-asset industries and to provide higher consumer and investor protection. This protection and other measures to ensure market integrity will help build trust in crypto-assets leading to the more widespread use of crypto-assets and distributed ledger and blockchain technologies.

However, the excessive requirements could pose significant challenges for crypto-based projects where the issuance is decentralised and there is no identifiable issuer. As MiCA promotes the protection, market integrity and financial stability, innovation may face significant and irreconcilable regulatory challenges.

### Q23. Disclosure and Compliance Regime for Crypto-asset Service Providers (CASPs)

The disclosure and compliance regime for crypto-asset service providers (CASPs) is...



Crypto-asset services and crypto-asset service providers are defined in Article 3 (8)–(17) of MiCA and the concrete obligations of crypto-asset service providers are specified in Title V. The spectrum of defined crypto-asset services demonstrates many commonalities with investment services as defined by Section A Annex 1 of MiFID II. Unfortunately, the survey format did not allow us to inquire about the concrete obligations and their adequacy for individual types of CASPs. Instead, we wanted to capture the overall sentiment of the stakeholders toward the newly established disclosure and compliance regime.

In the survey, 54% of respondents considered the regulatory regime for CASPs as adequate, 14% would welcome a more extensive set of obligations and 18% consider the current set of obligations as too extensive and burdensome.



We assume that the overwhelming support for regulating CASPs stems from negative events, fraud and illicit activities of some CASPs, which in turn damaged the reputation of the crypto industry and hindered formal investors from entering the space. In the open question section, several participants expressed their concerns. For instance, some respondents were not sure under which type of services their company would fall. Particularly, the definition of 'providing the crypto-asset advice' stipulated in Article 3(17) seems to be rather broad and could potentially capture also the non-financial type of advice related to crypto-assets (for instance legal or tax advisory services).<sup>11</sup>

Furthermore, several respondents addressed the incompatibility of Decentralised Finance (DeFi) type of applications and protocols with the very centralised placing of liability to the crypto-asset service providers. One respondent noted... *'the obligations [of CASPs] assume static governance and management of crypto-assets'*... which may not be compatible with the modus operandi of DeFi protocols. Another respondent raised concerns over Automated Market Makers. In his view, the DeFi market needs regulatory intervention, however regulating developers would be rather disincentivising and could slow down the innovation efforts. DeFi often implements decentralised decision-making processes therefore it is rather difficult to determine who is in control and who should bear the liability for the operations of such CASP.

## Q24. Consumer Protection under MiCA

One of MiCA's explicit objectives is "to instill appropriate levels of consumer and investor protection and market integrity, given that crypto-assets not covered by existing financial services legislation present many of the same risks as more familiar financial instruments."<sup>12</sup> The special consumer protection provisions in MiCA are meant to complement existing horizontal consumer protection in the EU, such as Directive 2011/83/EU on consumer rights, Directive 2005/29/EC on unfair business-to-consumer commercial practices, and Directive 93/13/EEC on unfair consumer contracts, all of which continue to apply.

MiCA extends this protection by proposing new rights tailored to the crypto-asset market:<sup>13</sup>

- (a) the right to be informed on the characteristics and risks of crypto-assets and asset-referenced tokens;
- (b) the right to non-discrimination in terms of how they are treated by crypto-asset issuers and service providers;
- (c) the right to withdraw from a purchase of crypto-asset (but not asset-referenced tokens or e-money tokens) during a limited period of time after their acquisition.

<sup>11</sup> According to article 'providing advice on crypto-assets' means offering, giving or agreeing to give personalised or specific recommendations to a third party, either at the third party's request or on the initiative of the crypto-asset service provider providing the advice, concerning the acquisition or the sale of one or more crypto-assets, or the use of crypto-asset services;

<sup>12</sup> MiCA, Preamble. See also Article 1(d).

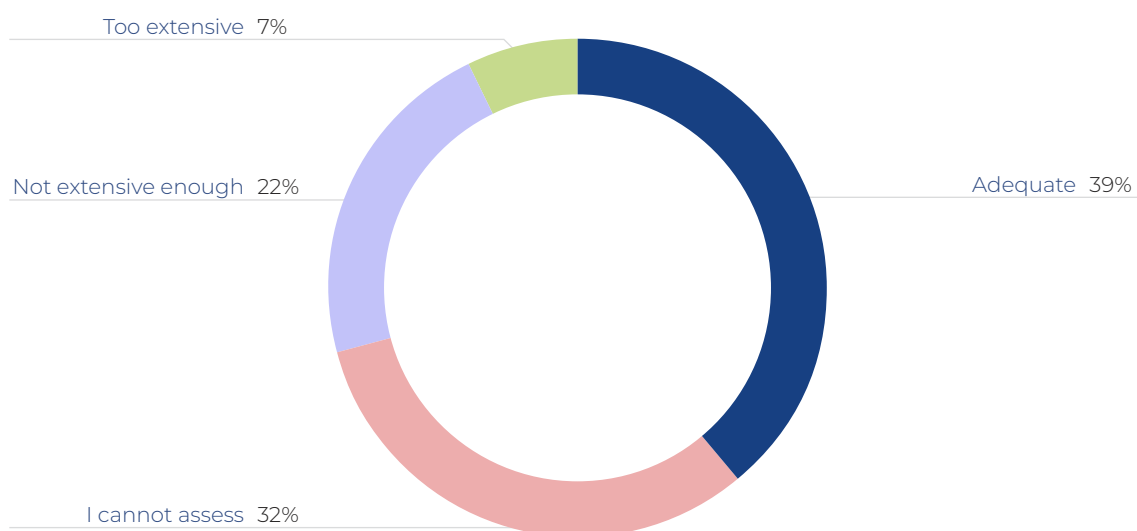
<sup>13</sup> See: MiCA, Articles 5, 12, 26, 41, 69.

Additionally, to further protect consumers, MiCA proposes the imposition of obligations on market participants:<sup>14</sup>

- (a) there is a general obligation upon crypto-asset issuers, asset-referenced token issuers, and service providers to act honestly, fairly, and professionally;
- (b) service providers have an obligation to put in place certain prudential safeguards;
- (c) service providers that provide advice on crypto-assets also have an obligation to make a preliminary assessment of their clients' experience, knowledge, objectives, and ability to bear losses.

To make sure that this extensive set of rights and obligations is respected, MiCA gives power to competent authorities to enforce them in the name of consumer protection.

### The protection of consumers—token holders is under MiCA...



It is evident that MiCA introduces a host of consumer protection rules. 39% of our respondents indicated that the level of protection introduced by MiCA is adequate; in contrast 32% of respondents cannot assess the level of consumer protection provided by the regulation. That said, a number of weak areas remain, some more critical than others.

A common problem that permeates much of MiCA is the tension between the requirements prescribed and their applicability to decentralised finance projects.<sup>15</sup> This goes back to the fact that consumer protection obligations (and the rights given to them), similarly to other obligations, need a point of reference upon which the obligation will be imposed. Whilst DeFi projects are supported by a community of developers, it is not always possible to find a suitable point of reference around which the project is structured to make the bearer of the obligation.

<sup>14</sup> See: MiCA, Articles 23, 59, 60, 73.

<sup>15</sup> See in more detail also: Q30 on emerging sub-industries such as Decentralised Finance (DeFi).



Another concern was raised around the vagueness or inadequacy of certain rights or obligations. For example, the right to information on the risk of crypto-assets and asset-referenced tokens might not be far-reaching enough considering the inherently higher risk and unpredictability associated with crypto-asset markets. One of the respondents pointed out that ... *'there are no consumer protection investment thresholds or maximum issuance amounts in place, which is justified given the direct access of retail investors to the offering and trading. Risk disclosure is not sufficient because generally the risks are higher than in traditional capital markets whereas traditional capital markets provide for a more robust protection of investors (through intermediation, quantitative and qualitative limitations).'*

Respondents that represented the industry expressed the desire for more concrete and detailed guidance on what the envisaged rights and obligations mean so that they can provide better services to consumers. This is related to the general desire for regulatory compliance, which is seen as a key component of long-term success.<sup>16</sup>

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<sup>16</sup> See also: Q28 and Q29.



## The Impact of MiCA

**In this section, we aimed to investigate the general sentiment of stakeholders towards some of the expected implications and impact of MiCA. To that end, we created eight statements that were derived from our observations of the most common reactions/responses to MiCA on an anecdotal basis. These statements relate to, amongst others, the legal certainty of MiCA's framework, different disclosure and compliance regimes for MiCA's subjects, the position of financial incumbents in the context of MiCA, cross-border operation of crypto-asset issuers and CASPs, and MiCA's potential effectiveness in combating fraud and market abuse on the crypto markets.**

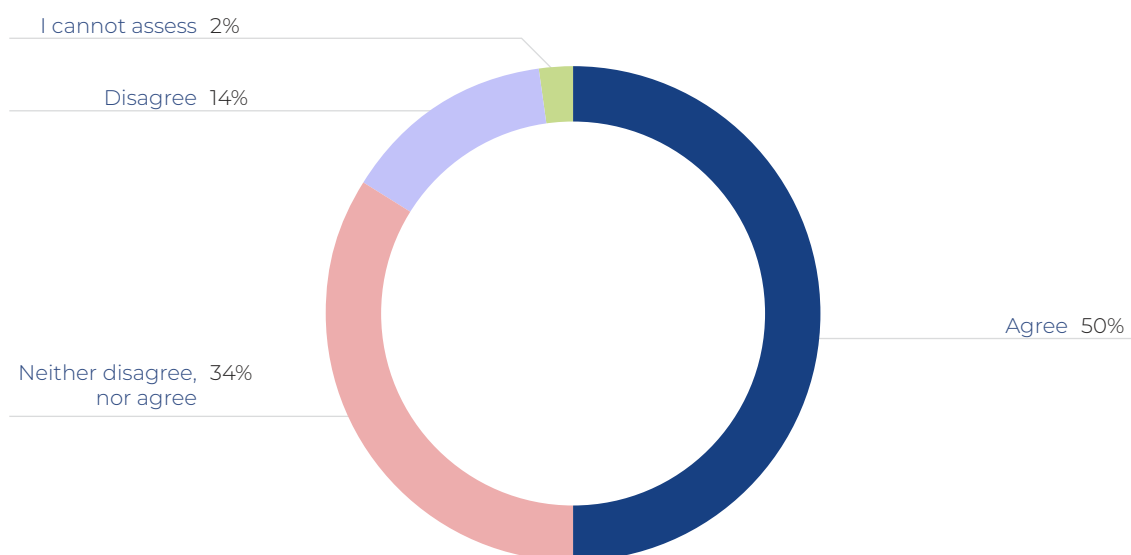
### Q26. Legal Certainty under MiCA

Regarding the question of legal certainty, two aspects stand out here: (i) 34% of survey participants and stakeholder session participants remained neutral on this matter (neither agree, nor disagree option), however, (ii) 50% of respondents said they agreed MiCA provides legal certainty for issuers of crypto-asset and crypto-asset service providers. According to the MiCA Explanatory Memorandum, legal certainty is one of its four general and related objectives along with innovation support, consumer protection and market integrity, and financial stability.<sup>17</sup> In light of the respondents' replies, it is worth recalling that legal certainty is a general EU principle of uncertain interpretation and application.

As the Explanatory Memorandum also shows, legal certainty is consistent with the Capital Markets Union's objective and related regulatory issues. Recitals 4 and 5 of the MiCA better reflect the desire to avoid "regulatory fragmentation" by harmonising legislation (Articles 114 TFEU and 115 TFEU). Under the functionalist paradigm, however, the European Union can intervene entirely where it is entitled to do so. We know that private law is not part of that. The conflict between Member States' private law and the EU functionalist paradigm leads to further fragmentation at the vertical level. It inevitably harms clarity and legal certainty and leaves national judges with a delicate and crucial role in interpreting EU rules. Assuming that this regulatory method is mostly uniform for financial instruments where the Member States' private law dimension is less relevant. In that case (MiFID 2), the EU lawmaker did not introduce a financial instrument definition. Nevertheless, it refers to legal categories already codified or consolidated for use (transferable securities, money market instruments, shares in collective investment undertakings and derivatives).

<sup>17</sup> Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in Crypto-assets, and amending Directive (EU) 2019/1937COM/2020/593 final.

## MiCA provides legal certainty for issuers of crypto-assets and crypto-asset service providers (CASPs)



Crypto-assets are not certain because we could not interpret private systems similarly. MiFID, for example, does not define transferable instruments. The MiCA would also address national legislators about the legal nature of crypto-assets or tokens, rather than giving a broad and open definition of crypto-assets in the terms “asset-referenced tokens”, “electronic money tokens” and “utility tokens”. The Expert Group on Regulatory Obstacles to Financial Innovation (ROFIEG) recommendations show the standards adopted to date (Exchange Token, Security Token, Utility Token) as schematic and therefore inaccurate with their main aim to compare regulatory treatment with existing asset categories (Recommendation 7). It is undoubtedly a good starting point, but a functionalist paradigm is not suitable when it comes to the need for legal certainty. The definition in Article 3, para. 2 of MiCA, according to which crypto-assets are a digital representation of values or rights, is not conclusive.

Respondents answered by a slight majority that MiCA provides legal certainty for issuers and service providers of crypto-assets. It indicates that the EU legislator is attempting to ensure a harmonised field of action. But even if it initially sounds correct, it lacks clarity about the not-so-defined boundaries between existing and new regulatory frameworks. The *iure condendo* (*the law to be established*) method used here has already been applied *iure condito* (*the established law*) in the Maltese legal system within the Virtual Financial Asset Article A negative scope of the provisions does not create legal certainty. It will not contribute to a genuinely level playing field. To this end, MiCA could guarantee crypto-asset operators at both vertical (EU → Member States) and horizontal (between the Member States) levels.



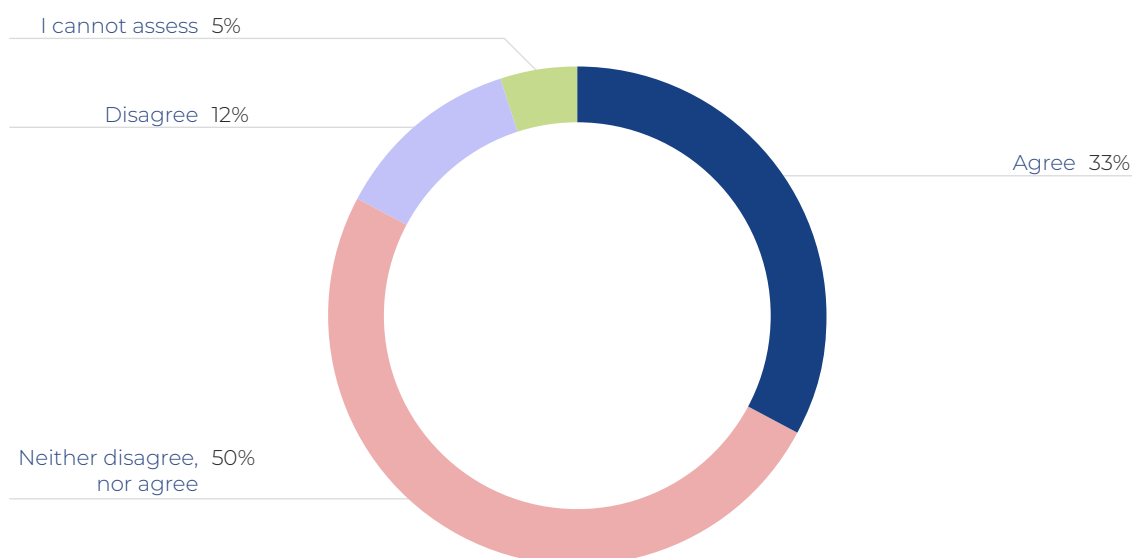


The definition of crypto-assets is also relevant for the exemptions provided by the MiCA for issuers (Article 4, para. 2; Article 15, para. 4; Article 43, para. 2) and for crypto-assets providers as well when compared with credit institutions (Article 3, para. 5) and investment firms (Article 3, para. 6). The legislator could consider the possibility of reviewing the proposed taxonomy and establishing the new taxonomy on a clear legal definition of tokens in private law, within the powers provided for in Article 352 TFEU.

## Q27. Compliance Regime under MiCA

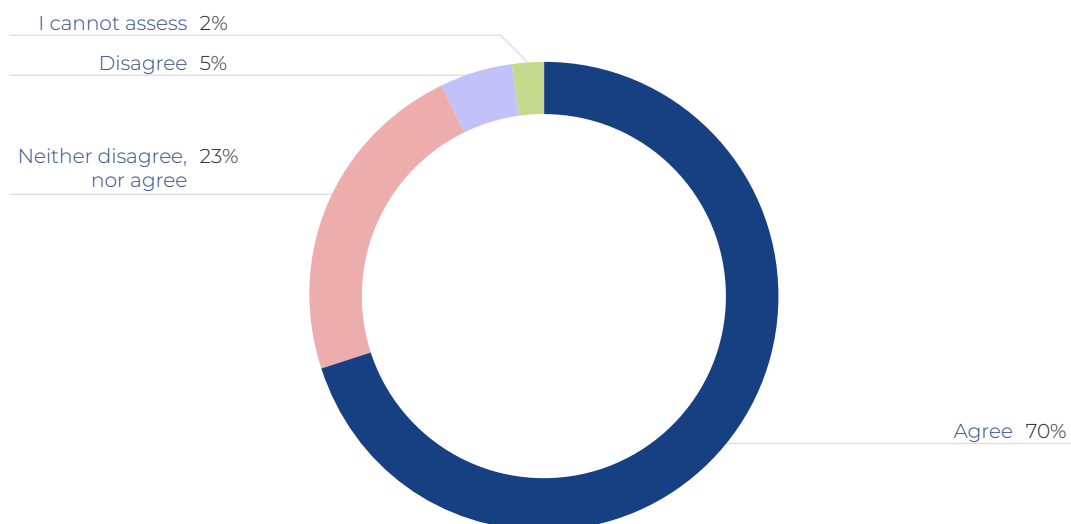
As part of this question, we addressed many different aspects of the MiCA regulation proposal. The respondents already partially addressed the regulatory regimes for crypto-issuers and CASPs in the previous section. Again, the aim of the question was to gauge the sentiment of the respondents toward the regulatory regimes for both groups of stakeholders. In this case, 35% of respondents agree with the statement, 13,5% disagree and more than half of the respondents remain neutral toward the statement. As mentioned several times before, a possible explanation is the theoretical nature of the proposed regulation. The respondents may not, at this stage, fully foresee the intricacies of the regulatory regime, once it is applied in practice and therefore remain hesitant and ambiguous in their assessment. For instance, it is yet to be seen how costly compliance with the regulatory requirements will be and to what extent the companies will have to seek help from professional advisors.

### The compliance regime for issuers of crypto-assets and crypto-asset service providers introduced by MiCA is costly and burdensome



## Q28. Competitive Advantages of MiCA-regulated businesses

**Crypto businesses operating under MiCA will have a competitive advantage over businesses operating under other legal regimes (for instance due to legal certainty and EU passporting option)**



It is strongly perceived that companies operating under MiCA will have a competitive advantage over businesses operating under other legal regimes (70%). The crypto-asset space has traditionally been plagued by legal uncertainty and lack of consumer trust.<sup>18</sup> Several scandals in the past that cost consumers significant funds still make consumers and regulators wary of the industry, a message that the industry seems to be responding to.<sup>19</sup> The recent wave of regulatory activity across the globe and the willingness of popular actors in the field to comply is evidence that properly designed regulation and compliance can be powerful means to increase adoption. MiCA is the first attempt at a comprehensive and pan-European regulation of crypto-asset products and services, and as such it has the potential to legitimise financial activities in this space and bolster consumer trust.

Businesses that are regulated under MiCA can more easily upscale as they can operate across the European Union, which represents the second-largest consumer market in the world. Businesses in this market could create or take advantage of innovative digital services, alternative payment instruments or new funding sources. Moreover, the lack of an overall regulatory Union framework risks creating fragmentation and distortions in the market if every Member State opted for a different regime.<sup>20</sup> MiCA combats that by providing a uniform regime that levels the playing field across member states and reduces

<sup>18</sup> Economist Intelligence Unit, 'Digimentality: Fear and favouring of digital currency' (The Economist, 2020), <https://digitalcurrency.economist.com/wp-content/uploads/2020/04/EIU-Crypto-Digimentality.pdf>, accessed 25 January 2021.

<sup>19</sup> Joshua M. Newville et al., 'Crypto Asset Regulation: Is the U.S. or UK Keeping Up Best With This Emerging Market?' (The National Law Review, 8 January 2021), <https://www.natlawreview.com/article/crypto-asset-regulation-us-or-uk-keeping-best-emerging-market>, accessed 25 January 2021.

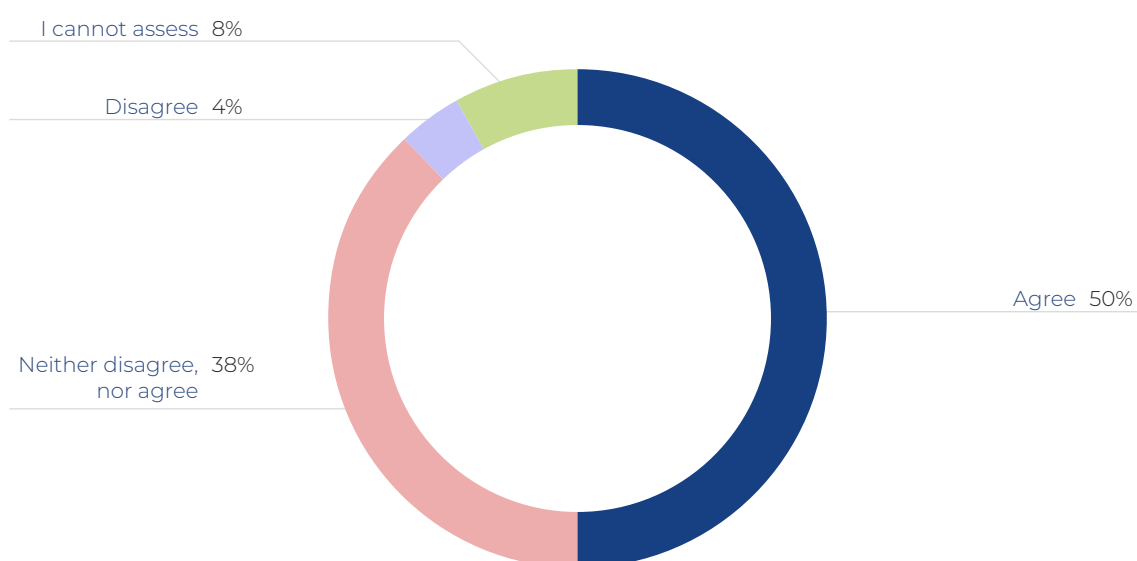
<sup>20</sup> MiCA, para 4.

regulatory arbitrage.<sup>21</sup> It also makes it simpler and less costly for businesses to comply, thereby lowering both entry barriers and running costs.

The lack of pre-existing regulation in the area means that MiCA can pre-empt the emergence of a mosaic of disparate national regulatory responses that would be difficult to undo. National financial and banking regulations, for example, predated the approximation of laws by the European Union. Even though various aspects of finance and banking products and services that currently closely resemble those offered in the crypto-asset space (e.g. e-money) are homogenised, there are still differences. Compared to such services, crypto services may also have an advantage because MiCA establishes pan-European regulation at the outset. Survey respondents seemed to recognise these benefits as three quarters agree or strongly agree that crypto businesses operating under MiCA will have a competitive advantage over businesses operating under other legal regimes. Only a negligible percentage disagreed with the remaining being neutral. Neutral responses may be explained by the fact that it is not clear what one should be comparing MiCA to, as it is the first-of-its-kind regulation.

## Q29. Position of Financial Incumbents under MiCA

**MiCA favors certain businesses, such as financial institutions, for instance in the process of authorisation**



In addition to competitive advantages accruing to businesses operating under MiCA as opposed to other authorisation regimes, respondents also saw increased competitive advantages for financial incumbents under MiCA. The majority of respondents (50%) agreed that established financial institutions will find it easier to comply with MiCA requirements compared to other businesses, more than a third of respondents, 38%, answered neutrally. This is not because MiCA changes anything in terms of their existing activities; after all, MiCA

<sup>21</sup> *Ibid.* See also: Q33 Cross-border operation of businesses under MiCA.

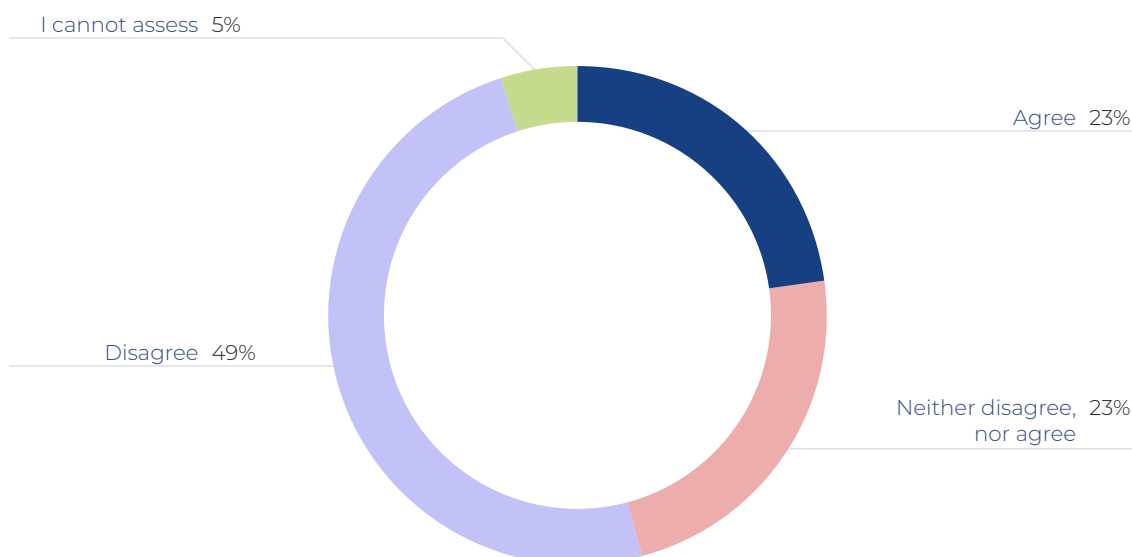
makes it clear that Union legislation does not, and should not, favor any one particular technology, and crypto-assets that qualify as 'financial instruments' as defined in Directive 2014/65/EU will continue to remain regulated under the general existing Union legislation regardless of the technology used for their issuance or their transfer.

The difference lies in the capacity for regulatory compliance.<sup>22</sup> Over the years, financial incumbents have built up expertise, manpower and processes to comply with the existing financial regulatory regime which is much more complicated than crypto-asset regulation. They have, in other words, a compliance capital in place, and any new compliance requirements add marginal burden to their existing apparatus.

On the contrary, many businesses in the crypto-asset market are either start-ups, SMEs or in a financially precarious position, and they may also lack both the experience and the processes to meet regulatory requirements as efficiently as existing companies. Some respondents therefore were justifiably concerned that MiCA rules may be too strict for less established companies, and that financial incumbents that are already familiar with MiFID rules will have an advantage. However, respondents also cautioned that, whilst regulatory breaks can reduce some of the burdens, they also risk disrupting the level playing field.

### Q30. MiCA and Emerging Sub-industries (DeFi)

#### MiCA sufficiently facilitates certain emerging crypto sub-industries, such as decentralised finance (DeFi)



According to respondents, decentralised finance (DeFi) presents one of the biggest challenges for MiCA, but also for regulation more generally. When asked whether MiCA sufficiently facilitates the emergence of DeFi, almost half of the respondents (49%) expressed strong disagreement, although interestingly

<sup>22</sup> European Commission, 'Study on the costs of compliance for the financial sector' (July 2019), <https://op.europa.eu/en/publication-detail/-/publication/4b62e682-4e0f-11ea-aece-01aa75ed71a1>, accessed 25 January 2021.



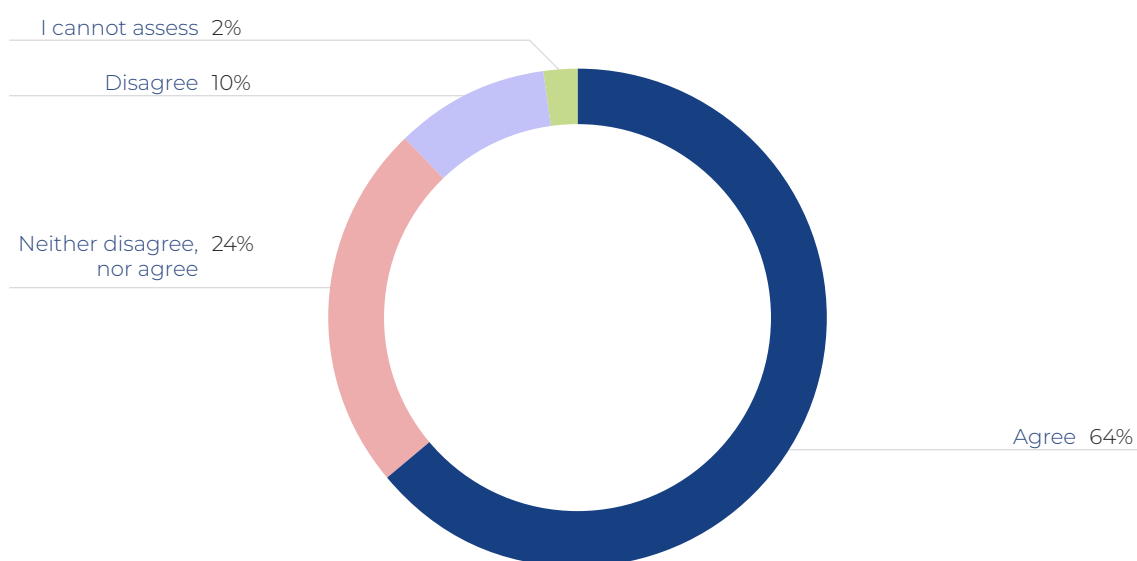
enough, a minority of blockchain companies responded positively about MiCA's provisions. Nearly all respondents representing industry associations and research/think tank circles responded negatively.

The regulatory difficulties associated with DeFi originate in the fact that regulatory measures typically presuppose a point of reference upon which an obligation is imposed or a right grounded. This is sensible because it dramatically increases enforceability and legitimacy—if it is impossible to specify who is the subject of a right or obligation, as is true for decentralised networks, it is also impossible to justify and enforce it.

DeFi, being decentralised, and often effectuated through automatic mechanisms, such as smart contracts, makes it hard to pinpoint its constituent actors, and among them, the one(s) that play the role MiCA provisions intended to target when designing rights and obligations.<sup>23</sup> For instance, Uniswap is a decentralised exchange that facilitates exchanges between crypto-assets through liquidity pools instead of trade books. The calculation of exchange ratios, the consummation of transactions and the calculation of rewards are all done automatically. It can fall under MiCA's definition of "crypto-asset service" but there is no single, legal person behind it that is responsible for its development and would be able to register an office in the EU, receive authorisation and comply with the numerous obligations (some of which are prudential in nature) imposed by MiCA. It is not that MiCA specifically excludes DeFi services from its scope or that it pronounces them illegal. Rather, the problem identified by respondents is that MiCA does not seem to have considered how DeFi services can be compliant with it and/or provide relevant guidance for doing so. This increases uncertainty and risk, which translates into an additional cost to DeFi companies.

### Q31. Market Abuse and Fraud on Secondary Markets

#### MICA will mitigate potential fraud and market abuse on the secondary markets (crypto exchanges)

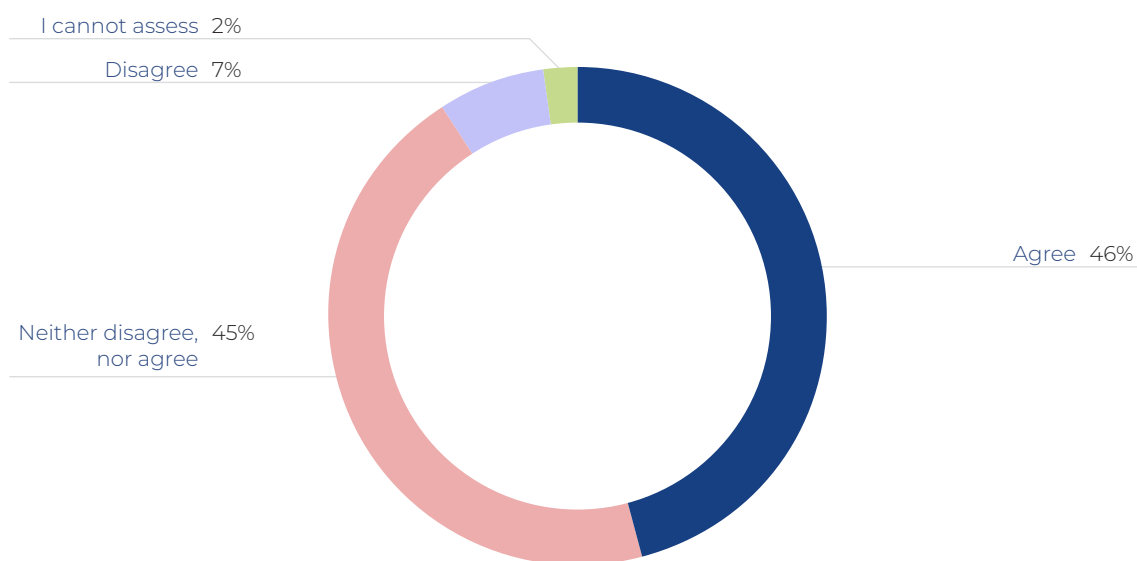


<sup>23</sup> Konstantinos Stylianou, 'DeFi's death by a thousand cuts' (Cointelegraph, 17 January 2021), <https://cointelegraph.com/news/defi-s-death-by-a-thousand-cuts>, accessed 25 January 2021.

The market manipulation and a multitude of practices that lead to relatively fast financial gains for its initiators such as pump-and-dump schemes, spoofing, wash trading and many others are relatively common on unregulated and even regulated crypto exchanges. Some of the practices are implemented by exchanges themselves artificially increasing the trading volumes and creating an appearance of liquidity. Others are triggered by significant holders of crypto-assets who can single-handedly, or in coordinated behavior with other holders, temporarily manipulate the price of traded crypto-assets.<sup>24</sup> MiCA, in this respect, describes and prohibits various behaviors that essentially lead to insider trading, unlawful disclosure of insider information and market manipulation. MiCA also requires CASPs to have in place systems, procedures and arrangements to monitor and detect market abuse.<sup>25</sup> Whilst this is absolutely a necessary step, it is yet to be seen how the prohibited behavior will be monitored, identified, and enforced by national competent authorities in practice. The overwhelming majority of the respondents (64%) agree that MiCA has the potential to mitigate fraud and market abuse on the secondary markets. Naturally, illicit behavior may occur also with other CASPs, but the case of the market manipulation on crypto exchanges is probably most prevalent within the ecosystem.

### Q32. Focus on Stablecoins

#### MICA disproportionately addresses stablecoins



According to these results, respondents either agreed (46%) or had a neutral stance (45%) toward MiCA's focus on stablecoins; only 7% disagreed with that statement. It can be interpreted as a sort of indifference toward stablecoins or as a lack of attention since MiCA does not use the term stablecoin; instead,

<sup>24</sup> See for instance: David Twomey and Andrew Mann, 'Fraud and Manipulation within Cryptocurrency Markets' in Alexander Carol and Douglas Cumming (eds), *Corruption and Fraud in Financial Markets: Malpractice, Misconduct and Manipulation* (John Wiley & Sons 2020); and Justina Lee, 'Research Affiliates Quant Warns of Bitcoin Market Manipulation—Bloomberg', Bloomberg (14 January 2021), <https://www.bloomberg.com/news/articles/2021-01-14/research-affiliates-quant-warns-of-bitcoin-market-manipulation>, accessed 28 January 2021.

<sup>25</sup> MiCA, Article 61(9).



they are referred to as 'asset-referenced tokens'. However, MiCA is undoubtedly quite strict on this type of crypto-assets, considering their capacity to quickly grow in scale, which could, in turn, cause possible issues for the financial system in terms of systemic risk and investor protection. Regarding the aforementioned risks, the main relevant risks stemming from the stablecoin adoption should be noted, namely for the incumbents in the financial industry. They are particularly concerned about the effect of DLT and blockchain on the banking and capital market system. What was previously considered a naïve, fringe movement, is now perceived as viable market competition. Moreover, the growing attention of central banks to digital currencies is a further sign that stablecoins could be a significant rival to fiat currencies and thus compete directly with governments.

The respondents who took part in the workshop stressed those points and the fact that stablecoins are at the center of the proposed regulation even if not referred to as such. MiCA defines these 'asset-referenced tokens' as 'a type of crypto-asset that purports to maintain a stable value by referring to the value of several fiat currencies that are legal tender, one or several commodities or one or several crypto-assets, or a combination of such assets'.<sup>26</sup> This definition must be read together with that of e-money tokens as they are usually used for payments. These two features allow stablecoins to be perceived in an economic manner as they were functionally equivalent to legal tender for the purchase of goods and services. On the other hand, the reserve asset to which the value of a stablecoin is linked is made also of 'fiat currencies that are legal tender' together with commodities or other crypto-assets.<sup>27</sup>

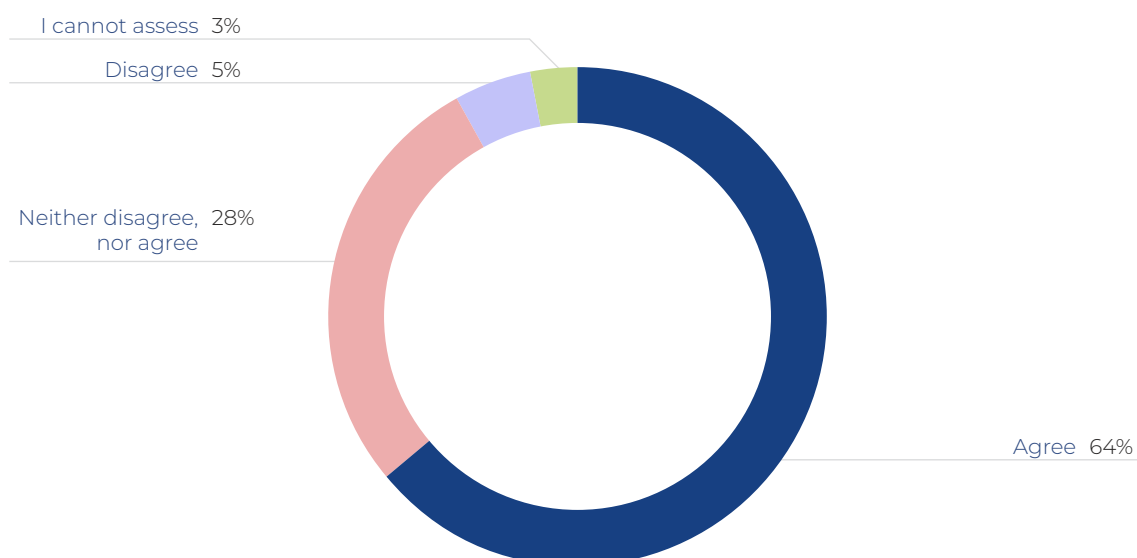
Moreover, it must be noted that particular measures are provided for the issuance of asset-referenced tokens and their admission to trading on a crypto-asset platform. It is assumed that in both cases, only legal entities established in the Union shall be granted the authorisation to ask for admission unless they are already credit institutions in accordance with Article 8 of Directive 2013/36/E. Besides that, the provisions related to asset-referenced tokens are quite broad (as is their definition) and the supervisory competencies are granted not only the NCAs but also EBA, ESMA, and ECB-SSM. For instance, EBA competently points out the criteria for which an asset-referenced token could be significant for the EU financial system passes supervisory competencies from the NCA to the EBA. Actually, it is one of many provisions related to EU-level supervisory responsibilities. The rules about asset-referenced tokens in the MiCA are quite broad and comparable to that of financial intermediaries considering the power of wind-down, on-site inspections and fines. If stablecoins can be referred to as crypto-assets, it is worth observing how extensive the rules are pertaining to asset-referenced tokens. The legislative bodies could consider moving this legislation to a proper draft considering, in addition, the relevance to have as early as possible, a legislation on crypto-assets that are currently exchanged. This is the most relevant as the guarantee of consumer protection is at stake. Asset-reference tokens could be introduced in a separate proposal together with CBDCs.

<sup>26</sup> MiCA, Article 3 (1) (21).

<sup>27</sup> *Ibid.*

### Q33. Cross-border Operations of Blockchain Businesses under MiCA

#### MiCA will address problems with cross-border operations of blockchain businesses in the EU



In the MiCA proposal, the European Commission directly referred to market fragmentation as one of the concerns that it took into consideration when deliberating on the suitable regulatory form for crypto-assets and subsequently chose regulation, which, upon entry into force, directly applies in all Member States. As a consequence, MiCA does not have to be transposed and it also ensures that crypto-asset issuers, as well as crypto-asset service providers, can operate freely across the entire Union once they fulfill their notification, authorisation and compliance requirements in their home Member State. Through this passporting option, which the EU also implemented in other markets, crypto-asset issuers and CASPs can, through a unified process, acquire access to the internal market of the European Union, consisting of more than 450 million inhabitants. Although certain discrepancies in interpretation may occur in the approaches of national competent authorities, the regulation itself is quite clear in its objective to ensure seamless cross-border operation. The same sentiment is reflected by the survey respondents. 64% believe that MiCA (to the extent that these businesses are regulated by MiCA) will address the issues with the cross-border operation of blockchain businesses.

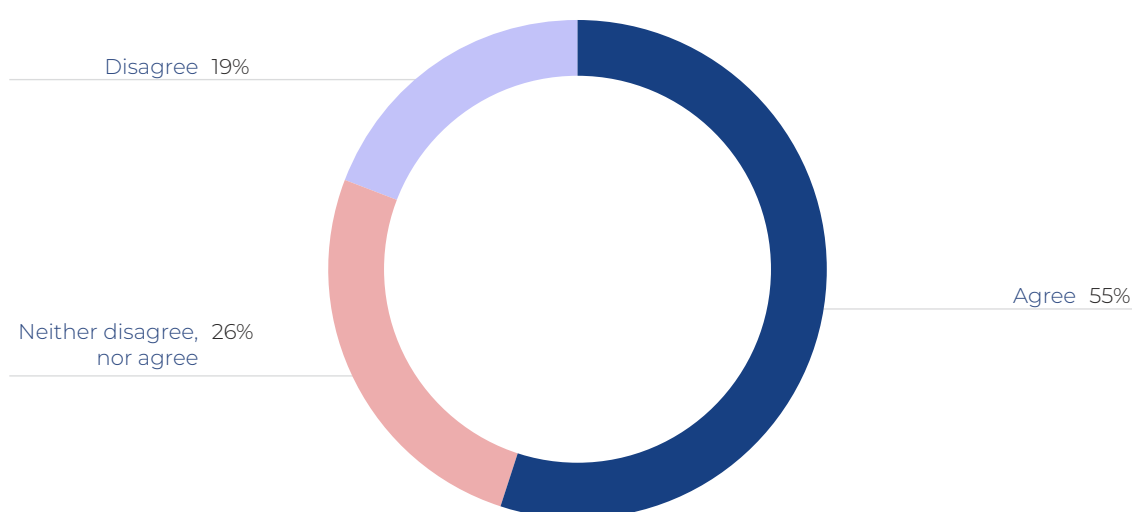
### Q34. MiCA and Financial Stability

Article 29 in MiCA states “A competent authority should refuse authorisation where the prospective issuer of asset-referenced tokens’ business model may pose a serious threat to financial stability, monetary policy transmission, and monetary sovereignty. The competent authority should consult the EBA and ESMA and, where the asset-referenced tokens are referencing Union currencies, the European Central Bank (ECB), and the national central bank of issue of such currencies before granting an authorisation or refusing an authorisation.



*The EBA, ESMA, and, where applicable, the ECB and the national central banks should provide the competent authority with a non-binding opinion on the prospective issuer's application. Where authorising a prospective issuer of asset-referenced tokens, the competent authority should also approve the crypto-asset white paper produced by that entity. The authorisation by the competent authority should be valid throughout the Union and should allow the issuer of asset-referenced tokens to offer such crypto-assets in the Single Market and to seek an admission to trading on a trading platform for crypto-assets. In the same way, the crypto-asset white paper should also be valid for the entire Union, without possibility for Member States to impose additional requirements."*

### **MICA will ensure that the growing crypto industry will not threaten the stability of the financial system**



The majority of survey respondents (55%) agree that MiCA's proposal will ensure the stability of the financial system. On the other hand, 26% are uncertain and 19% disagree. Although more than half of the sample is satisfied with the capacity of this legal framework to prevent financial instability, 20% is a significantly large proportion of dissent, which may increase if one takes into consideration the 26% of participants with a neutral stance.

Participants of the stakeholder engagement sessions suggested that MiCA's regulations are an "emergency brake for Libra" and its potential threat to financial stability. The main objection to the effectiveness of the legal framework is the combination of goals and lack of analytical rigor. Financial stability, the definition of crypto-assets, legal certainty for crypto-asset service providers and issuers and EU legal homogeneity are some of the goals of this proposal. The trade-off between rigor and the number of goals is clearly presented. If we acknowledge and accept the urgency to contain Libra's threat, we might understand the loss of rigor in some definitions and regulatory guidelines of this proposal.



## Conclusion

MiCA is currently in the early stages of the public part of the legislative process, but its impact on the blockchain ecosystem is already palpable. In general, we can conclude that stakeholders embrace this unprecedented regulatory step and fully realise the benefits of a rather comprehensive legal framework for crypto-assets. Concretely, the respondents recognised that MiCA has the potential to (i) significantly increase the competitive advantage of DLT businesses that are subject to it, (ii) mitigate fraud and market abuse particularly on trading platforms, and (iii) enable seamless cross-border operation of the businesses that it regulates, whilst (iv) ensuring that the crypto industry does not threaten the financial stability of the existing financial system.

On the other hand, some of the controversial parts of MiCA also did not escape their attention. The respondents are quite divided on the capacity of MiCA to provide legal certainty; they contend that MiCA does favour certain entities such as financial incumbents and that the proposed regulatory framework does not sufficiently facilitate emerging sub-industries such as DeFi. DeFi in particular was one of the most commented upon topics in the survey and in the stakeholder engagement sessions. On many occasions, respondents decided to choose the “neither disagree, nor agree” answer, which indicated their rather neutral stance toward a particular statement or topic. Such observation can indicate that the respondents were frequently unsure about the ‘real-life’ impact and implications of MiCA. Furthermore, when we tested regulatory awareness related to MiCA, many of the respondents self-assessed their understanding of MiCA as rather high (almost 90% of the participants claimed average or above-average understanding of the regulatory text). In contrast, more than half of the respondents did not consult MiCA with a lawyer or regulatory expert. Therefore we can assume that some intricacies of MiCA may have remained hidden from the respondents that do not possess a regulatory background. This also became apparent during the stakeholder engagement sessions, where many participants asked questions and clarifications in relation to specific provisions of MiCA. Nevertheless, the overall sentiment and the points of MiCA highlighted by the respondents as suboptimal, to a large extent, overlap with the more anecdotal feedback from the blockchain ecosystem and with the observations summarised in INATBA's first MiCA response.

In light of the above, we believe that it is essential that policymakers remain in an active discussion with ecosystem stakeholders for several reasons. Firstly, the blockchain ecosystem evolves with an immense speed, and to deliver an up-to-date and industry-relevant regulatory framework, the policymakers may have to employ a more dynamic approach. It is possible that details of the MiCA will have to change accordingly before it is enacted. Secondly, the ecosystem stakeholders should gain a better awareness of the regulatory measures before MiCA is applied. On many occasions, the respondents were unsure about the interpretation of provisions or did not find the regulatory text, by itself, concrete enough. Thirdly, MiCA may demonstrate some pseudo-extraterritorial effect, as a leading regulatory initiative, the effects of which can spill-over to other countries as a regulatory inspiration or a non-binding standard. In that sense,



the regulators have to be aware of the fact that MiCA's factual application may far surpass the territory of the European Union. Therefore, engaging stakeholders worldwide would be a welcome step toward building a robust, sustainable and optimal regulation for the years to come.



## List of Respondents/Participants

Christos Doulas, EC (expressing his own views)
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Lumoin Oy
Frederic Hannesen, Legal Counsel at Lightcurve GmbH
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Bo Hembraek Svensson, on behalf of "Nordic Blockchain Association"
Rosa Giovanna Barresi — BABEL Associate Member
Manuel Machado, Global Head of Blockchain Solutions in the MTS Division at Worldline

## Annex I: Overview of responses

	Topic	No. of Survey Respondents	No. of Participants of Stakeholder Session	Total
Q2	Active participation in the crypto space	41	—	41
Q3	Individual or representative of an organisation	45	18	63
Q4	Profile of Individuals Age Group	18	—	18
Q5	Profile of Individuals Gender	18	—	18
Q6	Profile of Individuals Location	19	—	19
Q7	Name of the organisation (not published in full extent)	22	—	22
Q8	Profile of Organisations Primary field of Operations	22	—	22
Q9	Profile of Organisations Type of Organisation	22	18	40
Q10	Profile of Organisations Function/Position of the Representative	22	—	22
Q11	Profile of Organisations Country of Registration	22	—	22
Q12	Profile of Organisations Geographical Markets	22	—	22
Q13	Profile of Organisations Size of Organisation	22	—	22
Q14	Regulatory Awareness Level of Understanding	39	—	39
Q15	Regulatory Awareness Consultations with Experts	39	—	39
Q16	Regulatory Awareness Participants regulated by MiCA	39	—	39
Q17	Regulatory Awareness Impact of MiCA on the Organisation	39	—	38

	Topic	No. of Survey Re-pondents	No. of Par-ticipants of Stakeholder Session	Total
<b>Q18</b>	Definition of Crypto-assets	31	20	51
<b>Q19</b>	Categorisation of Crypto-assets	30	20	50
<b>Q20</b>	Crypto-assets and Financial Instruments	29	—	29
<b>Q21</b>	Open question — Comments section	12	—	12
<b>Q22</b>	Disclosure Regime for Issuers of Crypto-assets	29	—	29
<b>Q23</b>	Disclosure and Compliance Regime for Crypto-asset Service Providers (CASPs)	28	—	28
<b>Q24</b>	Consumer Protection under MiCA	28	—	28
<b>Q25</b>	<i>Open Question</i> Comment section	11	—	11
<b>Q26</b>	Legal Certainty under MiCA	27	17	44
<b>Q27</b>	Compliance Regime under MiCA	27	15	42
<b>Q28</b>	Competitive Advantages of MiCA-regulated businesses	27	17	44
<b>Q29</b>	Position of Financial Incumbents under MiCA	26	18	44
<b>Q30</b>	MiCA and Emerging Sub-industries (DeFi)	26	17	43
<b>Q31</b>	Market Abuse and Fraud on Secondary Markets	25	17	42
<b>Q32</b>	Focus on Stablecoins	26	18	44
<b>Q33</b>	Cross-border Operations of Blockchain Businesses under MiCA	26	14	40
<b>Q34</b>	MiCA and Financial Stability	27	15	42
<b>Q35</b>	<i>Open Question</i> Comment section	8	—	8



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