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Position Paper
‘Staking in Germany’

Authors

The authors of this paper— Sebastian Becker, Veronika Ferstl, Marcel Kaiser, Dirk Schuster, Alireza Siadat, and Afra Stöhr bring diverse expertise in blockchain, tax, and regulatory matters. We declare that there are no conflicts of interest related to this work. Our aim is to contribute to the ongoing discourse on this topic, and we welcome questions, feedback, and further discussion from readers and stakeholders.

Table of contents

0. Executive Summary

Why Staking Matters	Essential for securing Proof-of-Stake (PoS) blockchains.
	Enables institutional and retail participation.
	Germany must ensure regulatory clarity to remain competitive.
Core Challenges	Inconsistent classification under financial and crypto laws leads to regulatory uncertainty
	Tax complexity and risk of dry-income taxation on unrealized staking rewards.
	Centralization risks – large providers dominate, potentially reducing decentralization.
	Competitive disadvantage – High taxes and strict rules push investors and entrepreneurs to more crypto-friendly jurisdictions.
Key Recommendations	Regulatory clarity – clearly define staking's legal status under MiCAR and German law.
	Taxation – Enable loss offsetting – Allow tax deductions for staking losses to prevent unfair financial burdens.
	Support decentralization – avoid regulations which disincentivize solo staking.
	Keep 'substance over form' approach and the incentive for transparency in staking product regulation
	Streamline licensing – Reduce bureaucratic hurdles for staking providers.
	Enhance competitiveness in comparison to other jurisdictions

1. Introduction

1.1 Purpose and Scope

The purpose of this position paper is to provide German regulators, institutional investors, and market leaders with a comprehensive analysis of the opportunities and challenges associated with crypto staking, particularly in the context of Germany's evolving regulatory landscape. With the increasing prominence of Proof-of-Stake (PoS) blockchain networks, staking offers a unique intersection between **financial innovation, environmental sustainability, and institutional investment opportunities**. However, both institutional investors as well as regulators and related professionals still demand clarification and education on this topic - we want to contribute with this paper.

As Germany continues to play a key role in the global financial and technology sectors, it is crucial that stakeholders understand both the technological underpinnings of staking and its broader economic implications. This paper outlines the core principles of staking, assesses its alignment with the German regulatory framework, and highlights its potential to drive adoption across traditional financial institutions.

Scope of this document

- A detailed explanation of staking and its role within PoS blockchains.
- Insights into the economic and environmental benefits of staking.
- Regulatory considerations and potential challenges for German institutions.
- A forward-looking perspective on how staking could shape Germany’s digital finance landscape.

By fostering an understanding of crypto staking, we aim to contribute to a dialogue that supports informed decision-making, both from a regulatory and a market adoption standpoint.

As we explore the dynamics of staking, our key motivation is to clear up one of the most common misconceptions: the **confusion between core protocol staking** (BMF: “Forging”) and **DeFi staking** (BMF: “Staking”).

While both share similar concepts, they differ substantially in their operation, risk profiles, and regulatory oversight.

2. Definition and Delineation of Staking

Which role does staking play in blockchain ecosystems?

There is currently no legally binding definition of “staking” and its sub-forms. Staking is a term that comes from the blockchain consensus method **"Proof of Stake" (PoS)**. Blockchains based on this consensus mechanism include, for example, Solana, Polkadot, and Ethereum. The total staking market capitalization exceeds EUR 160bn at the time of writing (StakingRewards, 2025).

In Proof of Stake, for node operators to create blocks, they lock their own tokens as collateral. Based on their share of the overall stake in the network, they increase their chances of being selected as block validators who forge the block and receive the reward. However, many users **delegate** their tokens to **staking pools** - without participating in block creation. These pools, built into blockchain protocols, **lock but do not transfer** tokens, increasing the chances of being selected as a validator. Participants earn a share of block rewards (if applicable) and transaction fees. Staking pool operators keep a fee for their coordination function.

Some exchanges, like **Kraken and Coinbase**, offer **platform staking (DeFi Staking)**, allowing users to join staking pools. In practice, **staking** is often used as a general term for both **validation and delegation**.

The tokens paid out in the process are called **"staking rewards"**. While many blockchain protocols pay out the staking rewards in the native tokens or coins of the network, other blockchains have created their own or separate coins and tokens that are used both as rewards and for the internal operation of the chain. The reward depends on the respective underlying blockchain protocol. In the case of pooled staking, it also differs depending on the validator: the validator usually gets a higher yield than the delegator because the validator still has the hardware and energy costs to operate the validator node. Therefore, the yield for validator and delegator may differ (StakingRewards, 2025).

Staking is becoming increasingly popular for investors to earn passive income from cryptocurrency holdings. It has become more prevalent because a change in consensus mechanism from PoW to PoS can help to **heavily reduce the energy consumption of PoW mining**, as it requires significantly less computing power.

Below is a summary of the staking types currently available in the market and how they are defined.

Custodial Staking

Custodial staking is a method of staking in which the entity entrusts its assets to a third-party service/custodian. This third party manages the technical staking process on behalf of the user and keeps a pre-defined share of the staking rewards.

Since 2025, crypto custody in Germany is considered '*qualified crypto custody*' under German Governance Banking Act law (Kreditwesengesetz, KWG) and can only be provided in relation to cryptographic instruments.

The legislator had to establish a regulation to enable crypto custodians licensed under the KWG to continue to hold, for example, security tokens, i.e. financial instruments within the meaning of the MiFID2 regulation and crypto securities under the Electronic Securities Act (eWPG). Since these instruments fall outside the scope of the MiCAR (Markets in Crypto Assets Regulation), they cannot be the subject of crypto custody on the basis of a MiCAR license.

German crypto custodians will therefore need both a license for qualified crypto custody under the KWG and a crypto custody license under the MiCAR in order to be able to carry out their business within the current national regulation (BTC-Echo, 2025).

Securing cryptographic keys (as long as this is not considered custody under MiCAR) is also included in qualified crypto custody. Crypto custody now refers to the custody of the crypto asset service for the custody and administration of crypto assets according to MiCAR, hence the term "qualified" was added. For example, a qualified custodian in Germany is Tangany. An exemplary non-custodial custodian is Fireblocks.

The main difference between custodial and non-custodial wallets is that custodial wallets give a third party permission to hold private keys for customers. Non-custodial wallets, on the other hand, give their users sovereign control over their own private keys.

Unregulated companies, providing software-as-a-service offerings for the custody of assets, do not require a crypto custody license. Not being entrusted with customers' private keys they do not act as custodians. Instead, they provide a technology platform that enables financial institutions to securely manage and transfer digital assets. The responsibility for compliance with regulatory requirements, including holding a crypto custody license, lies with the financial institutions that use such platforms. These institutions must ensure they meet all relevant legal requirements when using the respective technology.

In Germany, staking providers require a crypto custody license if they hold cryptocurrencies for their customers. This is the case when the provider takes control of the customers' private keys.

It is important to note that regulatory requirements may vary depending on the type of services offered. Providers planning to offer staking services in Germany should therefore carefully check whether they need a crypto custody license to comply with legal regulations.

Many centralized exchanges claim to offer ‘staking’ for rewards, but often, this is just an **opaque lending model** rather than ‘true’ staking. Users deposit tokens and receive a fee, but without contributing to a staking pool in terms of a proof-of-stake blockchain protocol, **core protocol staking does not occur**. The term is frequently misused as a synonym for earning interest, creating confusion. In many cases, it is unclear to the service user whether a platform’s staking program actually involves participation in a PoS consensus mechanism or is simply a lending service disguised as staking. This information is typically disclosed within the terms of use the customer accepts.

This technical lack of transparency in the crypto exchange can be considered problematic, as the prerequisite for core protocol staking is to create a block. **Staking in the true sense of the word does not exist if there is no participation in a PoS** consensus mechanism.

Centralized exchange ‘staking’ is **not true staking** and should not be labeled as such. The **Federal Ministry of Finance (BMF)**, in its May 10, 2022 letter, supports this view. In reality, these platforms primarily engage in **crypto lending**, which is unrelated to block creation and PoS consensus. The core mechanism is **loaning assets, not staking them**. (Schuster, D., Liedgens, G. and L B. 2022)

Liquid staking is another type of staking employing smart contracts to gather a stake of the blockchain’s native asset. Users supply their tokens to a staking pool and the underlying smart contract mints so-called pool tokens based on the design of the liquid staking protocol. These pool tokens represent a claim to the corresponding share of the staking pool. Eventually, users can trigger the token redemption process. In comparison to centralized exchange staking, liquid staking increases the risk exposure. This is compensated by ownership guarantees and higher staking rewards. Smart contract vulnerabilities, which may lead to hacks or unintended loss of funds go hand-in-hand with these benefits.

In **core protocol staking**, validators accepting smaller stakes from delegates operate **staking pools**, also known as **delegated staking**. These pools allow participants to **combine their funds** to meet the required stake for network participation. By increasing their total stake, pools enhance their chances of being selected as block validators, distributing rewards among participants while charging a service fee.

A **staking pool** typically consists of multiple stakeholders, such as **investors and node operators**, with an operator managing the pool and overseeing fund delegation.

A key consideration is how staking providers manage user funds. Some use **segregated wallets**, maintaining individual accounts per client, while others adopt **omnibus wallets**, pooling multiple users' assets using a common side ledger.

While omnibus wallets reduce costs and simplify management, they introduce risks such as slashing penalties, custody centralization, and reduced transparency for individual users.

In contrast, segregated wallets assign separate accounts to each user, ensuring clear ownership, isolated risks, and greater transparency, but at higher operational costs. Omnibus wallets are common in liquid staking and DeFi, while segregated wallets are favored in regulated environments or by institutions prioritizing asset control and compliance. The choice reflects a trade-off between efficiency and user trust.

Non-Custodial Staking

Non-custodial staking ensures participants retain full control of their private keys, eliminating the need to entrust assets to a third party. Unlike custodial staking, where a third party manages and holds the assets, non-custodial staking allows users to directly participate in staking without relinquishing control of their assets to another entity.

Technology providers like Figment offer non-custodial staking services by providing the necessary technical infrastructure while leaving the management of private keys with the client. This model avoids regulatory classification as a custodian and shifts compliance responsibility to the client.

Validator staking (also known as Solo-, Native- or Direct-Staking) refers to the process of the sovereign, self-organized staking process. There is no differentiation between an individual or an institution which is providing stake to a network directly by running a validator and participating in block creation. This process requires the staking party to set up their hardware and software accordingly. They are fully liable for the outcome of their technical and legal actions. The staking returns, however, are (potentially) the largest compared to custodial, non-custodial and liquid staking as no fees have to be forfeited to a third party.

Solo staking enables users to participate directly in network consensus by running their own validator nodes. Oftentimes, they do so locally with their own hardware. This approach requires technical expertise and a minimum staking amount (e.g., 32 ETH for Ethereum), making it more suitable for experienced users seeking greater returns and direct network involvement. **However, this type of staking has the greatest potential to further decentralize the respective networks.**

Restaking

Restaking is a mechanism that allows users who have staked their tokens in a Proof-of-Stake (PoS) blockchain to use those same staked tokens to participate in other protocols or earn additional rewards *without* having to unstake them.

It allows participants to derive greater utility or yield from their assets by layering responsibilities or economic activity on top of the initial staking. Restaking extends the promises of staking by allowing the same staked assets or derivatives of them to be used for additional activities, such as governance, collateral in lending protocols, or further staking in separate chains or layers.

Unlike traditional staking, where assets are locked purely to secure a network – which is incentivized by offering rewards – restaking leverages these locked assets to extend their use cases, often introducing new risks and complexities.

Another development currently taking place is the increased popularity of so-called Bitcoin-Staking. Bitcoin does not support native staking due to its Proof-of-Work consensus mechanism. However, BTC can be “restaked” in ways that mimic staking functionalities on other ecosystems:

Users lock their Bitcoin in custodial solutions to mint WBTC on Ethereum, which can then be used in DeFi applications for lending, liquidity provision, or governance participation. Platforms like Stacks or Rootstock (BTC Layer 2 technologies) introduce mechanisms where BTC holders can lock their assets to **participate in sidechain consensus**, or collateralize smart contract interactions.

While these Bitcoin-Staking activities fall under the definition of Restaking, it is rarely called that.

3 Risks

There is no free lunch - not even in staking. Several risk types have to be taken into account for staking to provide value and potentially generate economically relevant staking rewards (unless purely driven by enthusiasm for the network).

Locking periods in staking require participants to immobilize their cryptocurrency for a specified duration, preventing them from accessing or transferring their assets during this time. This restriction poses a risk of reduced flexibility, as users cannot access their tokens to quickly respond to market changes or personal financial needs. Additionally, a penalty mechanism called **‘slashing’** puts the users’ assets at direct risk. A portion of a validator's stake is automatically forfeited for malicious actions or failing to perform their duties properly.

When a validator signs two conflicting blocks or their node experiences prolonged downtime it could lead to staking entities to be slashed. This system incentivizes validators to act honestly and maintain network security by deterring harmful behavior but also poses a risk of a net negative impact on the assets in possession.

A significant concern about the entire system is the **centralization risk** inherent in PoS, where a small number of large stakeholders or validators may gain excessive control over the blockchain network. This concentration of power can undermine the network's decentralization, making it vulnerable to manipulation and reducing its overall resilience. The integrity of the chain is now tagged with a price.

The yield could decrease as more participants engage in staking, resulting in fewer rewards per validator. While staking is not a financial product, if it is treated as such, **return risk** (or reward risk) might have to be considered.

Moreover, the yield from staking is closely tied to the **value stability of the underlying digital asset**. If the price of the cryptocurrency increases, staking rewards automatically increase in value, enhancing the benefits for participants. A sharp decline in the cryptocurrency's price can render staking rewards insufficient to compensate for the losses. This could potentially lead to significant financial setbacks for those involved, especially if staking rewards are taxable upon reception and not at the time of sale. Therefore, while staking can offer attractive returns, it is far from risk-free.

Restaking introduces an additional layer of risk, including exposure to the smart contract vulnerabilities of the secondary protocols and the potential for cascading failures across systems relying on the same collateral.

4. Market Overview

With Ethereum's shift to Ethereum 2.0 and the PoS mechanism, a significant share of the crypto market is now engaged in staking activities. This shift reflects the growing preference for PoS as a more energy-efficient consensus mechanism in comparison to proof-of-work. However, this growing shift towards staking is not free of criticism around centralization.

Market Dynamics

Staking yields provide a source of passive income. Staking is generating an estimated amount of EUR 4bn annually (derived from staking market capitalizations and APYs, according to SolanaCompass, 2025 and Coinbase, 2025). For example, in 2024, it was estimated that over EUR 150 billion worth of assets were locked as stake across various ecosystems.

These funds accrue between 3% and 20% annual staking rewards at the time of writing (StakingRewards, 2024). The amount of locked funds is expected to increase with institutional adoption. The share of institutional investors staking increases the relevance of market actors offering simplification around institutional staking. These actors include custody providers, staking services, data and node providers as well as server infrastructure in general. Sooner or later, use cases for big enterprises and regulated investors involving staking could gain relevance. As part of their treasury management, for example, staking can make inroads not only in the financial sector.

Aside from the economic implications of novel financial products around staking, the institutions also take more responsibility regarding infrastructure security. While this is generally not disadvantageous for blockchain ecosystems, it is viewed critically by some, as power is concentrated in the institutions and those offering services. **Centralization through staking services is most certainly a development that antitrust agencies, regulators as well as the public should be aware of.**

Funds being locked up in staking can have an effect on the underlying asset/ecosystem. The aforementioned increase in network security is only one contributor to price stability. Another contributing factor to stabilization of prices is the fact that locked up funds are not readily available (liquid) in many cases. In harsh market downturns, this might amplify the drawdown and contribute to a lack of resilience of institutional offerings. Liquidity shortages are, however, only one side of the coin: liquidation of significant amounts of funds formerly staked through institutions can create market turmoil as well. In a way, the staking parties have a central role in the governance of their respective ecosystems and products.

Growth Projections

Currently. Proof-of-stake is the go-to consensus mechanism for novel web3 ecosystems. With restaking as a sub-system mechanism, staking in its different shapes and forms dominates the current blockchain ecosystem architecture. This trend will translate into a growing appreciation for staking in the medium run. This, in turn, will lower staking rewards but will contribute to temporarily smoother market regimes.

According to Dune Analytics, 2024, the value of funds locked in staking in the Ethereum ecosystem is projected to grow by 20% to 80% annually (CAGR). This implies the growth (potentially even stronger) of the staking service sector. The unique staking entities are projecting a similar growth rate.

In practice, companies that want to offer staking face not only strategic and technical questions but also regulatory questions, e.g. regarding:

outsourcing, compliance risks, liquidity management, investor protection, capital requirements, taxation, etc. (see chapters 5 and 6).

5. Regulation in Germany & EU

Current Regulatory Framework

Active vs. Reverse Solicitation

The regulation of Staking depends from a geographical perspective where the service provider is located or registered or (in case the service provider is located/registered outside of the EEA (e.g. third-country) where the customers/users are located. Since most of the Staking providers are located in third.countries, we must differentiate between “active” and “Reverse Solicitation”.

With regard to the question of active solicitation, German supervisory practice is based on the GermanFederal Financial Supervisory Authority (e.g. BaFin) information sheet, according to which a licence is required not only if the foreign provider operates a branch or agency in Germany, but also if it targets from abroad ‘specifically to the market’ in order to offer transactions or services ‘repeatedly and in a business-like manner’ in Germany. According to the supervisory authority's established administrative practice, there is no restriction on the so-called freedom to provide services in a passive manner (e.g. Reverse Solicitation). This refers to the right of persons and companies domiciled in Germany to request services from a foreign provider on their own initiative. According to BaFin, this includes cases in which the service is requested by the recipient of the service, i.e. provided by the service provider at the recipient's initiative. The freedom to provide services is a consequence of the general freedom of action under the German and the EU Constitution, which – in contrast to the service provider – is not restricted by economic supervisory regulations with regard to the recipient of the service. Transactions and services requested by the customer, by its own initative, do not trigger a licensing requirement.

Foreign Staking providers rely Reverse Solicitation to provide services, so that a proper examination of the question of the licensing requirement is necessary here. By contrast, there is no room for Reverse Solicitation, where the activity is actively advertised in Germany. This has been confirmed and specified by the courts to the extent that a foreign player can be attributed partial acts of operating the activity in Germany if essential steps leading to the conclusion of the contract are taken in Germany. However, even though DeFi players have recently attracted attention in Germany with heavy-handed advertising measures, in most DeFi-related cases such a distribution-related interpretation is difficult if the activity takes place exclusively on the internet or online. In the case of offers made over the internet that concern regulated activities, BaFin believes that the decisive factor is whether the services offered over the internet are targeted towards the German market based on the content of the website.

Thus, if a company specifically targets the German market through special notices or active advertising measures on the internet in order to offer regulated services or transactions, a licence requirement can be assumed.

In the past, a decisive factor for the supervisory authority was whether the website was in German. In view of globalisation and the predominant use of English, as well as the fact that many German-speaking third countries – such as Switzerland – are not subject to EU law, this should no longer be a decisive criterion for the domestic reference. Rather, the decisive factor should be whether the foreign actor is deliberately seeking to acquire new German customers (or new customers from the EEA). In this context, particular attention should be paid not only to any domestic contact details of the provider, but also to whether German or European users are being addressed linguistically or figuratively. For example, the deliberate mention of German or European users in advertising or the use of the German or European flag may be indications of a targeted advertising measure in Germany or the EEA. This may also apply to advertising measures via (online) magazines, where a magazine with a focus on Germany or Europe publishes an article about a provider or a product for which the provider has paid the magazine (so-called Sponsored Content). The supervisory authority also focuses on Finfluencers who advertise providers or products on social media (e.g. YouTube, Instagram, Twitter, LinkedIn, etc.) and are remunerated for this via their own referral code. DeFi (incl. Staking) products and DeFi (incl. Staking) activities are increasingly being offered in Germany through such measures. Thus, in most cases, a sufficient domestic connection can be assumed.

When looking outside of the German regulation and now facing EU harmonized crypto assets regulation, we must look into MiCAR. MiCAR regulates Reverse Solicitation in Art. 61. Even if the wording of the clause is irritating, the same legal treatment as in Germany is expected in the end result. Art. 61 MiCAR corresponds to Art. 42 MiFID II and Art. 46 MiFIR, for which ESMA has repeatedly clarified that the regulation does not apply if an EEA-based client has initiated the provision of a service by a third-country firm on their own exclusive initiative.

Staking as Fully Decentralized Activity

In addition to the Reverse Solicitation issue, the decisive factor for regulation is whether a person is present as the addressee of the regulation. As known, staking is provided generally in a decentralized finance (DeFi) environment. Such an environment works typically without intermediaries and is based on smart contracts. It is questionable whether supervisory law may regulate DeFi effectively. Supervisory law takes an activity-based approach by regulating the service or the business.

a) No regulation of protocol developers and the DAO network

For an activity to be carried out, people who can be subject to regulation are required. In a DeFi case, the protocols, the Decentralized Autonomous Organization or the token holders, who usually hold governance (i.e. voting/staking) rights, could be regulated. The regulation of protocol developers seems unconvincing because they merely enable smart contracts and applications operated by users or third parties on their own responsibility. Such regulation would be comparable to a licensing requirement for software developers of core banking systems in the real economy. Blanket regulation of the DAO or the network also seems inappropriate, since not all participants in a DAO have significant influence over the DAO's activities.

b) Regulation of significant holdings in a DAO

It would be more appropriate, however, to regulate the token holders of a DAO who have a significant influence on the DAO. Given the recent BaFin activities against DeFi players, the supervisory authority also seems to assume that action can be taken against DeFi activities. It is also not unusual in supervisory law for holders of voting rights to be regulated. For the supervisory authority, the decisive factor in determining a significant interest is whether someone directly or indirectly holds at least ten per cent of the voting rights in a company. This is because it is assumed that the holders of a qualified interest can significantly influence the company's management. If you can assume that the DAO is a company (at least a civil-law association), you could take the significant holdings as a basis for the purposes of the supervisory approach. It should be noted that when determining a significant holding, it is not possible to focus on just one person alone. Rather, a significant influence on a company's management can be exercised by several persons acting in concert. For example, when a DAO is founded, it is common for the founding team to be allocated more than 10% of the tokens when issuing the DAO tokens (which represent voting or governance rights) and to hold them later. These founding team members usually also have common interests after the founding of the DAO, which they then exercise together in the DAO through voting. Acting in concert can be derived from a coordinated exercise of voting rights. This could lead to the supervisory authority classifying such token holders as persons responsible under supervisory law in the case of a DAO.

c) Identifiable actors under MiCAR

MiCAR makes it clear that identifiable actors are required for regulation. The regulation is intended to apply only to persons, certain other entities, and services and activities provided, carried out, or controlled directly or indirectly by them in relation to crypto assets, even if some of those activities or services are carried out or provided in a decentralised manner. If services are provided without intermediaries – i.e. in an exclusively decentralised manner – MiCAR does not apply to those services.

This is because MiCAR only regulates the rights and obligations of issuers, providers and crypto asset service providers (CASPs). However, CASPs that offer services for DeFi crypto assets are regulated by MiCAR. The above considerations regarding national law should apply equally to MiCAR. It is unclear what the legislator means by ‘exclusively decentralised manner’, since there is virtually no DeFi that can be provided exclusively in a decentralised manner. There are always persons originally responsible for programming the protocols and smart contracts, and in most cases there are token holders who exercise the governance (or voting) rights.

Regulation of Staking

Whilst MiCAR only applies to crypto-assets (e.g. utility token and Stablecoins) that are not covered by other regulation such as by MiFID (e.g. Security Token), one must also consider that the Staking community -and not just the token- can be regulated. Given the “pooling” element of a Staking scenario, one must look into the regulation of investment funds.

a) Investment Funds Regulation

The German and the EU law on investment funds managers (e.g. KAGB and AIFMD) define an investment fund as

- (i) any undertaking for collective investment
- (ii) which collects capital from a number of investors
- (iii) in order to invest it in accordance with a defined investment strategy
- (iv) for the benefit of these investors and
- (v) which is not an operationally active company outside the financial sector.

According to the interpretative letter on the scope of application of the German investment act (e.g. KAGB) and on the term "investment fund" of BaFin as well as the ESMA's guidelines on key concepts of the AIFMD (which are the basis for KAGB and the BaFin interpretative letter), a “collective investment” implies that the investors participate in the chances and risks of the undertaking.

The collection of token for the course of collective staking may qualify as a collective investment. The decisive factors are “capital pooling” and “investment strategy”. Whilst the investment strategy at a pooled staking scenario can be seen as given (e.g. all investors aim to receive a staking reward for providing their assets for staking), it is questionable whether the assets are “pooled”. The definition of “assets” is very wide, covering also intangible assets, hence also any kind of valuable token. To consider that the assets are pooled, the assets must be “locked”.

So, if the token holder can redeem its token after one “staking scenario”, we can assume that the discretion over the asserts lie with the token holder (and not with third parties such as the validators). If however the token are locked for a longer tome (e.g. 30 days or 60 days or 90 days) it is likely to qualify the assets as locked and hence to see a very limited discretion with the token holder. Thus for not having the staking community being qualified as investment funds, it is important that, there is

- (i) no capital pooling in one vehicle,
- (ii) no investment strategy and
- (iii) no collective investment for the benefit of the token holders (i.e. no participation of the token holders in any chances and risks).

b) Crypto Custody

Staking could, however, even when falling outside of the investment funds regulation, be seen as regulated crypto custody under German and EU law. As we can see from BsFin’s administrative practice and publications on the regulation of crypto custody, we understand that the management and administration of crypto assets as well as the safekeeping of private keys (for others) are regulated.

BaFin’s understanding covers the custody, management and safekeeping of crypto assets or private cryptographic keys which are used to keep, store or transfer crypto assets for others. The licensing requirement will apply if the provider implements one of these alternatives. According to the wording of this provision, it is not necessary for crypto assets or other private keys that are used to keep, store, or transfer crypto assets to be held in custody, managed, or protected.

Custody within the meaning of this provision means taking care of crypto assets as a service for third parties. This thus includes, in particular, service providers which hold the crypto assets of their customers collectively, without their customers being familiar with the cryptographic keys used.

Management/Administration broadly means ongoing fulfillment of the rights resulting from the crypto assets.

Protection means both the digital storage of third parties’ private cryptographic keys provided as a service and safekeeping of physical data media (e.g. a USB stick or a piece of paper) on which such keys are stored. The mere provision of storage space, e.g. by web hosting or cloud storage providers, will not fulfil the definition unless these providers expressly offer their services for storing private cryptographic keys.

Nor does the definition include the mere manufacture or sale of hardware or software for the protection of crypto assets or private cryptographic keys operated by users on their own responsibility, insofar as the providers are not intended to have access to the crypto assets or private cryptographic keys that the user thus holds in custody.

Accordingly, the key point is always the possibility of access to the public addresses where the crypto assets are locally stored, which is granted by means of the private cryptographic key.

According to this, if the staked tokens are held in an omnibus wallet and the private key is only known by the service provider, we can assume a regulated activity. If, on the other hand, the tokens are locked at a smart contract and the token holders know their private keys (e.g. self-hosted scenario), we do not have a regulated custody scenario.

The second alternative “Management/Administration” also covers staking, since staking is a different way of voting, which is covered by Management/Administration. Hence, once again we must look into “discretion”. Do the token holders have discretion on a) how, b) when and c) how much to stake and are they able to redeem from staking on their own will (even if they get slashed). If the answer to this question is yes, we can assume that there is no regulated Management/Administration and hence no crypto custody.

c) Compliance Requirements

Institutional staking services must comply with the requirements of the Money Laundering Act (GwG). This includes the identification and verification of customers and the reporting of suspicious transactions to the competent authorities.To adhere to legal regulations, service providers must implement procedures to verify their customers' identities and assess risks. Staking providers are rarely subject to crypto custody licenses as as long as they do not exercise direct control over users' crypto assets, but merely provide technical services or infrastructure.

The interaction of different regulations needs to be evaluated carefully. The regulation of cryptocurrencies and staking in Germany is subject to many complex sets of laws, including the Banking Act (KWG), the Securities Trading Act (WpHG), and the GwG. These laws, among others, influence each other and create a complex regulatory framework.

Therefore, the current regulatory framework can both promote and hinder innovation in the staking sector. While clear rules build trust that is much appreciated across the world, restrictive requirements and taxation can slow down the market introduction of new products and their adoption significantly.

Despite the *regulatory edge* that Europe enjoys with respect to MiCaR and existing regulatory frameworks, adoption and implementation projects are not Europe's and especially Germany's strength.

d) Suggestion: **Do not hinder decentralization through solo staking**

A frequent criticism of the proof-of-stake consensus mechanism is the increasing centralization by large staking providers. Greater centralization can lead to distortions of competition and undermine the basic idea of decentralized networks. This is also due to the fact that the BMF considers the operation of a validator to be commercial. Due to the unfavorable tax implications and the additional bureaucratic burden, the operation of own validators acts as a deterrent.

➢ **Demand**: Solo staking should not be disadvantaged by regulatory measures, as it contributes to decentralization and strengthens competition. This requires a differentiation in the commercial nature of active staking. Active staking should only be considered commercial if there are structural commercial aspects and the activity has a recognizable entrepreneurial character. This would be the case, for example, if:

- third parties delegate tokens and the validator operator provides an economically relevant service.
- the staking party operates an extensive infrastructure with the intention of making a profit, which goes beyond mere private management.
- a staking individual who only validates their own tokens and does not receive tokens delegated by third parties should be able to tax their income as part of private asset management (other income in accordance with Section 22 No. 3 EStG).

Creating regulatory clarity for new products and developments in the staking sector

➢ Demand: The legislator should provide a clear and timely categorization of new staking models and Web3 developments in order to enable innovation and provide market participants with a secure legal basis.

Promoting innovation and competitiveness through faster regulatory adjustments

A general problem in Germany and Europe is the slow adaptation of regulatory frameworks to new technological developments. Delays between new market phenomena and their regulation can weaken the business location.

➢ **Demand**: The reaction time between technological innovations and regulatory adjustments must be shortened in order to ensure Germany's competitiveness in the global crypto sector.

6. Taxation of Staking Rewards

The tax treatment of staking rewards is currently mainly based on BMF letters and not on specific legal regulations or rulings. This leads to considerable legal uncertainty, as many aspects have not been clearly clarified. As a large proportion of income is covered by catch-all provisions, unfavorable tax constellations regularly arise that are difficult to reconcile with the basic principles of German tax law. Clear legal regulations and a more precise tax classification of staking income are therefore urgently needed to ensure fair and practicable taxation.

The taxation of staking rewards in Germany depends largely on whether the income is classified as other income or commercial income. This distinction can have a significant impact on the tax burden of those affected.

The BMF bases its definition on one decisive factor: the type of participation in the staking process. A distinction is made between active and passive staking. The main difference lies in the direct participation in the block creation.

- Active staking occurs when a taxable person is involved in block creation - for example as a validator who validates transactions and produces new blocks. In this case, the BMF generally assumes commercial income.
- Passive staking, on the other hand, involves delegating tokens or depositing them in a staking pool without direct participation in block creation. In these cases, the income is usually treated as other income in the context of private asset management.

In practice, many taxpayers are not aware of this distinction - although it can have considerable tax consequences.

Taxation of staking rewards in the context of private management

In the case of passive staking, the staking rewards received are treated as other income for tax purposes in accordance with Section 22 No. 3 EStG. This means that the income is taxable at the time of receipt - regardless of whether the tokens are subsequently sold or held.

The valuation is carried out at market value at the time of inflow, so that taxable income is already generated at this moment. In cases where the tokens must first be claimed before they actually accrue to the staker, the time of claiming can be used as the basis for tax purposes. However, this option is limited, as unclaimed rewards are also deemed to have accrued by 31.12. of a year at the latest and are therefore taxable.

This regulation can be particularly problematic if the tokens cannot be sensibly sold due to a lack of liquidity or unfavorable market conditions in order to cover the resulting tax burden. As taxation takes place irrespective of an actual sale, this can lead to considerable financial burdens.

If the tokens received are later sold, this is a private sale transaction for tax purposes in accordance with Section 23 EStG. The taxable profit or loss is calculated from the proceeds of the sale less the acquisition costs (i.e. the market value at the time of receipt) and deductible income-related expenses.

- If the sale takes place within one year of receipt, the gain is taxable.

- If the sale takes place after the speculation period of one year has expired, it is tax-free.

This does not result in double taxation of the staking rewards, as only the increase in value since the date of receipt is taxed on the subsequent sale.

Scenario 1: Sale of the staking rewards received at a profit

An investor stakes 10 ETH over one year via a service provider. According to the BMF regulations, this is therefore passive staking within the scope of private asset management

On 01.01.2025, the investor receives 0.3 ETH staking rewards, which are worth € 1,000 at the time of receipt. This €1,000 is taxed as other income from services, regardless of whether the ETH is sold or not.

If the investor sells the 0.3 ETH later, for example on 02.03.2025 for € 1,300, an additional profit of € 300 is made (€ 1,300 sales proceeds less € 1,000 acquisition costs (the value at the time of receipt)). This gain is taxable if the sale takes place within one year. If the investor holds the ETH for longer than one year, the gain remains tax-free.

As a result, the investor would have to pay tax on the €1,000 staking rewards and the €300 capital gain.

A key aspect of the taxation of staking rewards is that a subsequent sale of the tokens at a loss does not change the original taxation. This means that the taxpayer already bears a tax burden on the inflow, even if the tokens lose value at a later date or can only be sold at a loss. So in relation to our example: Regardless of what happens to the tokens later, the taxes on the €1,000 staking rewards will be incurred.

A serious tax problem arises if the tokens have to be sold at a loss in order to pay the tax on the staking income. This is because losses from the sale of staking rewards may not be offset against the original staking income, but only against gains from other private sales transactions.

This regulation leads to a tension that has hardly existed in German tax law to date: income is generated in tokens that have to be sold to pay tax, but losses from this sale cannot be deducted from the staking rewards for tax purposes. This systematic inconsistency can lead to the tax burden ultimately being higher than the income that can actually be realized in euros and should be urgently reconsidered.

Scenario 2: Sale of the staking rewards received at a loss

As before, our investor receives staking rewards in the amount of €1,000 and has to pay tax on this. Now the investor sells the 0.3 ETH later, on 02.03.2025 for €200 € . This results in a loss of €800 (€200 sale price less €1,000 acquisition costs (value at the time of receipt)). Our investor cannot offset the loss of € 800 against the staking rewards. He can only realize € 200 of the staking rewards, which were originally worth € 1,000. However, he has to pay around €430 in tax on the €1,000 in Staking Rewards, depending on his tax bracket. This means that he pays more tax on the rewards than he was actually able to realize in euros due to the inability to offset losses. He has to pay on top, so to speak.

Taxation of staking rewards in the context of an enterprise

The BMF generally assumes that active staking is a commercial enterprise. This means that the income generated is not treated as other income, but as income from business operations in accordance with Section 15 EStG. This commercial classification has considerable tax consequences and differs fundamentally from the taxation of private assets.

Differences to private taxation

The most important difference lies in the classification of the staked tokens as business assets. As soon as the tokens are classified as business assets, different tax rules apply:

- Abolition of the speculation period: Cryptocurrencies held as private assets can be sold tax-free after a holding period of one year (Section 23 EStG). This option does not apply to business assets - every sale is taxable, regardless of the holding period.
- No restriction on offsetting losses: The losses from the sale of rewards can be offset against the rewards, as both fall under Section 15 EStG. This means that there is less risk of a dry-income problem in the commercial sector in this context.
- Trade tax liability: As staking is considered a commercial activity, the income is subject to trade tax in addition to income tax, which is around 15% depending on the municipality.
- Accounting obligation: If certain size criteria are exceeded, there is an accounting obligation.

Tax consequences of closing a business or moving away

Another critical point is the so-called tax entanglement of tokens in business assets. This means that unrealized increases in value can be taxed in certain cases:

Discontinuation of business: If the business is discontinued, this is considered a sale of the tokens for tax purposes. Any hidden reserves - i.e. price gains that have not yet been realized - must then be taxed.

Moving abroad: If the taxpayer leaves Germany, this is treated as a fictitious sale of the tokens. This means that a tax burden arises on unrealized price gains, even though no actual sale has taken place.

Taxpayers themselves are responsible for sufficient funds and reserves

It is the responsibility of the stakers to build up tax reserves in euros in good time in order to be able to settle the tax payments due. Unfavorable market conditions or falling token prices do not exempt from tax liability. Taxpayers are responsible for building up the necessary reserves and ensuring that they can meet their tax liabilities on time.

However, there is one special feature of staking that absolutely requires attention. This is the fact that revenue is generated in tokens, while the tax burden must be paid in euros. This means that stakers may be forced to sell their tokens in order to pay the tax due. This tension between tax recognition and economic realizability is a special feature that rarely occurs in other types of income.

This problem can be exacerbated if token prices fall significantly and a sale must be made at a loss to cover the tax burden. Since the amount of tax is determined based on the inflow value of the tokens, a taxpayer may have to pay more tax on their staking rewards than they can ultimately realize from a sale of the tokens.

Demand for fair and practical tax and regulatory treatment of staking

The current tax and regulatory classification of staking leads to legal uncertainties, competitive disadvantages and administrative hurdles that require a practical adaptation of the regulations. In order to maintain Germany as an attractive location for blockchain technology and web3 development, the following key points should be taken into account in the regulation and taxation of staking:

Enable loss offsetting for staking rewards

Currently, losses from the sale of staking rewards cannot be offset against previously taxed staking income, which leads to an unrealistic tax burden.

➢ **Demand**: A loss offsetting option must be created to ensure fair taxation and prevent taxpayers from finding themselves in a dry income situation where they have to pay tax on income that cannot be realized in real terms or only at a loss.

Creating legal certainty in the tax treatment of crypto-assets

The Federal Ministry of Finance has clarified in a letter that the so-called ten-year holding period does not apply to crypto-assets. However, this regulation is not enshrined in law and is therefore legally uncertain.

➢ **Demand**: The BMF's statement should be confirmed by a legal clarification in order to create a reliable legal basis.

Maintaining flexibility and competitiveness in international comparison

The taxation of (liquid) staking rewards depends heavily on the mechanisms of reward generation, which change frequently in practice. At the same time, German tax law is complex in international comparison and associated with high tax burdens.

➢ **Requirement**: Germany should ensure that it does not lose touch with other jurisdictions through an appropriate tax and regulatory structure. Overly strict and complex tax laws could deter companies and investors, while other countries with lower tax rates and more flexible regulations appear more attractive.

Conclusion: Strengthening Germany as a crypto location

Staking offers Germany technological and economic opportunities that should be exploited through clear, fair and innovation-friendly regulation. Realistic taxation and practical regulation are crucial to making Germany an attractive location for investors, developers and companies. Without appropriate adjustments, Germany risks losing competitiveness in international comparison and losing important innovations to other jurisdictions.
Now is the right time to optimize the tax and regulatory framework for staking in order to create an attractive long-term environment for blockchain technologies and actively shape the future of the digital economy. This differentiated view would:

- Enable fairer tax treatment.
- Maintain the attractiveness of Germany as a staking location.
- Prevent private users from being confronted with high tax and administrative burdens due to unnecessary commercial activity.

A more precise tax classification would help to avoid legal uncertainties and ensure that only commercial staking activities are actually treated as such.

7. Possible Suggestions and Adaptations

The federal bureau of finances (BMF) recently stated in a letter that the so-called ten-year period **does not apply** to crypto assets. However, it is not firmly anchored in the law and thus not certain. 1) **We therefore strongly recommend creating regulatory certainty on taxation by implementing the BMF letters' statement on the holding period into law, as the letter is, despite being helpful, not binding.**

Centralization through staking is the main-critique of the Proof-of-Stake consensus mechanism in the crypto community. Centralization is a development that antitrust agencies as well as the regulator and the public must become aware of. **2) Solo staking should at the very least not be disincentivized by regulation as it helps foster decentralization.**

Running a validator can be subject to commercial tax. The operator is obliged to register as a commercial entity, rendering it subject to business income tax. **3) Regulators should reconsider if this requirement is useful, especially in conjunction with 2).** Further, it shall be considered that not all node operation is monetarily incentivized. Especially in the native crypto sector, enthusiasts want to be part of a network without being obliged to register for potentially negligible rewards.

For (liquid) staking, taxation highly depends on the mechanism of reward generation. Reward generation mechanisms might be subject to frequent and considerable changes. **4) The regulator should make certain that it is not inhibiting institutional (and individual) adoption of (liquid) staking assets.** In this context, it has to be considered in future regulation that Germany's relatively higher tax rate and complex logic might deter businesses and individuals. This can lead to a competitive disadvantage compared to other jurisdictions, which offer significantly lower tax rates or a higher degree of flexibility. Germany and Europe might lose out on potential investments.

The regulatory status of staking depends on several factors, including how it's offered (active vs. reverse solicitation), the degree of decentralization, and whether it resembles an investment fund or crypto custody service. The key is often control – if the token holder retains control over their tokens and staking decisions, it's less likely to trigger regulatory requirements. **5) The regulator shall provide timely, clear and concise categorizations for novel products and services around staking and developments in web3.**

In general, **6) Delays between the emergence of novel phenomena and regulation must be minimized to foster innovation and adoption for competitiveness' sake.**

Germany should pay closer attention to the topic of staking, as it offers numerous opportunities and advantages for both businesses and the national economy as a whole. Staking offers Germany significant economic and technological opportunities. It can drive blockchain innovation, create new business models and passive income for companies, and strengthen Germany's position as a leading technology hub. Clear regulatory frameworks are crucial to encourage market participation and enhance security. Staking also offers cost-effective portfolio diversification and the potential for Germany to gain a competitive edge in the global blockchain landscape by attracting talent and fostering innovation.

This spirit is, of course, also relevant in the matter of taxation. Here, additional complexities prevail which need to be tackled. **7) The regulator shall enable loss offsetting for staking rewards.** Currently, losses from the sale of staking rewards cannot be offset against previously taxed staking income, which leads to an unrealistic tax burden and dry income.

The Federal Ministry of Finance has clarified in a letter that the so-called ten-year holding period does not apply to crypto-assets. However, this regulation is not enshrined in law and is therefore legally uncertain. **Thus, 8) the BMF's statement should be confirmed by a legal clarification in order to create a reliable legal basis.**

German tax law is complex in international comparison and associated with high tax burdens. **9) Germany should ensure that it does not lose touch with other jurisdictions through an appropriate tax and regulatory structure regarding digital assets in general.** Overly strict and complex tax laws could deter companies and investors, while other countries with lower tax rates and more flexible regulations appear more attractive.

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