

What EU Bank Regulator's Letter Means For Crypto Providers

By **Hubert de Vauplane and Hugo Bordet** (July 10, 2025, 3:12 PM BST)

Barely a year after the entry into application of Markets in Crypto-Assets Regulation, or MiCA, the European Banking Authority published a so-called no-action letter on June 10, aimed at securing the applicable regime for crypto-asset service providers operating in relation to e-money tokens.[1]

The exercise seeks to avoid systematic dual authorization under MiCA and the Payment Services Directive 2, or PSD2, while preserving user protection and the integrity of the payments market.

In its no-action letter, the EBA recalls that, by virtue of Article 48(2) of MiCA, e-money tokens, or EMTs, are considered as electronic money under PSD2, and therefore benefit from a dual nature: crypto-assets and funds.

However, it considers that the same service should not be subject to two sets of rules, unless absolutely necessary.

Key Takeaways

The core of the mechanism lies in a functional reasoning: Custody and administration services for EMTs, as well as transfers of EMTs on behalf of clients, must be treated respectively as payment services and as the maintenance of a payment account, with all the consequences that follow, i.e., a payment institution or electronic money institution license or a partnership with a payment service provider.

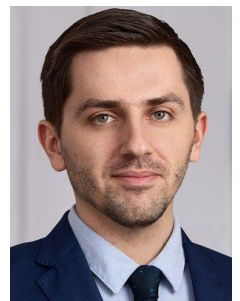
Conversely, the exchange of crypto-assets against funds or other crypto-assets, when carried out on the service provider's own account, as well as intermediation of EMT purchases, does not trigger the application of PSD2.

A new transitional period for crypto players has begun. Crypto-asset service providers that hold or transfer EMTs should be:

- Complying with the March 1, 2026, deadline to obtain a payment service provider authorization or partner with an existing payment service provider;
- Implementing a "streamlined" procedure, based on reuse of the MiCA file; and



Hubert de Vauplane



Hugo Bordet

- Ensuring that providing these services without license is prohibited after the deadline.

Own Funds Requirements

The EBA opinion confirms that the prudential requirements applicable to crypto-asset service providers operating on EMTs result from a cumulative application of MiCA and PSD2 frameworks, with no compensation mechanism or mutual recognition.

Thus, a crypto-asset service provider providing custody or transfer services for EMTs must comply simultaneously with the initial capital requirements under Article 67 and Annex IV of MiCA and those of Article 7 of PSD2, as long as its activity is considered a payment service.

For instance, a crypto-asset service provider falling under MiCA Class 2 — custody and transfer — must hold initial capital of €125,000 (\$147,000) under the MiCA regulation, to which an identical requirement under PSD2 will be added for payment execution.

No mutualization mechanism is provided: The so-called no double use rule applies strictly, meaning that €1 of capital cannot be counted twice under two distinct regulatory requirements.

The same logic prevails for ongoing own funds calculation: The calculation methods set out in Article 9 of PSD2, depending on the service type, must be added to MiCA requirements — one quarter of fixed overheads or the applicable minimum.

The EBA does not rule out that these amounts may be adjusted upward or downward by national authorities, provided this is based on a rigorous assessment of operational risks, as foreseen in PSD2.

However, such an assessment must not result in ignoring either of the two texts.

Differentiated Treatment of Requirements

The opinion introduces a pragmatic distinction between PSD2 requirements deemed priority — due to their direct link to user protection — and those which, until March 2, 2026, may be subject to flexible application, given the technological context of crypto-assets.

Among the obligations maintained as priority, two elements are expressly cited by the EBA:

1. Strong customer authentication, required for access to custodial wallets and for initiating EMT transfers: Although some platforms have reported technical difficulties in implementing dual authentication in a distributed ledger technology environment, the EBA insists that this requirement cannot be postponed. If a crypto-asset service provider fails to implement strong customer authentication, it incurs liability in the event of fraud or unauthorized use, even during the transitional period.

2. Fraud reporting obligations under PSD2 fully apply to services deemed payment services involving EMTs, particularly in a context of increasing attacks targeting hosted wallets.

Conversely, several requirements are explicitly deprioritized until the expiration of the transitional deadline, including the following:

- Precontractual information on exact fees, which is difficult to provide reliably for on-chain transactions with highly variable gas fees — a cost that certain blockchain protocol users pay to network validators each time they wish to perform a function on the blockchain;
- Compliance with a maximum execution time, which is not compatible with confirmation times on certain blockchains;
- Provision of a unique identifier such as the international bank account number; and
- The application of open banking rules, which cannot be applied as long as the legal nature of the custodial wallet as a payment account is not resolved.

The EBA recommends that these issues be taken up and clarified in the context of the Payment Services Directive 3 and Payment Services Regulation reform or, failing that, integrated directly into MiCA to ensure overall coherence.

After March 2026

The opinion does not merely adjust the current interpretation of existing texts. It also outlines two structural reform paths that EU institutions are invited to consider by 2027.

The first path would be to reinforce the MiCA regulation by incorporating — directly or by reference — the prudential and consumer protection requirements provided for by PSD2 or PSD3, but solely for EMTs.

This approach would allow for a unified regime, in which crypto-asset service providers would only be subject to one license, under MiCA, while ensuring an equivalent level of protection to that offered to users of traditional payment services.

The second option, which the EBA qualifies as an alternative but acceptable solution, would consist in adapting the future PSD3/Payment Services Regulation framework to include a specific regime for EMT services provided by already licensed crypto-asset service providers.

These could thus notify their activities to the competent authority without having to obtain a second authorization. This conditional exemption regime would rely on the recognition of MiCA authorization and the implementation of technical standards equivalent to those required in the payments sector.

However, the EBA categorically rejects any solution that would exclude EMTs from the scope of payment legislation without providing equivalent safeguards. Such a solution, it argues, would endanger consumer protection, encourage regulatory circumvention and threaten the integrity of the internal market.

Consequences

Detrimental Regulatory Burden

It may be considered that the accumulation of obligations arising from MiCA and PSD2 imposes a singularly high regulatory burden on service providers related to EMTs.

Already, the MiCA primary framework imposes important additional obligations compared to electronic money, e.g., heavy reserve requirements, a white paper, a recovery and redemption plan, and, for significant EMTs, enhanced supervision by the EBA. The extension of this corpus to the secondary market

— through the assimilation of transfer and custody services to regulated payment services — increases the asymmetry of treatment between EMTs and classic electronic money.

Even though both instruments are, legally speaking, defined as funds and equal treatment is an objective affirmed by the EBA, the requirements of the regime applicable to EMTs appear significantly heavier.

This imbalance is all the more striking given that euro-denominated stablecoins represent only a marginal fraction of the global ecosystem: barely 1% of stablecoin capitalization according to market estimates.

Furthermore, most euro EMTs in circulation are issued by non-European entities. Excessive regulatory stringency could thus lead to a competitive decline of the European Union, to the detriment of its own ambitions for digital monetary sovereignty.

Probable Side Effects

The functional analysis conducted by the EBA, although rigorous, could lead to strategic avoidance behaviors by market participants.

One can expect a growing migration toward self-custodial models. Crypto-asset service providers wishing to circumvent the qualification as payment service could restrict their offer to noncustodial wallets, leaving users with full control of their private keys.

Some crypto-asset service providers might simply cease to offer EMT transfer services, while maintaining the possibility to transfer other crypto-assets, such as asset-referenced tokens or traditional cryptocurrencies, e.g., bitcoin, ether, etc. In other words, users would retain the ability to move digital assets from one wallet to another, but EMT transfers would be deactivated or limited to own-account exchange operations.

There could be a rise in so-called payment asset-referenced tokens, particularly in the form of tokens backed by multiple fiat currencies, e.g., euros or US dollars.

These hybrid instruments, which would not fall under the EMT regime, could capture part of the demand for interplatform settlement and merchant use, while escaping the double regulatory framework of MiCA and PSD2.

However, this trend could undermine the clarity of legal categories introduced by MiCA and open the door to new risks of regulatory fragmentation.

Open Legal Questions

The opinion clarifies certain points, but does not exhaust the debate on EMTs. If EMTs are funds, does lending EMTs, whether in a decentralized finance environment or via centralized services, e.g., lending, constitute a credit operation? And if so, does it fall under the Capital Requirements Regulation or Credit Requirements Directive prudential regime, or should it be subject to a specific framework?

At this stage, legal scholarship remains silent, and the opinion only proposes an inductive approach without normative value.

The use of EMTs for payment purposes raises the question of its potential extension to asset-referenced

tokens. If asset-referenced tokens develop in parallel to EMTs as a new means of payment, should PSD2 rules apply as soon as an asset-referenced token is used to make a transfer between two users?

These debates will need to be resolved in due course within the PSD3 and Payment Services Regulation revision process, and the report to be submitted by the European Commission by the end of 2026, under Article 142 of MiCA, on crypto lending and the use of asset-referenced tokens as payment instruments.

Next Steps

Following the publication of the EBA opinion, several important regulatory steps are expected in the short and medium term.

Political negotiations on the PSD3 and Payment Services Regulation legislative proposals will play a decisive role in defining the future framework applicable to services related to the EMT.

One of the key questions will be whether to strengthen MiCA by directly incorporating payment-related safeguards into its scope, thereby eliminating the need for dual authorization, or to allow crypto-asset service providers already authorized under MiCA to simply notify their EMT activities under PSD3.

The outcome of these discussions will be decisive in resolving the legal overlap between the two regimes and ensuring consistency within the EU single market.

National competent authorities will be responsible for the practical supervision of the transitional regime until March 1, 2026. As recommended by the EBA, national competent authorities should adopt a proportionate and harmonized approach to the authorization and supervision of crypto-asset service providers engaged in the custody or transfer of EMTs.

It will be essential to avoid fragmented implementation across member states in order to maintain legal clarity and market stability during this transitional period. The Web3 industry itself must anticipate and adapt to this evolving legal environment.

Crypto-asset service providers offering services related to EMTs should proactively assess their compliance strategies, whether by applying for payment institution status, partnering with existing payment service providers or adapting their service offerings so as not to fall within the scope of regulated payment services.

Given the approaching deadline of March 2026, swift action will be essential to avoid operational and legal disruption.

Hubert de Vauplane is a partner and Hugo Bordet is a consultant at Morgan Lewis & Bockius LLP.

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[1] Opinion EBA/Op/2025/08.