

# ■ The Boundaries of DeFi

*When a decentralised exchange escapes regulation  
— and when it merely appears to*



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# The General Thesis

- Decentralised finance is a new field of financial-market development comprising services built on smart contracts that operate without intermediaries on distributed-ledger technology
- **Decentralisation is a matter of degree, and as a rule incomplete.**
- “Full decentralisation” within the meaning of recital 22 MiCA is a conjunction of conditions, not a majority of them.
- In the absence of a legal definition, the threshold is set by supervisory practice and functional interpretation.
- **Operational conclusion:** the object of analysis is the structure of the specific protocol, not its self-declaration.

## Scale of the phenomenon: size

≈ €78 bn

TVL after the correction (c. 4% of the crypto-asset market); EBA/ESMA, Sep 2024

≈ \$98 bn

TVL as of March 2026 (CRS); peak of c. \$180 bn at the end of 2021

≈ 0,1%

of global equity-market capitalisation (c. \$127 tn, Jul 2025)

*The entire segment roughly equals the market capitalisation of one large listed company. A niche does not dispense with the duty of qualification.*



## Scale of the phenomenon: structure and penetration

**7.2 m**

users in the EU (1.6% of citizens); fewer than 15% regularly active

**39 / 22 / 8**

share of TVL (%): staking / lending / DEX  
(down from 31%)

**≈10%**

DEX share of spot crypto-asset trading (up from c. 3% in Jan 2021); DEX flows may exceed €100 bn monthly (EBA/ESMA)



# The Systemic Consequence

- **The first asset class structurally resistant to seizure** by decision of a public authority.
- **Sanctions and enforcement instruments lose their effectiveness** against assets that lack a centre of control. Software cannot be compelled to honour sanctions
- **This is a paradigm shift in law enforcement** (from entity to function), not a transitional gap to be closed by the next amendment.

**Since 2022, Russian users have been taking out DeFi loans:** they deposit rouble-purchased ethereum into a protocol such as Aave or Compound, and against that collateral borrow stable tokens pegged to the dollar, and withdraw them to a private wallet. The result is dollar value, held outside the sanctioned banking system, that has never once passed an identity check at a centralised exchange.

The North Korea-linked Lazarus [group funnelled through DeFi protocols some 30 – 40 % of more than \\$2 billion in stolen cryptocurrency](#). The mechanism: break into a bridge or an exchange; within hours, before analysts can flag the addresses, swap the loot into ethereum or stable coins on a decentralised exchange, most often first on Uniswap; run it through a mixer; withdraw in tranches over weeks; and finally cash out into fiat currencies via a centralised exchange in a jurisdiction where identity checks are lax.

# The Face on the Other Side of the Protocol



## **Park Jin Hyok, Lazarus Group (DPRK)**

The 2018 DOJ indictment; the first Lazarus hacker charged by name.

The law can point to a human. It cannot seize an asset that has no centre of control — and it is precisely this asymmetry that Lazarus exploits, laundering its loot through DeFi protocols.

*Source: FBI Most Wanted; U.S. v. Park Jin Hyok (C.D. Cal. 2018)*



■ PART I

# DeFi Beyond Regulation: Europe and the United States

*Neither jurisdiction brings DeFi within the regulatory perimeter.  
Neither has drawn the boundary. The difference is constitutional, not  
definitional.*



# A Legislative Anomaly

- **An extraordinary legislative technique:** a sweeping regulation carves out a concept that has neither a legal definition nor a settled linguistic meaning.
- **Basis:** recital 22 MiCA — the preamble alone, with no operational threshold. Services provided “in a fully decentralised manner, without any intermediary” remain out of scope.
- **Confirmation:** the joint EBA/ESMA report of 16 January 2025 expressly concedes that the Regulation does not specify “full decentralisation” and deliberately offers no recommendations.



# The Union: Regulation Through the Entity

- **Object of regulation:** MiCA regulates the entity providing the service; the premise is a contract between two persons with legal capacity.
- **The software boundary:** code has no will, makes no binding declaration of intent and bears no liability. Yet the public deployment of a service may itself constitute a declaration of intent.
- **Scope of the exclusion:** it operates only where there is no person with whom the user enters into a legal relationship.



## USA: Exclusion by Type of Activity

- **CLARITY Act:** divides crypto-assets into commodities (CFTC) and securities (SEC).
- **Section 15H, the question inverted:** a catalogue of activities that per se do not make an entity regulated: validating transactions, operating a node or an oracle, a read-only data interface, writing and publishing code, supplying a self-custody wallet.
- **Ratio legis:** what is regulated is the provision of a service, not the existence of infrastructure. Writing code is not operating an exchange.
- **Migration of the defence “we merely supply software”:** a lineage from Napster through Kazaa, Megaupload and Backpage; its only durable success was in online gambling. The line will probably collapse at the interface layer.



# USA: The Limits of the Safe Harbour

- **The limit (subsection (b)):** the exclusion does not reach fraud and manipulation jurisdiction.
- **The crux of the design:** “you are not a financial institution merely because you wrote code,” but “defraud someone through that code, and the umbrella vanishes.”
- **Conclusion:** the safe harbour concerns regulatory status, not immunity from liability for abuse.
- In a sense — the Tornado Cash episode -> the limits of attributing liability (dolus eventualis)



## U.S. v. Storm and Semenov (S.D.N.Y., 23 Cr. 430)

The indictment of Tornado Cash’s creators: charged not for writing code, but for developing, marketing and profiting from knowingly tolerated laundering — “defendants well knew”.

This is the safe harbour’s limit in practice: the umbrella protects status, not dolus eventualis.



## USA: Where the Legislature Demands Control

- **GENIUS Act (P.L. 119-27):** the stablecoin regime; a duty to possess the technical capability to block, freeze and reject transactions.
- **What the provision says between the lines:** the legislature demands a point of control wherever the asset has a real issuer.
- **Blockchain Regulatory Certainty Act (H.R. 3533):** a non-controlling developer or provider is not a money transmitter.



# USA: The Enforcement Retreat

- **The new executive order (EO 14178, Jan 2025)** revoked the previous administration's cautious order (EO 14067, Mar 2022).
- **DOJ memorandum "Ending Regulation by Prosecution" (Apr 2025):** no prosecution of violations that would impose regulatory frameworks on digital assets; charges only for wilful breach of a known duty.
- **Softening at the agencies:** the SEC dropped the Uniswap case (Feb 2025), and Tornado Cash was removed from the OFAC list (Mar 2025).
- **Yet the letter endures, FinCEN (2019):** money-transmitter rules apply "regardless of the label" — so this is not deregulation but a suspension of enforcement.



## What This Turn Is — and What It Is Not

- **It is a suspension of enforcement, not a change in substantive law.**
- **The letter remains intact:** the FinCEN guidance continues to apply.
- **The course's durability is uncertain,** for it depends on the political cycle, not on statutory text.



# Two Models

Dimension	European Union (MiCA)	United States (CLARITY/GENIUS)
Basis of the exclusion	recital 22 (preamble), no threshold	catalogue of activities (section 15H), no definition of DeFi
Definition of “full decentralisation”	none (EBA/ESMA expressly concede it)	none; a category of activity instead of an entity
Real source of the norm	supervisory practice (Finanstilsynet)	enforcement practice (DOJ, SEC) plus statute
Limit of the exclusion	control attributable to an entity	fraud and manipulation (subsection (b))
Front-end / interface	may be a separate CASP service	statutory silence; a non-controlling developer out of scope
Main gap risk	arbitrage, semi-decentralisation	AML/CFT gap (Senate warning)



# What the Law Leaves Open Today

- **No normative threshold:** the standard is set by soft law and administrative practice ahead of judicial interpretation; a risk of divergence between Member States.
- **The asymmetry of the US catalogue:** the impersonal layers were excluded (protocol, validators, nodes); the interface and the treasury were passed over.
- **The AML/CFT gap:** the Senate Judiciary Committee letter (Grassley, Durbin, 14 Jan 2026) warns of a “significant enforcement gap”. The very spread of contested estimates illustrates the problem: from 0.15% of on-chain activity (blockchain analysts) to 11.9% of US crypto activity per FinCEN suspicious-activity reports (CRS).
- **The seizure gap:** no instrument exists to seize an asset that has no centre of control (Van Loon a contrario).



## ■ OUTLOOK I

# Where This Is Heading

- **Transatlantic convergence:** the same problem, different technique; both jurisdictions are moving towards a functional test.
- **Codification of the test (de lege ferenda):** the Danish-style test will likely migrate into EBA/ESMA guidelines or technical standards.
- **The interface front:** the main field of enforcement will shift to the layer where someone holds the domain, the terms of service and the servers.
- **Reversibility of the US course:** the suspension of enforcement may be reversed with the next political cycle.



## ■ CONCLUSION OF PART I

# There Is No “DeFi by Definition”

- The boundary has not been set normatively on either side of the Atlantic; the difference is constitutional.
- Europe regulates through the entity and refines the threshold by supervisory practice.
- America excludes by type of activity and, for now, suspends enforcement.
- **What remains for the adviser is the concrete:** not the protocol’s philosophy, but its structure.



■ PART II

# The Strategic Flight into DeFi

*Decentralisation is sometimes engineered as a legal position rather than an engineering outcome. This is the costume of decentralisation.*



# The Decentralisation Illusion

- **Source:** BIS (Aramonte, Huang, Schrimpf), “DeFi risks and the decentralisation illusion”, Dec 2021.
- **The mechanism — algorithmic incompleteness:** an analogy to contractual incompleteness (Coase). No code can prescribe a response to every state of the world, so a residual space for decision remains — and hence a decision-maker.
- **The BIS conclusion:** every DeFi platform has a centre of governance, usually clustered around token holders and often around the founders. The BIS identifies two sources of centralisation: the necessity of governance, and the consensus mechanism itself (proof-of-stake rewards large validators, and the initial token allocation favours insiders).
- **How, then, can one represent DeFi?**

## Illustration: Compound, October 2021

- **The event:** after a failed upgrade, the protocol distributed roughly \$90 m in rewards to users by mistake.
- **The founder's statement:** no administrative or community tools existed that could halt the distribution.
- **Conclusion:** an absence of control is advertised as the virtue of decentralisation, and turns out to be plain helplessness.



# Why the Flight Pays

- **(a) Genuinely decentralised businesses.**
- **(b) Illegal activity,** for which the absence of a control point is the objective, not a side effect.
- **(c) Prohibitive compliance costs** and the ambition of market expansion.
- **The FSB principle undermined:** “same activity, same risk, same regulation” loses its force when the exclusion itself creates the incentive for arbitrage.

# Functional Equivalence

- **The thesis (Aquilina, Frost, Schrimpf):** the same intermediation functions breed an analogous concentration of power, and hence analogous risk.
- **Conclusion:** the technology changes; the function does not.
- **Consequence for qualification:** decentralisation is sometimes designed as a legal position, not an engineering outcome.

## ECB No 3208: Concentration

- **Method:** a manual review of the 100 largest holders and the 20 largest voters in four protocols (Aave, MakerDAO, Ampleforth, Uniswap).
- **Result:** the top 100 addresses hold 82–94% of governance tokens (Oct 2022); the top 5 alone: Ampleforth 57%, Aave 49%, Uniswap 47%, MakerDAO 36%.
- **Stability:** the distribution is stable over time (measured Oct 2022 and May 2023; single-percentage-point shifts).

## ECB No 3208: The Structure of Power

- **Holdings:** half or more of the tokens sit in protocol treasuries and exchanges; aggregate exchange holdings range from 3% (Uniswap) to 22% (Aave), with Binance alone at c. 10% of Aave (Oct 2022).
- **Voters:** mostly delegates; the most powerful voter in Uniswap is the venture-capital firm a16z, with delegators rising from 100 (Dec 2022) to 125 (May 2023).
- **The character of the regime:** a timocracy — power in proportion to holdings — not a dispersed democracy.

# ECB No 3208: Conclusions

ECB finding	Seam	What goes into the opinion
Top 100 hold 82–94% of tokens; top 5 up to 57% (Ampleforth), 49% (Aave)	4	dispersion of addresses is not dispersion of power
Half or more of the holdings are treasuries and exchanges	1 and 4	we ask who commands the treasury and whether large addresses are linked to the team
Top voters are delegates; a16z is Uniswap’s top voter	4	we demand a delegation map: who actually votes and to whom power was delegated
37% (to Dec 2022) to 46% (May 2023) of top voters unidentifiable	burden of proof	if the authority cannot establish identities, a fortiori the client will not prove dispersion
Votes concern risk parameters (28%) and asset listing (23%)	4	governance power is substantive, and therefore attributable



# Opacity Is Not Decentralisation

- **The finding:** from 37% (to Dec 2022) to 46% (May 2023) of the largest voters cannot be identified from public sources.
- **The apparent counter-argument:** if no one knows who governs, there is no one to whom control can be attributed.
- **The refutation:** if an authority with its full apparatus cannot establish dispersion, an entity invoking decentralisation will prove it still less. The delegate's invisibility is evidence of opacity, not of the absence of control.
- **The evidentiary consequence:** the burden of proof shifts onto the party invoking the exclusion.

## Semi-Decentralisation: The Worst Position

- **The intermediate state:** an entity controls the service but performs part of it through smart contracts.
- **Cumulation, not reduction, of risks:** the key, the interface and the treasury remain — and with them an entity to charge — yet the exclusion is claimed all the same.
- **The rule of time (Finanstilsynet):** assessment as at the moment of public deployment; a promise of future decentralisation is legally irrelevant.

# What the Law Leaves Open Today

- **The incentive gap:** the exclusion rewards form at the expense of function, so circumvention is built into the design rather than incidental.
- **CeDeFi without a regime:** no dedicated rules for intermediate states in which control is partial yet real.
- **The risk of test erosion:** the temptation for practice to start “weighing” the conditions instead of requiring them all to be met.



## ■ OUTLOOK II

# Where This Is Heading

- **CeDeFi is the principal contested zone:** most cases will play out not at the poles — neither pure DeFi nor a pure exchange — but in the intermediate state.
- **Embedded supervision:** the DG FISMA pilot (Promontory, IBM; 2024) showed that liquidity pools are visible in public data, but user identities are not. The regulator's likely answer to unidentifiability.
- **Entrenchment of the timocracy:** concentration is stable, so the attributability of control is durable.



## ■ CONCLUSION OF PART II

# The Flight Works Until Proof Is Demanded

- Concentration is real and measurable.
- Opacity does not negate it; it shifts the burden of proof onto the party invoking the exclusion.
- **The adviser's task:** not to believe the costume, but to check the seams.



■ PART III

# The Emerging Criteria of Verification

*Where the legislature gave no threshold, practice supplies one. We convert the question “is it decentralised?” into a sequence of proofs.*

## The Two-Stage Functional Test (Finanstilsynet)

- **Stage I, technical decentralisation:** is the service provided solely by smart contracts that no entity controls.
- **Stage II, governance decentralisation:** if not, can control be attributed to an entity.
- **The technical conditions:** self-execution, autonomy (no editable inputs) and the absence of “special embedded rights”, such as a fee stream to the creator’s address. Self-execution alone does not suffice.



# Three Rules of Collision

- **The rule of time:** we assess the state as at public deployment, not the declared target state.
- **The rule of distribution:** token dispersion is not the absence of a centre of control. One may have a hundred thousand addresses and a single multisig key deciding everything.
- **The rule of the single factor:** this is not a weighted test. Full decentralisation is a conjunction of conditions; a single trail leading to a person disables the exclusion.



## Possible Layers of Centralisation

- **Three layers (BIS):** settlement (the chain finalises the transaction), application (smart contracts), interface (the front-end). The CFTC extends the stack down to hardware and up to governance.
- **Where the salient points sit:** the key and upgrade rights at the application layer; the interface and geofencing at the interface layer; fees at the junction of application and treasury; governance at the governance layer.



## Where the Person Hides

- **Observation:** the US bills exclude the impersonal layers (protocol, validators, nodes) while staying silent on the interface and the treasury.
- **Conclusion:** it is a map of the places where the law expects to find an owner — drawn by the hand of those who would rather he were not found.



## ■ Test 1

# Who Collects the Fees

**Question:** not whether fees exist, but where they flow; is there a recipient address and a protocol fee switch.

**Evidence we demand:** the protocol-fee recipient address and its link to the team or foundation; gas (for validators) distinguished from the protocol fee.

**Defence that fails:** “it is merely a network fee, gas” fails, because a protocol fee is revenue — hence an activity, and a person conducting it.

**Stack layer:** application and treasury.

**Basis:** Finanstilsynet: a remuneration stream as a “special embedded right”.



## ■ Test 2

# Who Operates the Interface

**Question:** who maintains the site and the servers, who runs geofencing and knows the customer at the front.

**Evidence we demand:** the owner of the domain and hosting, the entity behind the terms and policies, the presence of geofencing and KYC at site level.

**Defence that fails:** “the protocol is no one’s; the front-end is a separate matter” fails: an interface provider that converts the user’s intent into an order is executing orders and may fall under MiCA regardless of the protocol’s status.

**Stack layer:** interface.

**Basis:** Finanstilsynet and the EBA/ESMA report; the front-end as a separate regulated service.



## ■ Test 3

# Who Holds the Key

**Question:** does a technical capability exist to halt, alter or upgrade the protocol — and who wields it.

**Evidence we demand:** admin, upgrade and pause rights; the multisig configuration with its roster of signatories; the existence of an upgradeable proxy pattern; on-chain verification of key renunciation.

**Defence that fails:** “the key is renounced or in the community’s hands” fails: a contract with editable access is not autonomous; renouncing the master key does not suffice if roles such as Pause Manager or Oracle Feeder remain.

**Stack layer:** application.

**Basis:** Finanstilsynet: the division into autonomous contracts (e.g. Uniswap V1–V3) and those with editable access.



## ■ SEAM 4

# Who Writes the Future

**Question:** what is the real turnout and token concentration; who sets the agenda, implements resolutions and controls the treasury.

**Evidence we demand:** the distribution of governance tokens, the delegation map, turnout data and treasury control.

**Defence that fails:** “a decentralised community governs” fails: turnout is usually below 10% of those entitled, and 3–5% for Aave and Compound on significant decisions (EBA/ESMA); top voters wield from 52% (Uniswap) to 96% (Ampleforth) of delegated votes (ECB); Uniswap’s top voter is a16z; votes concern risk parameters and listing — that is, steering the protocol.

**Stack layer:** governance.

**Basis:** ECB No 3208 and the EBA/ESMA report.



# The Evidence Table

Seam (factual question)	Evidence we demand	Defence that fails
1. Who collects the fees	fee recipient address, fee switch, link to the team	“it is merely gas for the network, not our revenue”
2. Who operates the interface	owner of domain and hosting, terms of service, geofencing, KYC	“the protocol is no one’s; the front-end is separate”
3. Who holds the key	admin/upgrade/pause rights, multisig, upgradeable proxy	“the key is renounced or in the community’s hands”
4. Who writes the future	turnout, token concentration, the agenda, the treasury	“a decentralised community governs”



## Ooki DAO: Genesis and Motive

- **Point of departure:** the protocol was built by a two-person company (bZeroX) that collected the fees and held the keys.
- **The manoeuvre:** in August 2021 the founders transferred control and the keys to the newly created Ooki DAO, to sever the protocol from oversight and liability.
- **The court's diagnosis:** this is not a description of technology but of motive. The court caught the costume at the very moment it was being put on.



## Ooki DAO: The First Line of Defence Falls

- **The defence:** this is not an entity but a technology; suing a DAO is like suing the internet.
- **The court's answer:** if the company could be sued for wielding the keys, the DAO can be sued for wielding the same keys to the same end.
- **The principle:** transferring control does not erase control; it merely renames the one who exercises it. This is the counterpart of the third seam.



## Ooki DAO: The Second Line of Defence Falls

- **The defence:** there is no person known to the law.
- **The court's construction:** an unincorporated association (California law); token holders as members joined by a common purpose.
- **The blow to the tactic:** even abstention and a vote against are voluntary choices serving that purpose. One cannot claim at once that the community governs and that the community is no one.



# Ooki DAO: The Crux and the Ruling

- **The crux:** if the protocol operates against the law, someone must bear liability; decentralisation creates no lawless zone.
- **The ruling:** default judgment (June 2023): a penalty of c. \$643,542, a ban on operating without registration, an order to take down the sites, a finding of no KYC or AML procedures.
- **Service of process:** through the chat window and the forum, then personally on the founders as identified members.



## “Order concluding that service has been achieved”

CFTC v. Ooki DAO, N.D. Cal., 3:22-cv-05416-WHO. The court held service on an organisation “with no address” effective — via the chat bot and the forum. At the heart of the dispute was the CFTC’s thesis that the DAO structure was designed to be “enforcement proof”. The order proves that procedure reaches even such a construction.



# Boundary Markers

Case	Essence of the ruling	Lesson for the test
bZx DAO (Sarcuni v. bZx DAO)	DAO held to be a general partnership, token holders its partners	two routes, one result: an informal structure does not shield
Van Loon v. Dep't of Treasury (5th Cir. 2024)	sanctions on the mixer set aside: the contracts were immutable and ownerless, hence not “property”	only truly subjectless code is out of reach. Caveat: US sanctions law, not MiCA
Pertsev (Dutch court, 2024)	the mixer’s creator sentenced to 5 years and 4 months	on one side the code was de-sanctioned; on the other its author was convicted



# The Burden-of-Proof Construction

- **The interpretive principle:** the exclusion is an exception, covered by no presumption (*exceptiones non sunt extendendae*).
- **Allocation of the burden:** the *onus probandi* rests on the entity invoking the exclusion, not on the supervisor.
- **The argument from the ECB:** if the authority cannot establish control from public sources, the entity's bare declaration will not carry the burden. Opacity counts against the party enjoying the exclusion.



# Operational Conclusions

1. The burden of proof (onus probandi) lies with the entity invoking the recital 22 MiCA exclusion.
2. Semi-decentralisation as the worst position: an entity remains to be charged, and the exclusion is unavailable.
3. The front-end is always assessed as a potentially separate CASP service, regardless of the protocol's status.
4. The domestic thread: after the VASP-to-CASP transition, flight to a DEX as a compliance plan is usually illusory (confirm the cut-off date in national law).
5. The thesis that “the US has freed DeFi” is illusory: a suspension of enforcement, not a change in substantive law.



# What the Law Leaves Open Today

- **No line of case law in the EU:** the weight rests on soft law ahead of judicial interpretation.
- **The identification gap:** delegates unidentifiable even to an authority with its full apparatus (ECB).
- **The enforcement gap:** no tool against immutable, subjectless code (Van Loon).
- **No paradigm:** regulating a phenomenon without a subject requires a new normative model that has yet to be devised.



## ■ OUTLOOK III AND VISION

# Where This Is Heading

- **The interface front:** front-end providers, not protocols, will become the principal addressees of obligations (registration, the CASP regime).
- **De lege ferenda:** a rebuttable presumption of control where even one seam is met; treasury-transparency and delegation-map duties; a register of interface providers.
- **Embedded supervision:** reconstructing pools and flows from public data, with a durable limit at identity identification.
- **The deepest problem:** the de facto unseizability of assets without a centre of control marks the limit of sanctions law's effectiveness.



## The Practical Rule

- We do not ask a protocol about its philosophy.
- **We ask about four things:** the fee-recipient addresses, the owner of the interface, the holder of the key and the turnout figure.
- The rest is marketing narrative.



## ■ SUMMARY

Wherever someone promises profit and assures you that an impartial mechanism, not a human, is in charge, **there usually stands a human after all — one who prefers to remain out of sight.**

The adviser's task is to establish who holds the key: the first act of due diligence, and often the last line of defence.

■ ANNEXES

# Workshop Materials



# Checklist for an Opinion on DEX Status

- **Fees:** does the code contain a fee recipient address and a fee switch? Can the address be linked to the team or a foundation?
- **Interface:** who owns the domain and the hosting? Are there terms, policies, geofencing and KYC? Is the front-end a separate CASP service?
- **Key:** admin, upgrade and pause rights; the multisig configuration and signatories; an upgradeable proxy; roles such as Pause Manager or Oracle Feeder.
- **Governance:** turnout, token concentration, the agenda, implementation of resolutions, treasury control.
- **Time:** the state as at public deployment, not the state declared for the future.



## ■ ANNEX B

- **Bittensor / TAO:** concentration and governance in subnet ecosystems; the same seams at a new scale.
- **MEV as a centralising force:** 20% of MEV operations captured 72% of the revenue (Sep 2022 to May 2023); a single bot extracted \$34 m in three months; MEV-Boost runs on 85–95% of Ethereum blocks; cumulative MEV profit estimated at \$0.7–1.9 bn pre-Merge and \$0.4–1.1 bn after it (EBA/ESMA).
- **Concentration in staking:** Lido at roughly 70% of the liquid-staking market; the stETH depeg of 2022.
- **Embedded supervision (DG FISMA, 2024):** liquidity pools can be reconstructed from public data; user identities cannot.
- **The ECB's conclusion:** holders, developers and exchanges are not reliable regulatory anchor points today; despite delegation of only c. 5% (Ampleforth), 15% (MakerDAO) and 27% (Uniswap) of supply, a handful of delegates controls most delegated votes.



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- Aramonte, Huang, Schrimpf, “DeFi risks and the decentralisation illusion”, BIS Quarterly Review, Dec 2021.
- CRS, “An Overview of Decentralized Finance (DeFi)”, R48883, 17 April 2026.
- Born, Gati, Lambert, Naeem, Pellicani, “Who to regulate?...”, ECB Working Paper No 3208, 2026.
- CFTC v. Ooki DAO (N.D. Cal.); Sarcuni v. bZx DAO; Van Loon v. Dep't of Treasury (5th Cir. 2024); the Pertsev judgment (NL, 2024).



# The Firm's Publications: Further Reading



## The decentralisation test: the Clarity Act and MiCA

[kancelaria-skarbiec.pl/clarity-act](https://kancelaria-skarbiec.pl/clarity-act)



## DeFi: the MiCA exclusion, the Howey test and the limits of regulation

[kancelaria-skarbiec.pl/granice-decentralizacji-w-finansach-defi-mica-wymogi-licencyjne](https://kancelaria-skarbiec.pl/granice-decentralizacji-w-finansach-defi-mica-wymogi-licencyjne)



## DAOs — global legal solutions

[kancelaria-skarbiec.pl/globalne-rozwiazania-prawne-dla-zdecentralizowanych-organizacji-autonomicznych](https://kancelaria-skarbiec.pl/globalne-rozwiazania-prawne-dla-zdecentralizowanych-organizacji-autonomicznych)



## Decentralized Autonomous Organizations DAO

[kancelaria-skarbiec.pl/decentralized-autonomous-organizations-nowy-typ-podmiotu-prawa](https://kancelaria-skarbiec.pl/decentralized-autonomous-organizations-nowy-typ-podmiotu-prawa)

■ THANK YOU

The boundary of DeFi is not set by definition — it is drawn by evidence.

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