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# The area of interplay of crypto-asset and payment services in EU law

## Abstract

Due to the (un)expected delays of the Polish government in the work of adapting national law to the EU MiCA Regulation[1] , despite the fact that this act is already fully applicable throughout the European Union as of December 30, 2024, in mid-2025 it is still not possible to make a reliable legal or business assessment of the first months of functioning of the EU and Polish market in the new regulatory framework of crypto-asset services. However, it should be emphasized that the scale of complexity of legal issues impacted by the emergence of MiCAR in the EU financial market goes far beyond the strictly local – e.g. Polish specifics. One can even conclude that at the level of EU legislative work, it was either underestimated or not fully noticed, how widely the MiCAR regulation will affect the „traditional" financial market. The purpose of this article is to indicate precisely such an example of regulatory interplay at the EU level, where crypto-asset laws affect the payment service regulations, both those already in force as well as pending adoption, i.e. respectively (i) the PSD2[2] and EMD2[3] directives, and (ii) the PSR[4] regulation and the PSD3[5] directive, which are currently at the final stage of the EU legislative process.

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1 Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/19377 (hereafter, I use the terms "**MiCA Regulation**" or "**MiCAR**" interchangeably).

2 Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC ("**PSD2**").

3 Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC ("**EMD2**").

4 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on payment services in the internal market and amending Regulation (EU) No 1093/2010 ("**PSR**"), COM/2023/367 final.

5 Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on payment services and electronic money services in the Internal Market amending Directive 98/26/EC and repealing Directives 2015/2366/EU and 2009/110/EC ("**PSD3**"), COM/2023/366 final.

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## Introductory remarks

June 30th, 2025 marks the second anniversary of MiCAR becoming applicable[6] in the European Union. It is therefore possible to make the first assessment of how it has affected the EU financial market. Unfortunately however, this assessment still needs to be based more on analytical and doctrinal achievements than on market practice. This is because, despite the fact that MiCAR is an EU regulation directly and fully applicable throughout the EU, not all member states have complied with their Treaty obligations and have still not adopted national legislation enabling its provisions to be fully applied in practice by service providers[7] . As a result of the lack of national crypto-services laws aligned with MiCAR, suppliers in such countries are not only unable to apply for the relevant MiCAR authorizations[8] but are not even sure of the transitional period during which they will be able to operate under the existing rules. What is also obvious is that they are thus put at a market disadvantage in comparison to their competitors in other member states where relevant legislation has already been enacted and licenses have been issued. Such competitors are in the meantime free to offer their services across borders – including in Poland – using the so-called European single passport under Article 65 of MiCAR. As of May 20, 2025, the „empirical" study area across the EU is therefore set out only by 16 electronic money token („**EMT**") and 27 crypto-asset service ("**CASP**") licenses [9]. As it will demonstrated below, this state of affairs is contributed to not only by the tardiness of national legislators and supervisors from individual member states, but above all by the far-reaching legislative imperfection of the MiCA Regulation itself, which failed to fully recognizes how it's scope intersects with other legislation of the EU financial market. This is above all demonstrated by the unfortunate clash of this regulation with the EU's payment services and electronic money laws.

6 It should be added here, for the sake of precision, that this date applies only to the provisions of Titles III and IV of MiCAR, which apply from June 30, 2024, while the rest of MiCAR applies from December 30, 2024.

7 Among the examples of the most blatant violations of EU law in this regard are Poland, Belgium and Portugal, which, as of May 20, 2025, had not even yet referred national laws aligning national laws with MiCAR for parliamentary work.

8 On the subject of MiCAR licenses and the public law aspects of doing business in cryptocurrencies, see more extensively Stolarski, 2023.

9 https://www.esma.europa.eu/esmas-activities/digital-finance-and-innovation/markets-crypto-assets-regulation-mica#InterimMiCARegister, accessed 20.5.2025.

## 1. Electronic money – definitions and interpretations of the term

The definition of electronic money in EU member states is based on Article 2(2) of the EMD2. Due to the legal instrument of harmonization of the law in this area (directive), there are some differences in the content of the definition of electronic money transposed across national law in EU member states[10]. Much further reaching are however differences in the understanding of the term 'electronic money". It is in particular necessary to point to the Polish approach to electronic money, shaped largely by the position of the Polish Financial Supervision Authority („**KNF**") of 10.7.2015 regarding the issuance of prepaid cards (Polish Financial Supervision Authority 2015), and the alternative concept, where user's funds held by a provider beyond the so-called D+1 period qualify as electronic money[11]. The latter position was presented in particular by the United Kingdom and the Republic of Lithuania (for more on this see Stolarski 2023, p. 63). Much has nevertheless changed in this regard as a result of the judgment of the Court of Justice of the EU („**CJEU**") of February 22, 2024 (Court of Justice of the European Union, 2024), which ultimately found the UK and Lithuanian approaches to be incorrect, stating that the activity of a payment institution to receive funds from a payment service user, where such funds are not immediately accompanied by a payment order and therefore remain available in the payment account maintained by the institution within the meaning of Art. 4(12) of the PSD2, constitutes a payment service provided by that payment institution within the meaning of Article 4(3) of the PSD2, and not an electronic money issuance transaction within the meaning of Article 2(2) of the EMD2.

The direction indicated by the CJEU in the context of interpreting what e-money is, now is also followed by EU legislative bodies and institutions. In the course of work on the revision of the PSD2 directive, the European Commission also proposed in article 3.50 of the PSR to maintain the definition of e-money essentially coinciding with that known to date from EMD2, i.e. as: *electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on the receipt of funds for the purpose of making payment transactions and which is accepted by other natural or legal persons than the issuer* (European Commission 2023a). Thus, compared to the existing definition from EMD2, the only wording changes are cosmetic. The key change is nevertheless is the that of the legal instrument in which the definition is contained. The legal successors to PSD2 will be both the PSR Regulation and the accompanying PSD3 (European Commission 2023b), and the legal definitions of key terms will be found in both legal acts. The mere inclusion of them in the EU regulation means that with the adoption of the PSR, these definitions will become part of the legal system of each EU member state and will thus be directly applicable. With the adoption of PSD3, the EMD2 will moreover be repealed and electronic money institutions as such will disappear from the EU

[10] Cf. in this regard, in particular, the definition of electronic money in Article 2(21s) of the Payment Services Act of 19.8.2011 (Journal of Laws of 2022, item 2360, as amended; hereinafter: "**PSA**").

[11] That is, within the deadlines set forth in Article 87.2 of PSD2 and Article 54 of the PSA.

legal order. Electronic money on the other hand will be issued in the EU as a matter of principle exclusively by banks (credit institutions) and payment institutions.

Interestingly, however, even the introduction of a uniform definition of e-money will not necessarily automatically remove all interpretive doubts around the concept of e-money. On January 17, 2025, in response to an inquiry from an entity whose application for a license to provide services as an electronic money institution has been refused by one of the EU national supervisory authorities, the European Banking Authority ("**EBA**") once again had to provide its interpretation of the term "e-money" (European Banking Authority 2025). In the context of the definition of e-money, the EBA clarified that the phrase "*accepted by other natural or legal persons than the issuer*" means that the payee (e.g., a *merchant*) must become the holder of the e-money and enter into a direct contract with the issuer. It is not sufficient (as suggested by the inquirer) for the recipient to accept payments made by customers using cards linked to e-money, without having such an agreement. It should be assumed that **this is precisely the understanding of the concept of e-money that will operate in the legal market after the adoption of the PSD3 and PSR package**.

## 2. MiCAR and '*stablecoins*'

The area of common regulations of MiCAR and EU payment/e-money law is primarily set out by the regulations on so-called "stable cryptocurrencies" (*stablecoins*). This term itself has been in fairly common use and in circulation for years, but as such does not reflect any specific legal or specialist terminological framework. It has been however mainly commercialized by promoters of particular cryptocurrencies (Financial Action Task Force 2021). In practice, despite the name of such cryptocurrencies, their main characteristic is not so much their actual "stability," but simply their *pegging* (*pegging*) to some other metric, potentially stabilizing their value. Depending on what kind of value point of reference we are dealing with, the level of such "stabilization" can vary. There are currently numerous projects which aspire to the title of "stable cryptocurrency." In addition to pegging to official currencies, other convertible goods/assets (such as gold or oil), cryptocurrencies, there are also cases where the pegging is provided solely by an internal algorithm, which decides on the level of issuance of a given cryptocurrency in a given moment, depending on the market demand for it (Martínez Nadal 2025, p. 178). Despite the lack of a legal definition of the term "stable cryptocurrency" in MiCAR itself[12], it is indeed reasonable to assume that two types of such crypto-assets are the subject of regulation in this legal act, i.e.: asset referenced tokens („**ART**") and electronic money tokens ("**EMT**")[13]. And it is the latter category of crypto-assets that marks

[12] The term, moreover, appears only in paragraph 41 of the MiCAR preamble.

[13] As for the qualification of ART and EMT as stable cryptocurrencies, there is generally consensus in the doctrine. So in particular: Mosoń, 2024, p. 67; Tomczak, 2023, footnote 62; and Bilski, 2022, p. 101.

the interface between EU payments and crypto-assets regulations. In view of the above, the remainder of this paper focuses exclusively on this particular „stable crypto-asset."

## 3. Electronic money versus electronic money token (EMT)

Article 3.1.7) of MiCAR defines an e-money token (e-money token) as type of crypto-asset that purports to maintain a stable value by referencing the value of one official currency. This definition is further supplemented by Article 48.2 of MiCAR, which explicitly stipulates that e-money tokens shall be deemed to be electronic money. Despite such an unambiguous wording of the provision, during public consultation of the draft Polish law on market of crypto assets (Ministry of Finance 2024), some industry organizations questioned this dependence. In particular, they argued that the parallel functioning of the definition of e-money in Article 2.21a of the PSA and the definition of EMT in Article 3.1.7 of the MiCAR would lead to an "overlap of two legal regimes" (Ministry of Finance 2024a, paragraphs 9, 12, 23), and advocated treating e-money and EMT as two separate product categories (Ministry of Finance 2024a, paragraphs 9, 23, 34). These demands were correctly rejected by the Ministry of Finance as directly contradicting MiCAR. Indeed, it should be emphasized that **with the adoption of the MiCA regulation, a new category of e-money emerged on the market, which takes the form of token**. It thus functions alongside the long-known and already widespread forms of "server" e-money (where the payment instrument held by the user is used to connect to the server and authorize the deduction of monetary values to the payer and subsequently assign them to the payee) and "card" e-money (i.e. stored on a card, where a transaction with such an instrument is accompanied by the deduction of records or pulses directly on such a card). Indeed, EMT is therefore the only category of electronic money that currently has its own autonomous definition in a separate legal act. The comments pointing to potential definitional dualism in this regard, arising from the fact that the definition of EMT in the directly applicable MiCA regulation currently operates in parallel with the definition of electronic money in the PSA, implementing EMD2 in this regard, should be considered inaccurate. Theoretically it is of course conceivable that the Polish legislator in national law would introduce a definition of e-money that would contradict EMD2 and the definition of EMT from MiCAR. Such a situation would however constitute both a violation of the EMD2 directive, which by virtue of its article 16 is a full harmonization directive, and article 4(3) of the Treaty on European Union, which defines the so-called principle of loyal cooperation in EU law[14] . Any doubts in this regard will however be removed with the adoption of the PSR, as a result of which the „EU definition" of electronic money, like the definition

[14] According to this principle, Member States shall not only adopt all appropriate measures to ensure the implementation of their obligations under EU law, but shall also refrain from any action that could jeopardize the achievement of the Union's objectives, including those set forth in secondary legislation, such as EU directives and regulations.

of EMT, will already be included in the content of the EU regulation and, through the above, will have a direct effect and be directly applicable in all member states – including Poland[15]. As also rightly noted by M. Michna (Michna 2024), Article 49 of MiCAR furthermore introduces dedicated *lex specialis* rules for the issuance and redemption of EMTs in relation to EMD2, which makes it all the more clear that there is no conflict between these legal acts, as well as between MiCAR and the national laws implementing them (the opinion on lack of such a collision between EMD2 and MiCAR is also supported by Alcorta 2025, p. 149).

## 4. Common area of EU crypto market and payments/electronic money laws

It by no means can be stated that the issue of a potential conflict or "overlap" between the scope of MiCAR regulations and the already existing EU payment services law regulations evaded the notice of EU lawmakers entirely. Already in 2014, the EBA pointed out that virtual currencies – a concept with a slightly broader scope of meaning than cryptocurrencies – despite the fact that resemble products that already fall within the scope of EMD2, should be distinguished from electronic money, which, unlike virtual currency, is a digital representation of fiat currency (European Banking Authority 2014, p. 6). *A contrario*, if anything were to change such a position with regard to virtual currency (cryptocurrency), it would be its association with fiat currency, which is, after all, precisely the characteristic of EMTs. Also, during the public consultations preceding the adoption of MiCAR, EU legislators also considered regulating the trading with "stable cryptocurrencies" in the EMD2 (European Commission 2020a, p. 9)[16] as the so-called Option 2. Moreover, in the text of impact assessment the accompanying MiCAR, the European Commission explicitly pointed out the key and seemingly quite obvious fact that in case a provider offers such services as the transfer of „stable cryptocurrencies," then this service could fall under PSD2, and if **"stable cryptocurrencies" were considered electronic money, then services involving their transfer would have to be considered payment services** (European Commission 2020b, p. 54). The fact that some cryptoasset services may overlap with payment services from PSD2 is also pointed out in paragraph 90 of the MiCAR recitals. For the above reason, it is difficult to understand how it is possible that we came to a such far-reaching legal and regulatory uncertainty in the EU that CASP currently finds itself, when wishing to provide certain crypto-asset services that include EMT.

[15] The progressive phenomena of the choice of regulations as instruments of legal harmonization in the area of regulation of new areas of the EU financial sector in recent years is also highlighted by me in relation to crowdfunding activities (Dlugosz, Stolarski 2024, para. 5.1)

[16] This was eventually abandoned due to, among other things, consumer protection concerns and the inability of EMD2 to address the issue of systemic entities, which global "stable cryptocurrencies" could potentially become (European Commission 2020a, p. 9).

## 5. Crypto services vs EMTs

As demonstrated above, Article 48(2) of MiCAR unambiguously dispels, doubts about the legal status of EMTs, explicitly recognizing them as a category of electronic money. However, the EU legislator's contentions to the above provision alone completely ignores a number of secondary, practical implications for CASPs wishing to provide crypto-asset services relating to EMTs. Note in particular two of the crypto services, viz:

(i) providing custody and administration of crypto-assets on behalf of clients (service under Article 3.16.a of MiCAR); and
(ii) Providing cryptoasset transfer services on behalf of clients (service from MiCAR Article 3.16.j).

It can be assumed that, in a certain simplification, these services are, in terms of cryptoassets, the "equivalent" of the services of maintaining an electronic money payment account (wallet) and providing electronic money transfers from such an account. However, in the context of the comments made above on MiCAR defining EMTs as e-money**,** this means that **to the extent that a CASP would manage its client's EMT wallet or provide EMT transfers from such a wallet, those services would simultaneously constitute the provision of electronic money payment services.** This applies to both "on-chain" transactions (i.e., carried out directly on blockchain technology, with the recording of the operation in a distributed ledger (DLT), without the involvement of traditional banking infrastructure) and "off-chain" transactions (involving the transfer of the value of electronic money outside the blockchain – e.g., through an accounting entry in the system of the issuer or service provider, without recording the transaction itself in a distributed ledger (DLT)). In order to perform either service, the current state of the law therefore requires the status of a credit institution[17], electronic money institution or a payment institution[18]. There is no provision of MiCAR or other EU financial market legislation that exempts CASPs from being authorized to operate as any of these institutions.

MiCAR regulations seem to take notice of this provision only partially. Yes, MiCAR does provide, in Article 60, a simplified route to obtain the right to offer crypto services for credit institutions (paragraph 1) and electronic money institutions (paragraph 4), if they submit the information and documents indicated in Article 60 paragraph 7 of MiCAR to the competent supervisory authority 40 days prior to the start of such services (for more on this, see Stolarski 2023 p. 66). These provisions, however, provide a short route only for these two categories of providers and leave out CASPs themselves[19]. Thus, in order to provide EMT crypto services in the EU independently, one must now apply for two independent authorizations, i.e. –

[17] That is, in the Polish case, a bank or a cooperative savings and loan association (SKOK).
[18] In doing so, I am deliberately omitting cases of services where the provision of such services is excluded from the scope of the EMD regulations, such as under Article 1, paragraphs 4–5 of EMD2.
[19] And – something that is already completely incomprehensible and will be elaborated on below – payment institutions.

a CASP authorization and – at a minimum – an e-money institution authorization. MiCAR provisions, for completely incomprehensible reasons, fail to note how great of an organizational, financial and regulatory challenge such a situation entails for CASPs. **Neither MiCAR, PSD2 or EMD2 provide any simplification for CASPs in the process of applying for any of the above licenses.**

In the current state of the affairs, the only viable alternative for CASPs obtaining and holding "dual authorization" is to take up and operate EMT services in cooperation with a credit, e-money or payment institution in the so-called *white label* model[20]. It will be however highly problematic (though not impossible) to create a regulatory model of cooperation with the provider in such a case, if he himself does not have CASP authorization. This is because, in part, such a service would be provided by the CASP in its own name, and in part in the name and on behalf of the cooperating e-money service provider. This would contribute to high complexity of the construction of the service, both in business and legal-regulatory terms. This state is is also completely contrary to the principles and objectives of the EU financial market and the single European passport.

Issues signalized above were rather quickly recognized by the largest crypto service providers present on the market, who, without waiting for the situation to develop, decided to apply in parallel for both CASP and electronic money services authorization[21] . Through this they gained a market advantage over competitors who did not decide or weren't able to do so. The approach of the aforementioned providers is however highly expensive and for this reason alone, will not be available to every contender, what in consequence will negatively affect the market development and the commercial offer for users in the EU. The European Commission made an attempt to solve this problem by applying on December 6, 2024 (European Commission, 2024) to the EBA and the European Securities and Markets Authority („**ESMA**") to assess the risk of double regulation of CASP's EMT transfer activities resulting from the simultaneous application of MiCAR and PSD2. Pointing to Article 9c of Regulation (EU) 1093/2010 of the European Parliament and of the Council of November 24, 2010 establishing the European Banking Authority, the Commission suggested that the EBA consider issuing a so-called "no-action letter" or taking other actions to limit the enforcement of PSD2 rules against such services. The Commission distinguished here between the use of EMTs as (i) *means of payment* or the subject of a P2P payment transaction, and (ii) situations in which EMTs would be used for investment purposes, where a CASP intermediates the exchange of EMTs for cash or other cryptocurrency. Only in the latter case, the Commission argues that the obligation to obtain dual authorization and meet dual requirements under both MiCAR and PSD2 may constitute an excessive regulatory burden, requiring EBA intervention under Article 9c of Regulation (EU) No. 1093/2010.

[20] On *white label* financial services, see Grabowski, 2021, among others.

[21] This is the case for Circle and Coinbase, among others, which already hold both CASP and e-money institution licenses – https://www.esma.europa.eu/esmas-activities/digital-finance-and-innovation/markets-crypto-assets-regulation-mica#InterimMiCARegister , accessed 20.05.2025.

**It is however controversial whether EMT transfers made solely for investment purposes between portfolios of the same client should be treated as payment transactions at all**.

In its letter to the EBA and ESMA, the Commission furthermore did not notice a number of other significant problems arising from the current overlapping regulation of payments and EMT cryptoassets.

First of the omissions of the Commission is issue of the providers' requirement as regards EMT transfer timing. As a consequence of the qualification of EMT as electronic money the so called "D+1 rule| will apply to it, requiring that the date on which the payee's payment account is credited with the amount of the payment transaction be no later than the business day on which the payee's payment service provider's account is credited with the amount of the payment transaction. Furthermore, the amount of the payment transaction as a matter of principle should be made available to the payee immediately after the amount is credited to the payee's payment service provider's account. In case of EMT "*on-chain*" transfers it is meanwhile necessary to perform an operation on the network, which, depending on the consensus method used on the blockchain (and the cost of performing the transaction), can often take longer than D+1. The time and rules for performing a given operation and achieving consensus on the blockchain may also no longer be subject to modification due to the already adopted (and blockchain inscribed) network rules and principles.

Another major challenge in the context of EMTs is strong customer authentication ("**SCA**"), as mentioned in Article 97 of the PSD2. The obligation to apply SCA both in case of initiating an EMT transfer and accessing the wallet where the CASP holds client EMTs. There is no doubt that the SCA principles were developed without consideration of how they could potentially be applied on decentralized networks such as a blockchain. Since virtually all of the wallets on which CASPs hold EMTs for their customers will be online, EU open banking rules will also apply to each of them the obligation to provide dedicated access interfaces to such wallets under Commission Delegated Regulation 2018/389[22]. TPPs (*third party providers*) offering account information services or payment initiation services should – at least in theory – also be able to offer their services in relation to such. It is clear that neither TPPs nor the EU open banking system is currently prepared to integrate such services with respect to EMTs.

The dual authorization regime for activities involving EMTs also implies the doubling and parallel application of MiCAR (Article 67) and PSD2 (Article 10) prudential requirements, including those setting capital requirements for crypto activities and payment services. In the latter case, in the most disadvantageous configuration, a cryptocurrency service provider for EMT will be required to simultaneously hold

[22] Commission Delegated Regulation (EU) 2018/389 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for strong customer authentication and common and secure open communication standards.

(i) capital of €150,000 under Article 67.1.a of MiCAR and Annex IV of MiCAR, and (ii) initial capital of €350,000 under Article 4 of EMD2.

The above are just some examples of the extremely burdensome "dual" requirements of payment services law applicable to the crypto market, which have not been given sufficient thought during the MICAR legislative process.

## 6. Awaiting PSD3/PSR in the context of EMTs – EBA Opinion and the General Approach of the Council of the EU

As indicated above, the legal situation for suppliers wishing to engage in crypto activities involving EMTs is highly complicated under current regulations. Unfortunately constructed regulations impose on such entities disproportionately burdensome and costly regulatory and legal requirements. Unfortunately, the PSD3 and PSR regulations intended as the legal successors of the PSD2 and the EMD2 in their original wording presented by the Commissions – not only failed to provide solutions to these problems, but actually created further problems themselves.

For this reason, the entire crypto-asset market was awaiting, with considerable impatience but also hope, the EBA's response to the "non-action letter" proposed by the European Commission. Although the EBA promptly expressed a favorable stance on the proposal (European Banking Authority 2024), its response, in the form of an opinion on the interplay between Directive (EU) 2015/2366 (PSD2) and Regulation (EU) 2023/1114 (MiCA) in relation to crypto-asset service providers that transact electronic money tokens was published as late as 10 June 2025 (European Banking Authority, 2025b). Moreover, the substance of the opinion largely consists of *pro futuro* recommendations addressed to EU legislative bodies in the context of PSD3 and PSR. Any resolution of the identified regulatory problems will therefore materialize no sooner than within the next 2–3 years (after the PSR and PSD3 become applicable).

In its opinion, the EBA indeed does confirm that while crypto-asset exchange services into fiat currency (Art. 3.16(c) of MiCAR) and exchanges of crypto-assets for other crypto-assets (Art. 3.16(d) of MiCAR) do not qualify as payment services, providing custody and administration of crypto-assets on behalf of clients (Art. 3.16(a) of MiCAR) and transfers of crypto-assets on behalf of clients (Art. 3.16(j) of MiCAR), in relation to EMTs, do constitute payment services (European Banking Authority 2025b, p. 8). This means that a CASP intending to provide such services in relation to EMTs must have a valid legal basis to do so under both MiCAR and PSD2 regimes. In practice, this means the provider must meet the capital and own funds requirements set out in both acts (European Banking Authority 2025b, p. 12, para. 25) and undergo a complex licensing procedure before one of the EU member state regulatory authorities. **The only material simplification proposed by the EBA for the market is "advising" member state regulatory authorities to grant applicants a transition period until 1 March 2026 before the authorisation needs to be held**

(European Banking Authority, 2025b, p. 2). The EBA also recommends that, during this transitional period, supervisory authorities should not prioritize enforcement of certain PSD2 requirements vis-à-vis CASPs – particularly those concerning safeguarding, information duties, consumer protection, or open banking (European Banking Authority 2025b, p. 2). Within the context of PSD2 licensing procedures, EBA further advises that member state regulators, to the greatest extent possible, rely on the information previously submitted by the CASP during its application under the MiCAR framework (European Banking Authority 2025b, p. 10). It should be however taken into account what the current practice across the EU regarding the duration of licensing proceedings under PSD2 is, as well as the fact that in some countries, such as Poland, Portugal, or Belgium there is still no national crypto legislation at all. It is therefore impossible in such members state to apply for a CASP authorisation, let alone hold it. In such context the simplification measures currently proposed by the EBA in its opinion should be assessed critically as clearly insufficient.

Both the Commission as well as the EBA on the other hand still fail to notice the PSD3/PSR unjustifiably ignoring the fact that under the payment services law currently in force, it's not only credit institutions and electronic money institutions that can provide payment services in the field of electronic money. Payment institutions can as well. This possibility is granted by virtue of article 8 of the EMD2, according to which member states may allow payment institutions to issue electronic money, provided that they have been authorized to do so in accordance with the requirements of the directive. In Polish law, this provision is implemented in Article 73a of the PSA, which allows a national payment institution ("**NPI**") with an initial capital of not less than the equivalent of EUR 125,000 to issue electronic money. Such authorization is at the same time limited exclusively to the territory of Poland and limited to the equivalent of 5 million euros per month[23] . Thus, already having authorization to issue e-money, additional authorization to provide crypto-asset services would enable an NPI to provide such EMT services unhindered. By leaving payment institutions completely out of scope of the MiCAR, at present such providers, unlike credit institutions and e-money institutions, do not have any „simplified" path to obtaining the authority to provide cryptoasset services. Meanwhile, any payment institution wishing to provide payment services, firstly has to undergo a complicated procedure before a member state financial supervisory authority and is obliged to meet strict prudential and regulatory requirements, which do not differ significantly from those for electronic money institutions[24] . In spite of this, the status of a payment institution is, for the time being, *de facto* aligned with any other provider which does not hold any financial services authorization at the time of applying for a CASP. **Thus, in order to provide any crypto services**

[23] In order to start providing electronic money services, a NPI is required to simultaneously notify the KNF in advance and submit an application for the registration of information on issuing electronic money along with an update of its program of activities. Each of these requirements is subject to evaluation by the KNF on a case-by-case basis.

[24] Although, of course, there are some differences here – if only in terms of the increased requirement in relation to the amount of initial capital. Cf. Article 4 of EMD2.

**(i.e., not just EMT), a payment institution must go through the entire, standard authorization process. The above should be assessed critically**.

When publishing the drafts of the PSD3 and the PSR in June 2023, the European Commission failed to use such opportunity to correct the collision fields between them and the MiCA regulation in the process. And this is despite the fact that at that time MiCAR was already in force in the EU legal system. This is quite puzzling, since one of the Commission's major legislative proposals under the new EU payment services legislation is the final merger of the EMD2 and PSD2, and the consequent annihilation od electronic money institution as separate entities. With the adoption of the PSD3 and PSR, payment institutions will thus become the only non-bank (i.e., non-credit institution) payment service provider authorized to provide e-money services. In spite of this, the Commission has not chosen to reflect the above decision in the content of other EU legislation which, when referring to electronic money institutions at times granti them dedicated benefits (simplifications) arising from holding an e-money institution status alone (as is the case with MiCAR, among others). **Meanwhile, there is nothing to prevent the amendment of MiCAR through the PSD3 and PSR by granting payment institutions all the benefits currently applicable to electronic money institutions.** An alternative solution could also be to grant the existing payment institutions the status of electronic money institutions. If maintaining the catalog of payment services that a particular payment institution is authorized to provide at the moment, such amendment would only be a change in nomenclature. In turn, it would unequivocally contribute to solving many of the problems described in this article, which should be considered one of the basic areas of *de lege farenda* demands. Unfortunately neither of them have to date been raised at any stage of the PSD3 and PSR legislative process.

A somewhat more optimistic conclusion may be drawn from the updated drafts of the PSR (European Commission, 2025a) and PSD3 (European Commission 2025b), published on 18 June 2025 as the so-called *General Approach*, which will serve as the basis for trilogue negotiations between the European Commission, the European Parliament, and the Council of the EU. The amendments to Article 3 of PSD3 include dedicated provisions concerning applicants for payment licenses who have previously obtained authorization under the MiCAR regime. If applied favorably in the future, these provisions could indeed shorten the time required for such entities to obtain a payment license necessary to carry out their core activities in the crypto-asset space. However, as noted above, a realistic assessment of the impact of these changes will still require at least another 2–3 years.

## Summary

A cross-analysis of EU laws on payment services and cryptoassets (both in force and pending entry) unfortunately does not give the best testimony as to the legislative quality of EU lawmaking in this area. Despite having the human resources of Europe's leading lawmakers and specialists, the EU legislator is increasingly becoming

a "victim" of the incredible pace of technological progress in the financial market. Each time a piece of EU legislation is added, it requires an increasingly complex and elaborate analysis of its impact on other existing and drafted legislation. On the other hand, EU authorities and policymakers are under increasing pressure of complaints on the "over-regulation of the EU economy" (Dumont 2023). Through this, the EU is in threat of losing competitiveness vis-à-vis, among others, the United States of America and the People's Republic of China, both in terms of scientific research (Rodríguez-Navarro 2024) and new technology economy, what has been particularly highlighted recently in the context of artificial intelligence (Prenga 2024; Chun, Wittm, Elkins 2024). As regards the regulation of artificial intelligence, it can furthermore be argued that the situation is similar to crypto-actives, as in both cases the EU laws were the first comprehensive attempts to regulate their subject matter.

A systemic analysis EU policies and lawmaking lays beyond the scope of this paper. Despite criticisms of the current state of affairs in the crypto-assets and payment services interface, it is however premature to conclude that the EU approach will not work in the long run. In particular, it should be borne in mind that, at least since the adoption of MiCAR and the publication of the PSD3 and PSR drafts, awareness of existing regulatory shortcomings has definitely increased in the EU. Particularly in the course of work in the Council of the EU during the Polish Presidency, there was a ively discussion on how PSD3 and PSR should correct many of the imperfections of MiCAR raised in this article and the member states themselves submitted unofficial proposals for solutions in this regard to the Council of the EU, in the form of so-called "non-papers"[25]. It should therefore be expected that the upcoming PSR and PSD3 trilogues of the Council, the European Parliament and the European Commission, will bring positive developments.

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[25] The term "non-paper" in the EU context refers to informal documents used in the decision-making and legislative process, mainly for the purpose of discussing the proposals for solutions presented in their content. Although they have no official status and are not officially published, they play an important role in shaping policies and positions and are exchanged between EU bodies and member states.

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