
MiCA Supervision Training for CAs

Session 3 - PSD2-MiCA Interplay

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1. Background

- Since January 2025, MiCAR requires *inter alia* that legal entities that transact crypto assets in the European Union require an authorization as a crypto asset service providers (CASP);
- In addition, two recitals in MiCA explain that certain CASPs may require an additional, second authorisation under the separate Payment Services Directive (PSD2). More specifically,
 - Recital 90 explains that “Some CASPs, 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]”, and.
 - Recital 93 continues with “Depending on the precise features of the services associated to 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 that Directive.”.
- However, MiCA does not provide more detail as to which precise types of crypto asset services are additionally subject also to PSD2, and how the overlap between MiCA and PSD2 should be resolved.

2. The issue

- Such an uncertainty gives rise to the risk that national authorities will arrive at different approaches how the interplay between these two Level-1 texts should be interpreted and supervised. More specifically,
 - some authorities might take the view that existing CASPs can continue to provide payment services operate without a PSD2 license, given that MiCA does not provide further specifics;
 - conversely, other authorities might require impacted CASPs immediately to discontinue providing crypto asset services until the additional PSD2 license has been obtained, given that no entity is allowed to provide payments services in the EU without the required license under PSD2.
 - the resultant divergence across NCAs would create an unlevel playing field and undermine one of the aims of MiCA, which is to bring about a single EU crypto asset market.
- To mitigate these risks, the EU Commission sent a letter to the EBA in December 2024, inviting the EBA to consider issuing, in cooperation with ESMA, a “No Action letter” (NAL) to advise NCAs how to proceed.
- In the following 6 months, the EBA assessed this overlap, compared the provisions in MiCA and PSD2 and eventually issued, in June 2025, the NAL, content of which is described overleaf.

3. Legal basis of a No Action letter (NAL)

Article 9c of Regulation (EU) No 1093/2010 ('EBA founding regulation') mandates the EBA to issue a No Action letter "only in exceptional circumstances when it considers that the application of one of the legislative acts [in the EBA's remit] or of any delegated or implementing acts based on those legislative acts, is liable to raise significant issues, for one of the following reasons:

- a) the [EBA] considers that provisions contained in such act may directly conflict with another relevant act;
- b) where [...] the absence of delegated or implementing acts that would complement or specify the act in question would raise legitimate doubts concerning the legal consequences flowing from the legislative act or its proper application;
- a) the absence of guidelines and recommendations [...] would raise practical difficulties concerning the application of the relevant legislative act."

The EBA is not a legislator so, to resolve such issues, the EBA is not empowered to declare that certain provisions in EU law simply do not apply. Rather, what the EBA can do in an NAL is to advise national authorities which provisions to "deprioritise for the purpose of supervision".

4. Scope of the NAL on the PSD2/MiCA interplay

- When developing the NAL, the EBA sought to find the right balance between MiCA's competing aims of
 - avoiding excessive regulatory burden for crypto entities and facilitate innovation on the one hand, while at the same time
 - ensuring that all entities and consumers in the EU payments market can continue to have confidence in the reliability of the payment products offered and the viability of their providers
- To that end, the EBA issued an NAL in June 2025 on the interplay between PSD2 & MiCA to advise NCAs
 - to regard the transfer of crypto assets as a payment service under PSD2 only where they entail EMTs and are carried out by the entities on behalf of their clients;
 - to regard the custody and administration of EMTs as a payment service under PSD2; and
 - to regard a custodial wallet as a payment account under the PSD2 where the wallet is held in the name of one or more clients and allows to send and receive EMTs to and from third parties;
- For these services, the NAL advises NCAs to require an additional authorisation under PSD2;

Scope of the NAL (cont.)

- The NAL further advised NCAs *not* to regard as a payment service
 - the ‘exchange of crypto-assets for funds’ as defined in MiCA,
 - ‘exchange of crypto-assets for other crypto-assets’ as defined in MiCA, and
 - cases where CASPs intermediate the purchase of any crypto assets with EMTs,
- As a result of this first and fundamental advice given in the NAL, a significant share of crypto asset transactions became not subject to PSD2 and therefore did not require an authorization under PSD2.
- This significantly reduced the burden on the crypto industry.

5. The transition period of the NAL

- For those CASPs that *do* require an additional PSD2 authorisation, the NAL eases the burden for them further by advising NCAs to use a streamlined application procedure that makes maximum use of information that legal entities had already provided during their CASP authorisation under MiCA.
- Further still, the NAL advises NCAs to require the PSD2 authorisation not immediately, but to grant applicants an 8-month transition period (until 1 March 2026) before the authorisation needs to be held. Only after that date are NCAs advised to require CASPs without a license to discontinue EMT services that qualify as a payment service.
- Finally, once authorisation as a PSP is granted to a CASP, the NAL advises NCAs not to prioritise the supervision and enforcement of several PSD2 provisions, such as on safeguarding, the disclosure of information to consumers pertaining to the level of applicable charges, the maximum execution time of payment transactions and the unique identifier (e.g. IBAN), and open banking;
- The NAL does insist, however, on other PSD2 provisions, such as the application of strong customer authentication (SCA) to combat fraud to the accessing of custodial wallets and the initiation of EMT transfers, the reporting of fraud data, and the cumulative calculation of own funds.

6. Rationale for the approach taken

- In aggregate, the advice provided in the NAL resulted in a large number of EMT transactions not to be subject to PSD2 requirements, for a transition period to be granted, and for several PD2 provisions to be de-prioritised.
- The EBA based this advice solely on the acknowledgement that any alternative advice would have required CASPs to obtain a 2nd authorization, which the EBA would have considered undesirable, because
 - the compliance burden that arises for legal entities from such a scenario would be disproportionate;
 - the overlaps, gaps and inconsistencies between PSD2 and MiCA provisions would be confusing;
 - the effort required of public authorities to supervise these provisions would be unduly complex; and
 - the EBA is of the view that any given financial activity should be regulated by only one piece of financial services law and that the applicability of several laws to that same activity should be avoided.

7. The non-rationale

- By contrast, the EBA did *not* base its advice on the conviction that an authorisation as a CASP under MiCA is sufficient to address the risks that arise from EMT transactions.
- Quite the opposite: the success of PSD1, PSD2 and EMD over the past 15 years in bringing about a secure and competitive market in retail payments has shown that for retail payments to be able effectively to fulfil their role in a modern society, market actors need to have confidence in the stability of the market, the reliability of the payment services offered, and the viability of the entities providing these services.
- As a result, the same risks should be mitigated through the same regulatory mitigation, irrespective of whether the underlying technology is based on a distributed ledger or conventional systems and processes.
- Furthermore, CASPs have been seen to be promoting their EMT services as ‘payments’, and consumers will not be in a position to distinguish between different types of providers and laws that afford them different levels of protection.

8. The impact of the NAL on the market

- Throughout 2026, the EBA has done several stock takes with national authorities to monitor the progress that CASPs have made across the EU in obtaining additional PSD2 licenses;
- As of June 2026, national authorities reported that 30 CASPs had obtained a PSD2 license, with a further 10 CASPs in the pipeline likely to succeed with their applications later that year;
- This is a satisfactory outcome of the NAL, as it achieves a suitable balance between the competing aims of facilitating crypto-based competition and innovation in the payments market, while at the same time ensuring that all market actors can continue to have confidence in the now larger market;
- Looking ahead, the advice that the NAL provides to national authorities remains applicable until the date of application of the future PSD3, which is currently estimated to be in Q2 of 2028;
- The future PSD3 is expected to be more explicit than the existing PSD2 on the interplay between it and MiCA and, in substance, to continue the path taken by the EBA's No Action letter.



Thank you!



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