



Background

On 10 June 2025, the European Banking Authority (“**EBA**”) published an [opinion on the interplay](#) between [PSD2](#) and [MiCAR](#) (“**No Action Letter**”). The No Action Letter has been long-awaited by the sector and seeks to provide clarity on the (PSD2) licencing requirements for Crypto-Asset Service Providers (“**CASPs**”) when they provide services related to EMTs. In this newsflash, we will summarise the key points addressed by the EBA and their impact on (applicant) CASPs.

What is the issue?

According to Recitals (90) and (93) of MiCAR, a certain overlap may exist between PSD2 and MiCAR. This is principally the case in the instance of EMTs, which MiCAR qualifies as electronic money and, hence, are therefore ‘funds’ for PSD2 purposes. Identifying that this dual classification might lead to an (undesired) dual licencing requirement, the [Commission in December 2024](#) requested the EBA to explore the possibility to issue a No Action Letter. With the current No Action Letter, the EBA responds to this call to action and addresses the issues identified by the Commission.

What would be a payment service in relation to EMTs?

- ✓ The transfer of crypto assets, where they:
 - i. entail EMTs; and
 - ii. are offered and carried out by CASPs on behalf of their clients.
- ✓ The custody and administration of EMTs.
- ✓ Additionally, the custodial wallet is a [payment account](#), provided it allows for the sending and receiving of EMTs to and from third parties.

What would not be a payment service in relation to EMTs?

- ✗ The exchange of crypto-assets for funds.
- ✗ The exchange of crypto-assets for other crypto-assets.
- ✗ Additionally, CASPs that intermediate the purchase of any crypto-assets with EMTs would not require authorisation under PSD2.

What does the No Action Letter do?

- Clarify the scope of the PSD2 authorisation requirement
- Explain the extent of PSD2 requirements applicable to CASPs
- Propose to address the identified issue with the PSR/PSD3 legislative package
- Advise NCAs to de-prioritise supervision and enforcement

Therefore...

CASPs providing payment services must comply with the requirements under the (temporary) regime and are principally required to obtain a licence under PSD2, though ultimately *after* the temporary regime expires (see below).

When CASPs apply for a PSD2/EMD2 licence, NCAs are instructed to optimally use available data and to apply a proportional application regime.

Applicable requirements for a CASP licensed under PSD2

CASPs that would be subject to a PSD2 licence requirement should meet the following requirements:

- **Own Funds** – Once authorized under PSD2, CASPs should cumulatively meet MiCAR and PSD2 own funds requirements. The EBA advises NCAs not to increase, or decrease, the own funds requirement (via Pillar 2) because of the dual nature of the CASP.
- **Consumer Protection** – The EBA advises NCAs not to prioritise supervision and enforcement of some of the PSD2 consumer protection requirements, including: (i) information related to the (exact) charges payable if unknown to the CASP; (ii) information on maximum execution time of payment transactions where unknown to the CASP in advance; (iii) the IBAN; and (iv) the [SEPA Regulation](#).

Applicable requirements (contd.)

- **Strong Customer Authentication (SCA)** – CASPs must in principle apply SCA requirements, though the EBA advises NCAs not to enforce the application of SCA before **2 March 2026**.
- **Fraud Reporting** – CASPs must report fraudulent transactions in line with art. 96(6) PSD2, though the EBA advises NCAs not to enforce this reporting requirement until **2 March 2026**.
- **Safeguarding** – CASPs must follow the MiCAR safeguarding requirements pursuant to art. 70(1) MiCAR and principally not those of art. 10 PSD2. The EBA advises that the latter article should not be prioritized in the enforcement action by the NCAs.

Note: Though NCAs are advised not to enforce SCA until **2 March 2026**, the EBA points out that pursuant to art. 74(2) PSD2, CASPs will continue to bear liability *vis-à-vis* its customers where it does not apply SCA. **Thus, it is crucial to note that private liability is not affected by the transition period.**

Solution to the current issue

The EBA proposes to ideally use the PSDR/PSD3 legislative package to amend MiCAR. Specifically, MiCAR should be amended so that the requirements applicable to EMT crypto-asset services that (also) qualify as payment services comprise a similar level of protection as PSD2 does for ‘regular’ payment services. This would disapply the PSR/PSD3 to CASPs and involve including rules in MiCAR on: **(i)** consumer protection; **(ii)** security of payments; **(iii)** own funds requirements; **(iv)** reporting of payment fraud, and **(v)** other additional requirements.

If this approach is not deemed feasible, PSR/PSD3 could be (partially) applied to the relevant CASPs. This would create the (difficult) situation where CASPs would have to apply PSR/PSD3 rules, though they would not be subject to a PSR/PSD3 authorisation requirement. Effectively, this could substantially increase the regulatory compliance costs for in-scope CASPs, as they would have to monitor and apply two regulatory frameworks.

Temporary regime

Up until **2 March 2026**, CASPs may continue to operate without a PSD2 authorisation or appropriately licensed (PSD2) partner. After that date, CASPs will have to apply for a PSD2 licence or ensure that they are out of scope of such licence requirement and comply with the *relevant* requirements.



Jan Jans

Partner

Jan Jans is a Dutch qualified lawyer specialized in financial regulatory law. He has a strong focus on the regulatory framework covering investment firms, banks, insurance companies, payment service providers, crypto-asset service providers and investment funds. Prior to joining Regulatory Counsel | Financial Services as Partner in 2022, Jan worked as a financial regulatory lawyer at Linklaters and other (international) law firms in the Netherlands. He successfully defended his PhD thesis on the level playing field between banks and non-banks in the European market for electronic payments in 2023.

Tel: +31 6 83 50 49 27

E-mail: jan.jans@recofise.eu



Jan-Jouke van der Meer

Managing Associate

Jan-Jouke van der Meer is a Dutch qualified lawyer specialized in financial regulatory law. He advises clients on the full range of Dutch and EU financial regulatory laws, licensing issues, corporate governance (including integrity and suitability assessments), compliance and integrity-related issues (including AML and sanctions) and dealing with financial regulators. Prior to joining Regulatory Counsel | Financial Services, Jan-Jouke worked as a financial regulatory lawyer at Linklaters.

Tel: +31 6 13 50 73 91

E-mail: janjouke.vandermeer@recofise.eu



Maarten Mol-Huging

Junior Associate

Maarten Mol-Huging is a Dutch qualified lawyer specialized in financial regulatory law. He advises on financial regulatory issues with regards to banks, investment firms, insurers, payment service providers and FinTech (e.g., digital asset services providers), with a particular focus on prudential aspects. Maarten graduated with distinction from the prudential regulation-oriented EBI Master in Banking Regulation in 2024. Before, he graduated cum laude at the VU Amsterdam in International Business Law in 2022.

Tel: +31 6 29 90 96 29

E-mail: maarten.mol-huging@recofise.eu