



Application of PSD2 and upcoming PSD3/PSR provisions to Electronic Money Tokens (EMT) as defined under the MiCA Regulation

28 February 2024

Summary: *We urge the European Commission to clarify the application of the Payment Services Directive¹ (PSD), to electronic money tokens (EMT) and EMT services, which is anticipated by the MiCA Regulation² (MiCA) to apply in June 2024. To this end, we stand ready to participate in a joint government-industry working group to develop a tailored means of achieving regulatory clarity.*

MiCA is expected to begin to apply over the next months, with provisions relating to electronic money tokens (EMTs) applying in June 2024.

Recital 66 and Article 48 of the MiCA Regulation, state that EMTs “shall be deemed to be” e-money. This would mean that EMTs could be regarded as funds under the PSD and issuers of EMTs, and entities providing payment services using EMTs would fall within the scope of the PSD. In the future, they would also be subject to the revised PSD as well as the Payment Services Regulation.

Furthermore, EMTs are defined as “a type of crypto-asset that purports to maintain a stable value by referencing the value of one official currency” in Article 3 (7) of the MiCA Regulation: this definition is broad enough to capture assets that would fall outside the definition of e-money in the E-Money Directive³ (EMD), bringing into scope products that may not have been contemplated as e-money. Conversely, due to their inherently different technological infrastructure, EMTs are treated as crypto-assets, not e-money, under the recast Transfer of Funds Regulation⁴ (TFR).

In light of the above, and exacerbated by the short timeline within which the MiCA Regulation will begin to apply, there remains significant regulatory and legal uncertainty around the nature of EMTs and the extent of the application of PSD rules to EMTs.

A key part of the current challenge is that the distributed ledger infrastructure upon which EMTs operate creates an ecosystem that is distinct in its distribution of roles and responsibilities from that of conventionally centralised payment service provision. This makes the current approach of the PSD, which contemplates centralised control, less suited to establishing a regulatory framework that would meet the needs of a distributed ecosystem.

Typically, in a centralised technological environment Payment Service Providers (PSPs) have control over the governance, over information and over the IT infrastructure of the underlying payment rails.

¹ Directive (EU) 2015.2366 on payment services in the internal market.

² Regulation (EU) 2023/1114 on markets in crypto-assets, of 31 May 2023.

³ Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions.

⁴ Regulation (EU) 2023/1113 on information accompanying transfers of funds and certain crypto assets. See Article 2 (b) of the TFR.



By contrast, Crypto Asset Service Providers (CASPs) or issuers providing EMT transfers:

- Rely on publicly utilised technical infrastructure used for the recording and transfer of assets (public blockchains);
- Consequently, such infrastructure is frequently not under the direct control of a single entity, including the issuer or CASP
- Participation in the ecosystem is open to entities that may not have a contractual relationship with an issuer or with other participants
- Transactions on the blockchain are final and immutable by design; and do not therefore lend themselves to being reversed in the event of them being regarded as unauthorised
- Similarly, data is stored and held by different entities in the ecosystem and may not be visible to other entities at the same time.

The decentralised infrastructure in which CASPs operate requires therefore a rethinking of the obligations and liabilities that attach to different entities operating within the EMT ecosystem. It follows that if PSD rules were applied to EMT transfers without bespoke adaptation, crypto asset service providers - including those authorised to provide payment services under the PSD - would find it challenging to do so.

This could lead to a significant drop in economic activity around EMTs in the EU and would further inhibit the growth of Euro-denominated EMTs that, to date, only represent a small portion of the global stablecoin market.

We urge the EU Commission and the EBA to clarify the application of the PSD to EMTs, and to develop further guidance on how PSD rules could be adapted to apply to EMTs and to the distributed ledger ecosystem. This guidance could then inform and be reflected in the text of the forthcoming PSD3/PSR. We believe the best way to achieve legal certainty and regulatory alignment to address market needs is to foster close cooperation between EU regulators and industry.

We, the undersigned trade bodies and other unaffiliated regulated entities, are jointly committed to supporting this process to make MiCA's long-awaited entry into application a success.

Best regards,

Representatives of:

Association for the Development of Digital Assets (ADAN), Adriana Torres Vergara, EU Policy Officer
Blockchain for Europe (BC4EU), Robert Kopitsch, Secretary-General
Crypto Council for Innovation (CCI), Mark Foster, EU policy lead
Electronic Money Association (EMA), Thaer Sabri, CEO
European Blockchain Association (EBA), Erwin Voloder, Head of Policy
European Crypto Initiative (EUCCI), Marina Markezic, Executive Director and Co-founder
European Payment Institutions Federation (EPIF), Nickolas Reinhardt, Head of Secretariat