General Observations:

Bitpanda participated in all of the ESMA MiCA package consultations. We welcome the chance to share our views here now with EBA on these important guidelines. We welcome the effort of EBA to provide a harmonised set of guidelines for the issuers and CASPs on how to fulfil the reporting requirements.

We have to however express our concerns about a number of proposals that extend beyond the requirements set out in MiCA. We cannot agree with EBA assertion that "*only limited data is required under Art 22 MiCA which would not allow authorities to fully monitor stablecoins issuers*". MiCA is clear on the regulatory monitoring. As far as we understand to be able to make explanations by means of specific data points, this must be limited to the letter of MiCA. Unfortunately, this is not the case in the proposed guidelines. What we see is the introduction of new and often non-related disclosures that acts as a "backdoor" for expanding the scope of MiCA. MiCA does not foresee reporting obligations of CASPs and we do not understand the connection of supervising stablecoin issuer and the necessity to report such vast amounts of data (like e.g. every holder, or personal data) by a CASP. Consequently, we cannot agree with the argument that there are gaps that prevent the monitoring of significant and non-significant stablecoins.

Furthermore, we believe that EMTs might not be covered by the same reporting obligation to the extent as ARTs. There is a fine line in Art 58(3), as explained below in our answer to question 8 as well for significant EMTs in Art. 56. The proposal by EBA does not clearly explain the basis and the scope is unclear and confusing. By adding EMTs without limiting them to specific cases of EMTs denominated in a currency that is not an official currency of a Member State, or clarifying the "alternative" source of data to assess significant EMTs, the scope of MiCA seems to have increased beyond its initial legal mandate.

We are also concerned by the statement that EBA justifies the expansion of the scope of MiCA by the use of its "own initiative powers" pursuant to Article 16 of Regulation (EU) No 1093/2010 to lay down a harmonised framework with common formats and templates. Then it is mentioned that "*the issuance of own initiative guidelines is the EBA's preferred way forward for the collection of the data that competent authorities and the EBA may need to carry out their supervisory tasks under MiCA until the Regulation is reviewed in accordance with Articles 140 and 142 MiCA, and revised to include additional information in ITS".*

Another serious concern is the amount of personal data that can fall under personally identifiable information (PII) and the 'investigative research' nature of the personal data points related to individuals in these proposed guidelines that are required by EBA. In fact, it is indicated how the issuers should handle the personal data - it is even observed that national rules, if any, on the processing of personal data may/should apply. This is a very significant issue that deviates from MiCA requirements. Overall, we are of the strong opinion that no requirement exists to report the user name as MiCA - *expressis verbis* - only requires the amount of users. The reporting obligations need to be seen in connection to the purpose of Art. 22 MiCA - and not act as a "backdoor" to fully fledged indirect CASP reporting - which was not included in Level 1 Text.
Having expressed the foregoing observation, we urge to reconsider the text of the guidelines to be in line with MiCA and its general principles. In its current proposed version, we believe

that regulatory powers are potentially exceeded and obligations for CASPs, that are not warranted under MiCA, are added. This acts contrary to the harmonisation principle and legal certainty and proportionality.

Please find below our response to questions concerning CASPs.

Question 6: Do you have any comments on template U 09.04 on how CASPs should report to issuers the cross-border transactions that are associated as a means of exchange?

Please see our answer to Q7 where we cover aspects of Annex III and Annex IV. In short, MiCA does not specify the requirement of reporting transactions that are of cross-border nature.

Question 7: To note, CASPs templates U 08.00, U 09.01, U 09.02, U 09.03 and U 10.00 in these guidelines are the same templates as templates S 06.00, S 07.01, S 07.02, S 07.04 and S 08.00 in the draft ITS under Article 22(7) of MiCA, only the tokens in scope of the reporting is different. Do you have any comments on the extension of the scope, compared to the draft ITS, to EMTs referencing EU currencies for these templates related to information on holders; information on transactions; and information on tokens held by the CASPs with these guidelines?

With regards to the Annex IV “instructions”:

Part I: General Instructions

I. *Scope of reporting*

In point 5, we would like to seek further clarification of the scope. We believe that it goes beyond MiCA scope. In this respect, Art. 22 of MiCA predominantly seeks to apply to ARTs (see also MiCA recital 40) and is limited to specific cases of EMTs. In this regard, the main legal basis for EMTs is Art. 58(3), for which the scope of Art 22 is constrained, to EMTs denominated in a currency that is not an official currency of a Member State. This fact is not clearly stated and the proposed requirements are confusing. Furthermore, Art 56 (8), in fact, gives the option from where the data could come from for the significance assessment. Accordingly it states:

- Art. 56(8) *EBA shall annually reassess the classification of significant e-money tokens on the basis of the available information, including from the reports referred to in paragraph 3 of this Article <u>or</u> the information received under Article 22.*

It is clear that there is an “alternative” in the source of data and not so much as a general obligation for all EMTs as for the ARTs under Art 22 (only for specific EMTs as mentioned above). This is further supported by Art 56 (3) that states:

- *Competent authorities of the issuer’s home Member State shall report to EBA and the ECB information relevant for the assessment of the fulfilment of the criteria set*

out in Article 43(1), including, if applicable, the information received under Article 22, at least twice a year.

Again, the word “including, if applicable” gives an alternative of the sources to choose the data from for the assessment of significant EMTs issuers and can indicate applicability to specific cases of EMTs in light of Art. 58(3).

Furthermore, point 5 reads as implying that data points are needed only for EMTs whereas ARTs are only included in the template U 09.04. This should be further clarified and, as stated above, primarily limited to ARTs and then to EMTs that are solely denominated in a currency that is not an official currency of a Member State. While for significant EMTs, as per Art. 56 (8), there is an alternative for collecting the necessary data. Therefore, we believe that the guidelines are not clear here. The scope is too wide, extending the scope of MiCA and should be very much clarified and contained.

In point 7, the frequency of reporting information from template U 10 is mentioned. The proposed requirement of daily basis by close of business effectively goes beyond the scope of MiCA Art. 22, which does not envisage a daily basis for the reporting of a) Token held by CASP and b) of which held via EU customers of the CASP. The proposed requirement is excessive and disproportionate (administrative and operational burden) and should be erased. The requirement of reporting concerns “quarterly basis”. Therefore, some time in advance before submitting data - the time of when the issuer makes a request, data can be shared in aggregate and up-to-date (ex. one week before the submission).

In terms of data **b)** token held by CASP of which is held via EU customers of the CASP, this data point also goes beyond what is required under Art. 22 that only requires information on the number of holders without further specification. Therefore, we would not deem it necessary having to fulfil these reporting obligations.

Part II: Information on Holders (U 08.00)

I. *Instructions concerning specific positions of Template U 08.00*

We find the section on “Information on Holders” not relevant for the reporting obligation of stablecoins issuers and excessive beyond the intention and letter of MiCA. In short, this proposed requirement significantly extends beyond the scope of MiCA, especially with respect to individual personal information. The requirements of a) name, b) country, c) retail/non-retail and d) national identification number, passport, or other type of identification number, bear no relation to the scope of Art. 22 (1a) MiCA that only postulates “the number of holders”. We strongly oppose this proposal and urge to erase this requirement as it effectively risks violating data protection (GDPR), for example, by disclosing PII (Personal Identifiable Information).

Accordingly, we would like to point out that "*Legal references and instructions (CASPs should allocate one row for each specific holder in scope*", should be, therefore, also erased given our explanation about transgressing personal information. This will be consistent with MiCA that only seeks the information on the number of holders without collecting any personal information.

Next, in terms of "code" (00.20), we would like to point to our public response to the ESMA MiCA Consultation Package 2, that contains the complete set of arguments concerning CONCAT/LEI. In short, if we aim to achieve standardisation and harmonisation, a CONCAT approach for all jurisdictions would be preferable. National identifiers are burdensome and ineffective - there are huge discrepancies and fragmentation between national set-ups. In reality, this is a large blocker for CASPs and retail markets. Further, if at all, an LEI should not be required at all times. It might be burdensome for small issuers to request a LEI (small businesses that do not have LEI should not be blocked). For proportionality reasons, either a threshold should be included or the obligation for an LEI should be evaluated as a whole. Alternatively, it might be feasible to define certain assets or products that would require an LEI or could be exempted from this obligation.

Part III: Information on Transactions (U 09.01, U 09.02, U 09.03 and U 09.04)

I. *General remarks on Template U 09.01*

We would also like to highlight here that the requirement of reporting transactions and data points of (row 00.10, 20, 30 and 40) significantly go beyond what is stipulated under MiCA. The essential element that issuers need to report is the average number and average aggregate value of transactions (Art 22 c MiCA).

The proposed specific data points bear no proxy to the reporting requirement. Here, once again, the PII information is required, which is irrelevant and poses significant risk to violating GDPR rules - the requirement of habitual residence, originator and beneficiary or from and to country are unnecessary and excessive. Essentially, the breakdown for the transactions is unsubstantiated. Overall, the proposed draft is overly burdensome from the operational perspective (amount of data and regularity of submission) as well as unwarranted under MiCA. The only suitable data for MiCA reporting is: number and amount of transactions.

Point 13 is confusing and unclear. It appears to us that it is also based on wrong premises. Art. 22 concerns ARTs and is specific for EMTs. In addition, as mentioned above, EBA can receive data from "alternative" sources for significant EMTs . Point 13 also reads as "geo-tracking" which, once again, should not be part of the reporting. Moreover, MiCA does not justify, and therefore, does not require the collection of data for EMTs when both parties involved in the transaction are located outside the EU.
Point 16 is unnecessary and overly complex. MiCA does not require a country specific reporting template for transactions with EMTs referencing a non-official currency of an EU Member state. Furthermore, there is equally no basis in MiCA for determining the country of a transaction by identifying the location of the transaction's originator and beneficiary.

II. *General remarks on Template U 09.02*

We believe that the proposed requirement lacks the legal foundation under MiCA. Article 22 (c) of MiCA defines a 'transaction': "*shall mean any change of the natural or legal person entitled to the asset-referenced token as a result of the transfer of the asset-referenced token from one distributed ledger address or account to another*." The EBA suggested breakdown of transactions is therefore disproportionate and excessive.

While EBA may exercise discretion through "own initiative powers", this should not lead to an extension of MiCA's scope to the degree that it has adverse effects on its intended purpose and negatively impacts market participants. Moreover, the demand for such detailed breakdown of transactions will impose a significant operational burden, making compliance impractical in the long run and potentially leading to unintended consequences. To reiterate, the average number and average aggregate value of transactions should be sufficient to report as per Art. 22 (c)(d).

It is important to note that reporting and monitoring are part of AML/CFT regulations such as TOFR and the new AML package. Thus, the additional reporting requirements proposed are redundant and could strain resources without providing substantial benefits.

Finally, the above points should be read in connection with our response to General *remarks on Template U 09.01* given the same nature of the issue here.

III. *General remarks on Template U 09.03*

We strongly oppose the proposed requirement to collect and share DLT addresses. Although the information is available publicly, it should not be disseminated by CASPs and issuers of stablecoins to authorities. DLT addresses function like bank account details and should not be disclosed as such. This raises serious privacy concerns and infringes on rights of property. Moreover, users are unaware that such data points are shared by CASP with issuers and then with EBA, without their consent, which is a serious problem from the perspective of data protection law. The "own initiative" powers of EBA, cannot thus justify this reporting obligation, which is broadly speaking, irrelevant for the supervisory duties. Lastly, once again, Art 22 applies to EMTs only when they are denominated in a currency that is not an official currency of a Member State.

Moreover, MiCA does not require to identify which transactions registered on the distributed ledger take place between non-custodial wallets. We respectfully disagree with EBA exercising its "own initiative powers", as this represents an unwarranted expansion of MiCA's scope. Non-custodial wallets fall outside the MiCA framework and should only be considered under the TOFR, based on the monetary threshold.

IV. *General remarks on Template U 09.04*

We would like to underline that the rules established under MiCA regarding the use of tokens as a means of exchange predominantly apply to ARTs rather than EMTs. Specifically, both standard and significant ARTs are required to report on their usage (Art. 22 and 23, recital 40, 56, 61 MiCA) since there are increased risks in terms of protection of holders (recital 40). The case for EMTs is limited, as already mentioned above, as per Art. 58 (3) to EMTs denominated in a currency that is not an official currency of a Member States. Finally, in

terms of risk of significant EMTs as a means of exchange MiCA rectal 104 notes: "*Significant e-money tokens denominated in an official currency of a Member State other than the euro which are used as a means of exchange and in order to settle large volumes of payment transactions can, although unlikely to occur, pose specific risks to the monetary sovereignty.*" Consequently, it shows that non-significant EMTs would not pose the same risk as potentially, however unlikely, significant EMTs. Therefore, we assert that any reporting is predominantly necessary for ARTs, while the scope for EMTs is clearly limited.

Next, there is nothing under MiCA about breakdown between inflow to or outflow from the EU. The requirements are effectively limited to a single currency area. Imposing obligations related to inflows and outflows from the EU would not only pose an operational burden but would exceed the scope of MiCA.

Another important point is that we see the contradiction in the EBA proposal as well as further unwarranted expansion of MiCA's scope. For example in point 19 and 20 it is stated that "*total number and total aggregate value of transactions during the reporting period should be calculated*" whereas in point 20 d it is added: "*(...) not the average values."* Based on MiCA, the only requirement is the "average" and not total (Art. 22 and 23 MiCA). We strongly encourage EBA to change this.

Part IV: Information on token

I. General remarks on Template U 10.00

To the extent that the proposed drafts cover the amount and number of tokens that are held by CASPs and can help issuers to fulfil their obligations, we believe that the requirement to specify which tokens are held by EU customers is not necessary and not specified anywhere in MiCA. We are of the opinion that the amount of holders (without origin) should be sufficient. We also do not see how this fact will help to calculate the reserved requirements. MiCA focuses on "international scale" without distinction to EU level.

Question 8: Do you have any other comments on the guidelines, the templates or instructions?

See our general observations at the beginning of this response and answer to Q7 and Q6.