

EBA No Action Letter on the interaction between MiCA and PSD2

EBA issues No Action letter to clarify interaction between MiCA and PSD2 for CASPs providing services pertaining EMT

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KEY ASPECTS

- The No Action letter was published on June 10, following a formal request from the European Commission aimed at mitigating the risk of regulatory duplication applicable to some CASPs.
- During the MiCA transition period and until the entry into force of PSD3 and the Payment Services Regulation (“PSR”), the EBA recommends that some activities with EMTs should not require a second authorization under PSD2 for now.
- Even so, certain transactions such as the custody or transfer of EMTs for payment purposes may qualify as payment services and therefore require authorization under PSD2.
- The EBA suggests that these authorizations be processed with simplified procedures and that the authorities grant an adaptation period until March 1, 2026 before requiring formal compliance.





Objectives of the No Action letter

On June 10, the EBA issued a No Action Letter in response to the European Commission's written request of December 6, 2024, to clarify, in cooperation with the European Securities and Markets Authority ("ESMA"), the interaction between MiCA and PSD2 for CASPs providing services pertaining EMTs.

The objective of this document is, first, to advise the European Union (EU) bodies on how to resolve regulatory overlap in the long term, taking advantage of the ongoing legislative process for the PSD3 and the PSR, and, second, to guide the national competent authorities ("NCAs") during a transition period of two to three years while the PSD2 remains in force and until the date of application of the PSR and the transposition of PSD3.

Core legal issue

Under MiCA, EMTs are considered electronic money and thus qualify as funds within the meaning of PSD2. Therefore, they are subject to the PSD2 provisions for payment services involving their use.

EMTs thus have a double regulatory categorization: First, they are a category of crypto-assets within the meaning of MiCA, and, second, they are electronic money and thus funds within the meaning of PSD2.

Article 70.4 of MiCA establishes that CASPs aiming to provide payment services related to crypto-assets services they offer may do so directly or through a partnership with a payment service provider ("PSP"), provided the CASP itself or the PSP is authorized to provide these payment services.

However, MiCA does not clearly specify which of the services that can be offered by CASPs qualify as payment services, which raises the question of whether—and in which cases—a dual authorization will be required, i.e., an authorization as a CASP under MiCA and an authorization as a payment institution under PSD2.

Recital 90 of MiCA already established that custody and administration services, placement, and transfer services for crypto-assets could coincide with payment services under the terms and for the purposes of PSD2.

The EBA's view is that any financial activity must be regulated by a single legal instrument in the field of financial services, and that the simultaneous application of several legal regimes to the same activity must be avoided, or risk generating disproportionate complexities for the entities concerned.

The EBA's recommendations

While PSD2 remains in force and until PSD3 and the PSR clarify this issue, the EBA's recommendation to NCAs is that CASPs providing EMT services only require an authorization under MiCA, without needing an additional authorization under PSD2. Otherwise, the CASPs would have to obtain a second authorization, which the EBA considers undesirable.

This EBA opinion is not based on the conviction that a CASP authorization under MiCA is in itself sufficient to address the risks associated with EMT transactions. For the EBA, it is vital that EMT transactions are regulated consistently and in accordance with the standards established by PSD2 to maintain the confidence of payment market participants.

Therefore, the EBA recommends that the EU bodies use the ongoing PSD3/PSR legislative process to amend MiCA, strengthening the requirements for providing crypto-assets services with EMTs that qualify as payment services, in key areas such as consumer protection, payment security, capital requirements, and fraud reporting, among others.



If it is not feasible to amend the MiCA at this phase, a second approach would be to clarify, in PSD3 and the PSR, which types of services with EMTs these two pieces of legislation apply to and how they apply, ensuring a clear distinction in the scope of PSD3/PSR and MiCA.

The EBA considers a third approach, in which EMTs would be excluded from the scope of the future PSD3 and PSR, unsatisfactory and unacceptable without MiCA being amended to strengthen the duties of CASPs providing EMT services for payment purposes.

During this period, the EBA also recommends that NCAs clearly define which types of EMT services must not be considered payment services (and are therefore not subject to additional authorization) and which must qualify as such.

Therefore, the EBA recommends that NCAs consider that the transfer of EMTs in the name of clients and the custody and administration of EMTs qualify as payment services under PSD2. Similarly, the provision of custodial wallets in the name of one or more clients enabling EMTs to be sent and received should also be classified as a payment service.

For these activities, the EBA's view is that the relevant authorization under PSD2 must only be required from March 1, 2026, and that simplified procedures taking advantage of the information already provided by entities in the authorization process as CASPs under MiCA must be applied.

However, after March 2, 2026, the NCAs must prevent entities that are not authorized to provide payment services, or that have not entered into a partnership with entities authorized to provide these services, from providing EMT services that qualify as payment services.



For additional information, please contact our Knowledge and Innovation Group lawyers or your regular contact person at Cuatrecasas.

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