



MiCA



DIGITAL PAYMENTS FORUM



# Joint GDF Payments Forum and MiCA Working Group Session

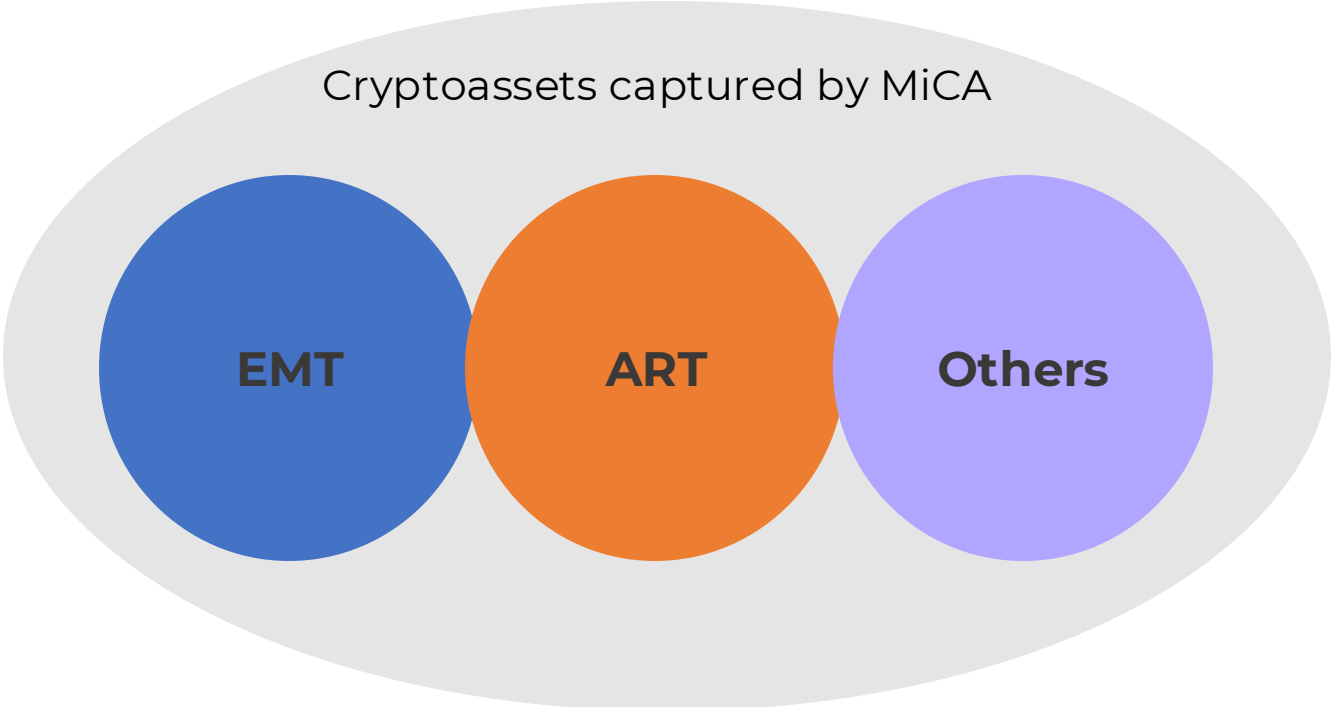
## *Second Payments Services Directive*

**Thursday 12 December 2024**

**09.00 ET | 14.00 GMT | 15.00 CET**

- Overview of cryptoassets classification under MiCA
  - E-money vs EMT
  - Issuing EMTs
  - Significant EMTs
  - Transferring EMTs
- EU Commission letter to ESMA and EBA – December 2024
- Forward outlook and GDF engagement consideration
- Q&A

# MiCA – Different types of cryptoassets



# MiCA – Different types of cryptoassets



Cryptoassets excluded from MiCA:

- financial instruments (in scope of MiFID),
- (structured) deposits,
- unique and not fungible crypto-assets,
- securitisation positions,
- insurance contracts,
- pension products and social security schemes; and
- funds **except if they qualify as EMT**

MiCA Recital (19): '*[b]ecause e-money tokens are crypto-assets and can raise new challenges in terms of protection of retail holders and market integrity that are specific to crypto-assets, they should also be subject to the rules laid down in this Regulation to address those challenges*'.

# MiCA – e-money vs EMT



## E-money

EMD2 2.2: *'electronic money' means electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions as defined in point 5 of Article 4 of Directive 2007/64/EC, and which is accepted by a natural or legal person other than the electronic money issuer*

Claims against the issuer, right to redeem at any time and at par value

## EMT

MiCA 3.(7): *'electronic money token' or 'e-money token' means a type of crypto-asset that purports to maintain a stable value by referencing the value of one official currency*

Not always a claim against the issuer, redemption may be limited (in time or value)

EMTs under MiCA = stablecoins = e-money under EMD2 = 'funds' under PSD2  
(Art. 48(2) MiCA & Art. 4(25) PSD2)

Specific rules under MiCA applicable to the issuance of EMTs

- Issuers can only be credit institutions or EMIs
- No interest
- Recovery and redemption plans
- Claim against the issuer, with right of redemption at par value
- No FX risk

# MiCA – Significant EMTs



- Minimum 3 criteria (MiCA 43.1)
- Decision by the EBA (or voluntary classification)
- Supervision normally shifts from NCA to EBA
- Additional requirements applicable to issuers (increased capital requirements, liquidity management policy, interoperability requirements, etc.)

# MiCA – Transferring EMTs



- MiCA Recital (90): *‘Some crypto-asset services, in particular providing custody and administration of crypto-assets on behalf of clients, the placing of crypto-assets, and transfer services for crypto-assets on behalf of clients, might overlap with payment services as defined in [PSD2].’*
- MiCA Recital (93): *‘Depending on the precise features of the services associated with the transfer of e-money tokens, such services could fall under the definition of payment services in [PSD2]. In such cases, those transfers should be provided by an entity authorised to provide such payment services in accordance with [PSD2].’*



# MiCA – Transferring EMTs



- Provision of payment services = generally an intermediary service between payer and payee.
- Transfer of EMTs should qualify as a payment service for the purpose of PSD2 where the service provider controls the actual execution of the transfer.  
Same when a service provider transacts with fiat currencies and / or holds customer funds.
- No intermediation? No application of PSD2!
- e.g. the service provider does not perform the payment transaction (merely enables the transfer), pure peer-to-peer transfers (from non-custodial wallets and without a coinbase type of platform)

# MiCA – Transferring EMTs



Open PSD2-related questions, such as:

- If PSD2 applies, which payment service would be performed?
- Which provider is the PSP? entity issuing the client's instructions or the one that carries out the state change on the blockchain?
- Is there a payment account?
- If so, who is holding the payment account?
- Can a non AISP provide wallet balance?
- Etc.

No available guidance and risk of divergence within members states (and between UK & EU)

# EU Commission letter to ESMA and EBA



- Acknowledge that activities could be captured by the broadness of the definition of a **payment transaction**
- Dual authorisation may create “significant burden for both CASPs and NCAs”.
- Also highlight the diverging interpretations among member states
- Request EBA to issue no action letter on CASPs that may be inadvertently covered by PSD2
- Where EMTs are **not used as a means of payment** or for **P2P payment transactions**, but rather for investment or trading purposes
- Request streamlined authorisation process where dual licensing still required

# What does this mean in practice?



- Uncertainty remains, likely that NCAs will take different views
- EBA opinion could provide further clarity
- Where used as a means of payment or for P2P, dual licensing will be required
- This means that P2P payments (**third party deposits and withdrawals**) to crypto exchanges of stablecoins would require dual licensing
- Expect to see exchanges restrict deposits and withdrawals in stablecoins until they are licensed, or partner with a third party in the interim

**Q&A**

The GDF Digital Payments Forum is a recurring quarterly meeting that is open to GDF members as well as the broader digital finance community and GDF community partners, co-chaired by John Salmon (Hogan Lovells) and Will Paul (Block and GDF Practitioner in Residence).

It will convene industry experts to further explore the world of digital money and payments, and discuss the opportunities and challenges in their development. The sessions will be purposefully curated to drive thought leadership in these subject areas, and should the need arise, serve as a catalyst to mobilize participants to form a working group to drive actionable outcomes, such as a whitepaper or report.

GDF members will receive a summary and write up from each session.

For more information on the GDF Digital Payments Forum, please reach out to Madeleine Boys at [madeleine@gdf.io](mailto:madeleine@gdf.io)



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