Crypto, TradFi & Digital

European enforcement special: Google's AI opt-out under scrutiny, MiCA fines being calibrated

Decoding financial, AI and data regulation to anticipate, comply and decide

From rule to application: two enforcement workstreams that set the European method

Previous editions of the Regulatory Brief have documented the gradual entry into application of the major European frameworks: the AI Act on 2 August 2026 (Edition #18), the full application of MiCA following the end of the grandfathering clause (Edition #13), the clarification of the perimeter of advice on crypto-assets (Edition #20), global regulatory fragmentation (Edition #21), and the twin dynamic of the MiCA review and the construction of the Pontes and Appia infrastructure (Edition #22). This twenty-third edition turns to a quieter but equally structuring phase: the one in which European regulators define the fine mechanics of how they exercise their powers.

Two files illustrate this phase in very different fields. The first concerns competition law applied to the AI economy: the European Commission is seeking to establish whether the opt-out mechanism rolled out worldwide by Google on 31 August 2026 gives news and content publishers a genuine choice, or merely the appearance of one, over the use of their content in generative search features. The second concerns financial supervision: the European Banking Authority is consulting until 28 September 2026 on the methodology it intends to use to calculate fines falling within its direct supervisory powers under MiCA, a technical text that will determine in very concrete terms how the regulation's legal caps translate into actual amounts.

The two workstreams share the same underlying question: how do you make a legal power operational, measurable and predictable? For the Commission, it is not enough that an opt-out formally exists; it must also be verified that it is economically workable. For the EBA, it is not enough that MiCA sets caps on sanctions; a transparent method is also needed to move from the cap to the amount. In both cases, regulatory Europe is leaving the terrain of rule-making for the more demanding one of effective application.

The main signal

European enforcement is entering its fine-mechanics phase: the question is no longer what the rules are, but how the choices offered, the remedies imposed and the sanctions handed down become effective, measurable and predictable.

The Google file is a striking illustration. The Commission is not simply checking that the opt-out mechanism exists: according to a non-public questionnaire seen by Reuters, it asked publishers whether they actually intended to use it, and what factors would determine their decision. That approach reflects an assessment doctrine going beyond formal compliance: a remedy is effective only if those it is designed for can take it up without penalising themselves. The opt-out take-up rate therefore cannot be read in isolation as proof of satisfaction, and the effects of the choice on publishers' visibility, traffic and revenue will also have to be examined.

The EBA consultation follows the same logic, applied to sanctions. MiCA sets caps, up to 12.5% of annual turnover for issuers of significant ARTs, and lists criteria. But between the legal cap and the amount imposed there is a margin of discretion that the EBA has chosen to structure through a public two-stage method, put out for consultation. This move towards methodological formalisation, which can also be seen at the AMF (its compendium of sanctions), ESMA (consolidated reports) and AMLA (common risk assessment methodology, see Edition #12), points to a European supervisory model in which the predictability of a sanction becomes an objective in its own right, serving both deterrence and legal certainty.

Focus 1 - Google's AI opt-out: Brussels checks whether publishers have a genuine choice

The European Commission is seeking to establish whether the new mechanism proposed by Google genuinely allows publishers to refuse the use of their content in generative search features, without penalising their presence in traditional search results. According to a non-public questionnaire seen by Reuters, the Commission asked publishers whether they intended to use the mechanism and what factors would determine their decision. Sent in July, the questionnaire set a response deadline of 28 August 2026. It also asked publishers about the announced convergence of AI Overviews and AI Mode, as part of a search experience built more closely around AI.

Google says it rolled out this control worldwide on 31 August. From Search Console, publishers can decide whether their site may appear in the answers produced by generative features, notably AI Overviews, AI Mode and AI Overviews in Discover, or be used to support them. Google states that use of this control is not taken into account in the ranking of results outside those features.

The real issue: the economic effectiveness of the opt-out

The absence of any downgrade in traditional search is an important safeguard, but it is not necessarily enough to make the choice economically neutral. A publisher activating the opt-out also gives up the display of its content and any referrals generated by the AI features. The Commission is therefore seeking to establish whether publishers can effectively refuse the use of their content, or whether their dependence on Google leads them, in practice, to accept that use despite their reservations.

A step in an antitrust investigation already under way

This consultation forms part of the formal investigation opened by the Commission in December 2025 under Article 102 TFEU and Article 54 of the EEA Agreement. The Commission is examining, among other things, whether Google is using its leading position in the online search market to impose unfair terms on publishers regarding the use of their content in AI Overviews and AI Mode, in particular in the absence of appropriate remuneration or of any effective possibility of refusal. Opening the investigation does not, however, prejudge its outcome.

The file is therefore first and foremost a competition law matter. Copyright and the AI Act are complementary frameworks: Article 53 of the AI Act requires providers of general-purpose AI models to adopt a policy for complying with copyright and with the rights reservations provided for by Directive 2019/790. Those provisions do not, on their own, settle the competition question of publishers' dependence on the search engine.

The UK precedent as a benchmark

In the United Kingdom, on 3 June 2026 the Competition and Markets Authority imposed on Google a binding requirement going beyond a simple exclusion button. The arrangement must cover the use of content to feed AI features, its use for fine-tuning models, its attribution in answers, and the publication of data allowing implementation to be monitored. Google has nine months to implement all the changes and must submit compliance reports. That UK decision does not apply in the European Union, but it provides a concrete benchmark for assessing whether Google's arrangement offers a choice that is sufficiently granular, transparent and free from retaliation.

What to watch

- The **precise technical conditions of the opt-out** and their effective granularity (by feature, by use, by content type).
- The **take-up of the mechanism by publishers** and the associated traffic data, bearing in mind that a low opt-out rate will not amount to proof of satisfaction.
- The **Commission's assessment** in the course of the current investigation, and the possible influence of the UK benchmark (coverage of fine-tuning, attribution, monitoring data, compliance reports).

Focus 2 - MiCA: the EBA prepares its method for calculating fines

The European Banking Authority is consulting until 23:59 on 28 September 2026 on the methodology it intends to use to determine fines falling within its direct supervisory powers under the MiCA Regulation. The scope of the consultation should be precisely delimited: it concerns neither all crypto-asset service providers nor all stablecoin issuers. It covers the sanctions the EBA may impose on issuers of asset-referenced tokens (ARTs) classified as significant, issuers of e-money tokens (EMTs) classified as significant, and, under the conditions set out in MiCA, members of their management bodies. Sanctions concerning the other players subject to MiCA remain primarily a matter for the national competent authorities.

From legal caps to a common method

Article 131 of MiCA allows the EBA to impose a fine where an issuer concerned, or a member of its management body, has intentionally or negligently committed an infringement listed in Annex V or VI to the regulation. MiCA already sets the applicable caps: up to 12.5% of annual turnover for issuers of significant ARTs and 10% for issuers of significant EMTs. Where the amount can be determined, the fine may also reach twice the profits gained or losses avoided as a result of the infringement.

The regulation also lists the factors the EBA must take into account: the duration and repetition of the infringement; whether it was intentional or negligent; the existence of serious or systemic weaknesses in organisation and risk management; the consequences for token holders and third parties; the profits made or losses avoided; cooperation with the EBA; previous infringements; and the corrective measures taken by the issuer. Delegated Regulation (EU) 2024/1504 supplements this framework on procedural matters, notably rights of defence, deadlines and recovery.

A two-stage method

The EBA's draft aims to convert these general criteria into a more predictable method. In outline, it provides for a basic amount to be set according to the gravity of the infringement and the issuer's financial capacity, then for that amount to be adjusted in the light of aggravating or mitigating circumstances. The duration of the infringement, its repetition, whether it was intentional, or the existence of systemic failings could thus lead to an increase. Conversely, effective cooperation, prompt notification or credible corrective measures could be taken into account favourably. The formula would not, however, remove all case-by-case assessment: the final amount would still have to be compatible with the MiCA caps and with the principles of proportionality, deterrence and restitution of unduly obtained advantages.

What are the consequences for the issuers concerned?

The consultation confirms that exposure to sanctions will depend as much on the nature of the infringement as on the issuer's ability to demonstrate the quality of its governance and of its response. Issuers of ARTs and EMTs liable to be classified as significant therefore have an interest in mapping their internal controls precisely to the obligations covered by Annexes V and VI to MiCA; in documenting decisions and the oversight exercised by their management bodies; in organising prompt detection, escalation and correction of breaches; in retaining the material needed to assess the consequences of an incident for holders; and in framing their cooperation with the EBA in the event of an investigation.

This is not an amendment to MiCA, nor a new category of sanctions. The text put out for consultation is a draft methodology internal to the EBA, intended to make the exercise of powers already provided for by the regulation more consistent, transparent and predictable.

What to watch

- The **final version of the methodology after 28 September 2026**, together with any changes made to the coefficients, to the aggravating or mitigating circumstances and to the EBA's final power of adjustment.
- The **list of ART and EMT issuers actually classified as significant**, which will determine the real scope of application of the methodology.
- The **interaction with the sanctioning practices of the national authorities** (the AMF, BaFin and the CSSF, among others), which are competent for the other players subject to MiCA, and any methodological convergence that may result.

Key takeaways

Five structuring points to remember:

- On 31 August 2026, Google rolled out worldwide an **opt-out allowing publishers to exclude their content from generative search features** (AI Overviews, AI Mode, AI Overviews in Discover) via Search Console, with no effect, according to Google, on ranking in traditional search.
- The **European Commission is examining how effective that choice really is** in the context of its formal investigation opened in December 2025 (Article 102 TFEU): an opt-out that is formally available but economically penalising might not be enough to dispose of the unfair terms complaint.
- The **UK precedent of 3 June 2026** sets a more demanding benchmark: the CMA requires Google to put in place an arrangement covering the feeding of AI features, the fine-tuning of models, the attribution of content and the publication of monitoring data, with compliance reports within nine months.
- The **EBA is consulting until 28 September 2026 on its methodology for calculating MiCA fines**, applicable only to ART and EMT issuers classified as significant (and to their senior managers): a basic amount based on gravity and financial capacity, then adjustments for aggravating or mitigating circumstances, within the MiCA caps (12.5% or 10% of annual turnover, or twice the profits gained or losses avoided).
- For potentially significant issuers, **exposure to sanctions will depend as much on demonstrable governance as on the infringement itself**: controls mapped to Annexes V and VI, documentation from management bodies, prompt detection and correction, and properly framed cooperation with the EBA will all weigh in the calculation of the final amount.

Conclusion

The two files in this edition, however different their respective fields, tell the same story about the maturing of European digital and financial law. After the adoption of the major frameworks (the DMA, the AI Act, MiCA) and their entry into application comes the moment when their credibility is at stake: the moment when a remedy has to prove that it works economically, and when a sanctioning power has to equip itself with a transparent method. For publishers and content economy players, the Commission’s review of Google’s opt-out will determine whether the choice on offer is real or theoretical, against the backdrop of the more demanding benchmark set by the

UK CMA. For significant stablecoin issuers, the EBA's methodology will turn abstract caps into a concrete calculation grid and will make the quality of governance a direct parameter in the amount of any fine. In both cases, the message to regulated players is the same: the era of effective application has begun, and it is won in the detail.

Main sources

- European Commission, *Investigation into possible anticompetitive conduct by Google in the use of online content for AI purposes*, December 2025.
- Reuters, *EU antitrust regulators quiz publishers on Google's AI search opt-out*, 1 September 2026, updated 2 September 2026.
- Google, *New opportunities, control and insights for website owners*, 3 June 2026, updated 31 August 2026; Competition and Markets Authority, *CMA secures fairer deal for publishers and improves Google search services in UK*, 3 June 2026.
- European Banking Authority, *Consultation Paper on a Methodology for setting fines under MiCA*, 26 June 2026, consultation open until 28 September 2026.
- Regulation (EU) 2023/1114 (MiCA), Articles 130 to 136 and Annexes V and VI; Delegated Regulation (EU) 2024/1504 on the procedural rules for penalties imposed by the EBA.
- Regulation (EU) 2024/1689 (AI Act), Article 53; Directive (EU) 2019/790 on copyright in the digital single market, in particular Article 4(3).