Do you really need both PSD2 and MiCA licences?

EBA issues no-action letter on interplay between payments and crypto-regulations

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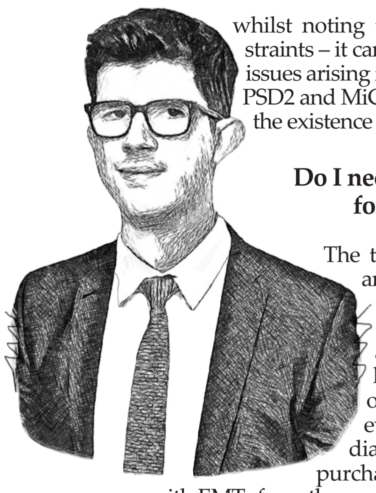

On 10 June 2025, the EBA issued a 33-page "no action letter" in cooperation with ESMA (the "Letter") to clarify the interplay between Regulation (EU) 2023/1114 on markets in crypto-assets ("MiCA") and Directive (EU) 2015/2366 on payment services in the internal market ("PSD2"), in relation to crypto asset service providers ("CASPs") that transact e-money tokens ("EMTs").

The main takeaways are (i) a lighter application of PSD2 for EMTs to the extent these are part of a payment service, with a grace period until 2 March 2026 and (ii) the "exchange of crypto-assets for funds" and "exchange of crypto-assets for other crypto-assets" as defined in MiCA are not subject to PSD2.

What is a no-action letter?

"No action letters" are a regulatory instrument which may be taken by authorities to discourage the enforcement of certain legal provisions, notably in case of a risk of contradiction with other potentially contradicting legal provisions. Popularised in the US as "*forbearance powers*",[(1)] these are a recent innovation in the EU, with the EBA and ESMA empowered with such power since a 2019 reform.

The EBA in particular may take such no action letter "only in exceptional circumstances"[(2)] in case of conflict between legal provisions, lack of delegated or implementing acts raising doubts as to legal consequences of the application of said provisions, and lack of guidelines and recommendations entailing practical difficulties in their application. Simply put, these are for all practical purposes equivalent to opinions taken by the EBA.

Why EMTs in particular?

The reaction of the EBA and ESMA originated from a letter of the European Commission in December 2024 considering the issuance of such no action letter given the internal differences within the Commission's services and between national authorities on the overlap between MiCA and PSD2 when it comes to EMTs.

The Commission points out that EMTs are crypto-assets within MiCA but are also deemed to be e-money pursuant to art. 48(2) MiCA and hence would be within the scope of PSD2. Consequently, the provision of payment services with EMTs (such as for peer-to-peer payments) will need to be covered by a payment service provider ("**PSP**") license under PSD2 – either held by the CASP or making use of another entity licensed as a PSP.

In addition to this potential overlap in regulatory supervision, the Commission also notes that EMTs may be used for trading purposes (exchanging EMTs for funds or for other crypto-assets) which would fall under the definition of a "payment transaction" under PSD2[(3)] even though there would be no intention from the CASP to offer any payment services. Since these issues are to be dealt with the ongoing proposals for PSD3 and the PSR (currently under review by the Council), the Commission therefore envisages the adoption of a no action letter from the EBA on these issues in the meantime.

The EBA, reaffirming that in principle one activity should be governed exclusively by one text (sic), responded in the affirmative by issuing the Letter, whilst noting that – due to time constraints – it cannot take a position on all issues arising from the overlap between PSD2 and MiCA, but at least recognises the existence of such issues.

Do I need a PSP license for my EMTs?

The transfer of EMTs offered and carried out by the CASP on behalf of their clients will be considered as a payment service, and hence fall within the scope of PSD2. The Letter however excludes the intermediation services for the purchase of any crypto assets with EMTs from the scope of PSD2.

If a dual license is required in for such EMT activity, the Letter does recommend a cumulation of the capital requirements (so that the requirements are added together, rather than the biggest threshold being taken as the only reference), but also a lower own funds requirement under Article 9(3) of PSD2. The Letter also advises not to prioritise enforcement of consumer protections under PSD2 (including those arising out of the SEPA Regulation – including therefore the instant payments requirements), as well as the PSD2 provisions on safeguarding assets and open banking.

The Letter foresees a grace period until 2 March 2026 in the form of de-prioritising enforcement of PSD2 provisions regarding security (including strong-customer authentication measures), as well as fraud reporting requirements. The scope of the Letter is furthermore limited to entities which would in theory need such dual license by 2 March 2026, in order to avoid CASPs discontinuing their activities due to the (sudden) clarification given by the EBA. In our view, this scope may be reviewed in the future depending on the advancements of the legislative process regarding PSD3 and PSR.

On a practical note, the Letter does recall national supervisory authorities to make use of information already at their disposal, in line with the '*once only*' principle growing in importance in public administrations.

Do I need a PSP license for my EMT custodial services?

Custodial wallets allowing transfers of EMTs to and from third parties shall amount to a payment account under PSD2. This being said, the supervision thereof should not be prioritised by national supervisory authorities. The above considerations on the dual authorisations apply as well.

Do I need a PSP license for my crypto-exchange?

The Letter explicitly excludes the services of 'exchange of crypto-assets for funds' and 'exchange of crypto-assets for other crypto-assets' from the scope of PSD2. No licence is required for such services.

What's next?

In terms of outlook, the EBA does explicitly state that the issue at hand involves the incompleteness of MiCA to offer sufficient protection to consumers, which justified the reference and applicability of PSD2 in addition thereto. However, due to the risks of confusion, market distortion, lower consumer protection standards, and regulatory arbitrage, the EBA urges the Commission to remedy these issues during the legislative process of PSD3 and PSR.

In particular, one of the approaches proposed by the EBA would consist of MiCA re-producing, or cross referring to, the relevant requirements set out in the forthcoming PSD3 and PSR, so that these would not apply to CASPs, nor would an additional licence be required. It remains to be seen whether such approach will be followed or not, especially in light of the long-term objectives of the EU on competitiveness.[(4)]

1) See Marjosola, Heikki. "*Shadow Rulemaking: Governing Regulatory Innovation in the EU Financial Markets*" German Law Journal 23, no. 2 (2022): 186–203.
2) To be noted this is not the first no-action letter pusblished by the EBA, which previously published on the application of the FRTB.
3) As a reminder, this definition aimed to be as wide as possible to capture any other form of payments than card-based ones (see recital 10 PSD2).
4) See the Communication of the EU Commission, Parliament and Counsel on Long-term competitiveness of the EU, COM(2023) 168 final.

Transformation digitale : concilier innovation, cadre réglementaire et compétences humaines

Par Chloé HENIN, HR Manager Luxembourg – WESTPOLE, du groupe Prodware

À l'heure où la transformation digitale bouscule les modèles traditionnels, les entreprises luxembourgeoises doivent composer avec un environnement à la fois technologique, réglementaire et humain. Entre exigences sectorielles strictes, montée en puissance de l'IA et évolution des compétences, le rôle des ressources humaines prend une dimension nouvelle dans l'accompagnement du changement.

Un environnement réglementaire structurant

Au Luxembourg, la transformation digitale se conjugue avec un cadre réglementaire particulièrement structurant. Certains secteurs – bancaire, financier ou institutionnel – imposent des normes strictes, telles que la certification bien connue PSF (Professionnel du Secteur Financier), condition indispensable pour manipuler certaines données sensibles.

Les entreprises actives dans l'accompagnement à la digitalisation doivent donc composer avec ces contraintes fortes. Cela suppose de disposer de collaborateurs non seulement techniquement compétents, mais également certifiés, audités et formés aux processus conformes aux standards luxembourgeois.

L'IA s'impose dans les projets… avec mesure

Le virage de l'intelligence artificielle marque aujourd'hui une nouvelle étape dans cette transformation. Qu'elle serve à automatiser des tâches documentaires, fluidifier des processus ou extraire des données, l'IA est désormais un levier incontournable dans de nombreux projets opérationnels.

Mais son intégration se fait de manière progressive et raisonnée. Du côté des ressources humaines, elle commence à être utilisée pour mieux cartographier les compétences, identifier les besoins de formation ou orienter les recrutements, tout en conservant une validation humaine à chaque étape.

La prudence reste de mise : l'objectif n'est pas de déléguer la décision, mais de l'éclairer.

Croiser expertises techniques et humaines sur le terrain

La complexité des projets impose aujourd'hui des profils dits « hybrides », capables de naviguer entre logique métier, compréhension technique et sens relationnel. Cette complémentarité entre expertises (ingénieurs, analystes métier, spécialistes sectoriels) permet d'adapter les solutions au plus près des besoins.

Sur le terrain, ces talents agissent autant comme experts techniques que comme médiateurs du changement. Car la technologie ne transforme pas seule : il faut la rendre accessible, la faire accepter, accompagner les équipes et rassurer les utilisateurs.

La montée en compétences au cœur de la transformation

La transformation digitale n'est jamais figée. Les outils évoluent, les projets s'enchaînent, les attentes changent. Pour que les collaborateurs restent pertinents dans ce contexte, la montée en compétences devient un enjeu central. Cela suppose une gestion dynamique des ressources humaines : mise à jour régulière des matrices de compétences, déploiement de plans de formation évolutifs, accompagnement individuel, y compris à distance pour les consultants opérant directement chez les clients.

Dans cette optique, les consultants ne sont pas seulement formés, ils forment aussi, en transférant les bonnes pratiques et en guidant les utilisateurs finaux. Chaque projet devient alors un vecteur d'apprentissage partagé.

CFL : un cas concret de digitalisation encadrée

Un projet emblématique mené au Luxembourg illustre cette approche : la digitalisation documentaire de CFL (Société Nationale des Chemins de Fer Luxembourgeois). L'enjeu dépassait la simple numérisation : il fallait aussi sécuriser les processus, garantir la conformité avec les normes locales, et rendre l'accès aux données fluide et maîtrisé pour plusieurs milliers de collaborateurs. La réussite de ce projet repose sur une combinaison d'expertises techniques (IA, signature digitale, archivage électronique), d'accompagnement humain et d'un pilotage rigoureux des obligations réglementaires.

Se transformer pour mieux accompagner

Ce que les acteurs de la transformation digitale appliquent chez leurs clients, ils se doivent de l'incarner eux-mêmes. Maintenir une dynamique d'innovation suppose de créer un environnement propice à l'adaptation, au dialogue et au développement professionnel.

Les retours d'expérience montrent que les projets les plus robustes sont souvent ceux qui allient expertise IT, proximité humaine et compréhension des spécificités du marché local. Dans un environnement où la technologie évolue sans cesse, la véritable transformation ne tient pas seulement à l'adoption d'outils innovants, mais à la capacité d'en faire un levier de cohérence, de performance et de confiance.

Au Luxembourg, cette exigence est d'autant plus forte qu'elle s'inscrit dans un cadre réglementaire strict et un tissu économique exigeant. Pour y répondre, les entreprises doivent s'appuyer sur une approche équilibrée entre technologie, culture humaine et adaptation continue. Elles ont également tout intérêt à s'entourer de partenaires qui maîtrisent tous ces aspects à la fois.

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