Adan's position on the treatment of decentralised finance within the MiCA framework

The European Commission and the European Securities and Markets Authority (ESMA) are preparing to launch a consultation on the potential integration of decentralised finance (DeFi) within the scope of the Markets in Crypto-Assets Regulation (MiCA). This initiative, which takes place in the context of MiCA's progressive entry into application and of the broader European reflection on the evolution of digital markets, represents an important step in structuring the European debate on these new architectures.

Adan, the Association representing French and European companies active in the crypto-asset sector, welcomes this initiative. It sees it as an opportunity to contribute to a balanced approach capable of strengthening trust while supporting the European Union's competitiveness in digital finance. Through its DeFi Committee, Adan aims to provide analytical elements relating to the technical and organisational realities of decentralised architectures.

This document seeks to clarify the specificities of DeFi and to identify the principles that should guide any reflection on its treatment within the existing European framework.

I. A European reflection with significant implications for digital markets

The reflection initiated by European institutions takes place at an important stage for the crypto-asset sector. While the MiCA regulation establishes a harmonised framework for Crypto-Asset Service Providers (CASPs) and issuers, the question of its articulation with decentralised architectures raises important issues for the evolution of digital markets in Europe.

However, decentralised finance currently represents a limited share of the global crypto-asset market:

- According to data recently published by the European Banking Authority (EBA) and ESMA, DeFi accounts for approximately 4% of the total crypto-asset market capitalisation, with a total value locked (TVL) estimated at EUR 78 billion as of September 2024.
- Available estimates indicate approximately 54 million users worldwide, including around 7.2 million within the European Union, representing approximately 1.6% of the EU population.

These figures confirm that DeFi remains limited in scale at this stage, does not present systemic risk, and constitutes a significant field of innovation. It relies on open, interoperable and automated protocols enabling the execution of financial functions without a central intermediary exercising discretionary control nor custody of users' assets. Access to such

protocols may occur either through interfaces developed by identifiable actors (front-ends), distributors (such as financial institutions, Fintech companies, crypto platforms) or - in practice, to a very limited extent - through direct interactions with smart contracts. Observed use cases primarily include exchanges, liquidity provision, borrowing, and collateralised management of crypto-assets within "vaults" or other programmed mechanisms. **These developments may raise questions regarding legal frameworks around traditional intermediation models.**

A precise understanding of DeFi's operational mechanisms is therefore essential in order to avoid unintended consequences that could hinder innovation or generate legal uncertainty detrimental to the development of competitive European solutions. Especially at a time the US are also exploring how to provide legal visibility to DeFi actors as well as institutions willing to integrate DeFi protocols in the context of the Market Infrastructure Bill.

II. Decentralisation as a 'spectrum'

On decentralisation, Adan recalls that this concept cannot be understood as a homogeneous legal category opposed in a binary manner to so-called "centralised" models. Decentralisation does not correspond to a fixed state; rather, it exists along a 'spectrum' within which projects evolve according to varying degrees of distribution of control, governance and critical functions. **Decentralisation is not determined by a single feature. It results from the fulfilment of several elements;** such as asset custody, the existence of discretionary powers, control over governance or the ability to modify the protocol, *etc*. **For this reason, the Association supports a functional approach to DeFi, based on the functions effectively exercised rather than on an abstract or theoretical definition of decentralisation.**

In practice, many protocols follow a progressive trajectory. An initial structuring phase is often necessary, during which a development entity assumes a central role in technical design, smart contract deployment and project coordination. This phase, which may involve a traditional corporate structure intended to frame legal and operational risks, frequently precedes a gradual decentralisation phase. As the protocol is deployed and governance expands, decision-making functions may be transferred to distributed mechanisms, including onchain governance frameworks. Technical decentralisation may thus be accompanied by economic and organisational decentralisation, until no identifiable entity exercises discretionary control over the system as a whole.

This evolutionary dynamic illustrates that decentralisation should be understood as a continuum. Decentralised architectures display heterogeneous configurations, in which certain functions may remain structured while others are fully distributed. As observed in market practice, there is no universal threshold at which a protocol becomes "fully" decentralised instantaneously.

In this regard, **Adan considers that clarification of the notion of "full decentralisation" constitutes a priority.** A restrictive and/or static definition would not reflect the progressive and graduated nature of decentralisation processes observed. Such an approach could lead to extending MiCA's scope to architectures that don't exhibit the functional characteristics of an intermediary exercising management or control over users' assets. A nuanced understanding of the technical, economic and organisational dimensions of decentralisation is therefore essential to avoid oversimplified classifications given that such clarification is a prerequisite for legal certainty and for any further reflection on the articulation between MiCA and decentralised protocols.

III. Legal certainty requires an analysis grounded in technical realities

Clarifying the legal treatment of decentralised finance also requires a careful assessment of the functions effectively performed within the relevant architectures. Supervisory models built around centralised entities exercising discretionary power cannot be mechanically transposed to protocols whose operation largely relies on automation and the encoding of rules into software.

Within decentralised systems, a significant share of operational parameters is determined *ex ante* through protocol design and the smart contracts that execute them. These protocols operate on the basis of self-executing mechanisms, where execution derives directly from code, without the intervention of a central authority capable of unilaterally modifying their functioning or intervening ex post in the event of disputes or operational incidents. Risk allocation and control mechanisms are largely embedded within the technical architecture itself rather than within ongoing managerial discretion. This specificity requires a clear distinction between technical infrastructure and activities involving asset custody, discretionary decision-making or the provision of regulated services within the meaning of existing frameworks.

Furthermore, certain functions performed in the onchain environment constitute technical or informational activities that do not entail asset custody or management authority. Indiscriminately qualifying such roles as regulated services would conflate technological infrastructure with the effective provision of crypto-asset services. This could generate inappropriate classifications and create legal uncertainty detrimental to responsible European innovation.

Many protocols are developed and maintained as open-source software, relying on contributions from technical teams that neither operate nor control their use. **Preserving a legal environment that enables the development and maintenance of such infrastructures without disproportionate liability exposure is therefore critical for Europe's digital innovation ecosystem.** This also requires ensuring appropriate protection for developers and open-source

contributors against extensive liabilities where they do not exercise operational control over the deployment or use of the protocol.

At this stage, priority should be given to clarifying how the existing framework applies to the various configurations observed in practice. A thorough understanding of technical realities is the necessary foundation for any subsequent regulatory consideration.

IV. Principles to guide the European approach

European reflection on decentralised finance should be grounded in clear principles that ensure legal certainty while preserving the fundamental characteristics of the architectures concerned. Certain elements structurally define these architectures and should be recognised as such:

- the ability for users to retain direct control over their assets (self-custody);
- reliance on public, transparent, and permissionless infrastructures;
- open-source code;
- distributed governance mechanisms;
- interoperability between protocols.

Any evolution of the framework should preserve these characteristics.
The principle of proportionality must also apply. At this stage, DeFi does not present systemic characteristics. The introduction of general limitations, *ex ante* thresholds or uniform restrictions regarding eligible assets or access modalities could produce disproportionate effects.

Therefore, Adan states that before considering additional regulatory requirements, particular attention could usefully be given to providing guidance to entities that give access to, distribute or interact with DeFi protocols in order to help them ensure that their activities remain compliant with existing regulatory frameworks. Clear guidance would support responsible market development and reduce legal risks for actors integrating, or building, services decentralised infrastructures.

Certain discussions have raised the possibility of segmenting or restricting liquidity in order to limit access to actors established within the Union or to regulated entry points. However, decentralised protocols rely on unified and interoperable liquidity pools at an international scale. Fragmentation of such liquidity flows would reduce market depth and negatively affect capital efficiency. It would also limit the capacity of protocols to absorb market volatility.

The European approach can build on practices already deployed within the ecosystem, including independent smart contract audits, bug bounty programmes and compliance tools integrated at interface level, rather than introducing additional certification schemes. These mechanisms operate through incentives and reputational discipline, where security and

trust directly condition adoption. DeFi survival depends on its demonstrated operational and cyber resilience to stay in business. DeFi developers thus work to ensure the most rigorous cyber security standards to ensure the market credibility and its valuation permanently.

Finally, the legal framework should:

- rely on a precise, case-by-case functional analysis of activities actually performed, without imposing *ex ante* regulatory automation at the protocol level;
- take into account the diversity of existing architectures, avoiding reductive binary distinctions between centralised and decentralised models;
- base the qualification of technical actors on the effective exercise of custody or management functions, in line with the functional logic generally retained under EU law.

V. Conclusion

The European reflection concerns the articulation between established financial infrastructures and decentralised architectures that contribute to the evolution of digital markets. Decentralised finance introduces transparency, automation and interoperability mechanisms that enrich the existing financial ecosystem. These characteristics can operate in complementarity with the stability, investor protection and supervisory standards structuring traditional finance. This complementarity creates a framework conducive to the development of digital markets integrating both traditional financial standards and the technological contributions of decentralised protocols. The challenge for the European Union lies in organising this articulation with coherence and discernment. **An approach grounded in clarification of key concepts, analysis of functions effectively performed and respect for the technical characteristics of decentralised architectures will strengthen trust, support innovation and reinforce European competitiveness in digital finance**. In addition, ongoing reflections within the Union, including in the context of the DLT Pilot Regime, illustrate the importance of appropriately calibrating thresholds and *ex ante* limitations, whose impact on adoption and scaling capacity constitutes a key parameter for the proper functioning of the internal market.

Adan, through its DeFi Committee, stands ready to continue the dialogue and to further develop the elements set out in this document in support of a proportionate and legally sound European framework.

Contacts at Adan:

- Claire Balva, General Director claire.balva@adan.eu
- Adriana Torres Vergara, EU Policy: adriana.torres.vergara@adan.eu
- Alizée Van Den Schrieck, Lawyer: alizee.vandenschrieck@adan.eu