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From:	General Secretariat of the Council
To:	Working Party on Financial Services and the Banking Union (Payment Services/ PSR/PSD) Financial Services Attachés
Subject:	Discussion Note: Treatment of payment transactions with EMTs in PSD3/PSR

PUBLIC

Payment services package proposals (PSD3/PSR)
Brussels, 04.04.2025

Discussion Note
Treatment of payment transactions with EMTs in PSD3/PSR

I. Scope of application of PSD3/PSR to services with EMTs & definition of funds

The discussions in previous Council Working Party (CWP) meetings on the interplay between PSD3/PSR and MiCA have highlighted the need to find a solution that strikes a suitable balance between (1) the objective of minimising the burden for market participants and NCAs due to the application of two regimes to the same activity where '*providing transfer services for crypto-assets on behalf of clients*', as defined in MiCA, with EMTs also qualifies as a payment service, and (2) ensuring consumer protection and a level playing field with the regime applicable to other payment transactions, including with e-money.

The approach proposed by the Presidency (PCY) aims to strike a balance between these objectives and to provide more clarity on the cases in which there would be a need for authorisation under both PSD3 and MiCA versus cases where only one authorisation should be a sufficient and proportionate solution. In the proposed approach, cases where both MiCA and PSD3 would apply would be narrower compared to PSD2, given the proposed exclusions from the scope of PSD3/PSR and other clarifications provided.

Overall, the majority of MS supported the direction of travel proposed by the PCY in the February CWP meeting.

However, the points below were raised in the written feedback provided following the February CWP meeting.

- One MS was of the view that qualifying all EMTs as e-money would '*give up on the current necessity of having a third-party acceptance in order to qualify as e money*', which is a prerequisite for a means of payment being qualified as e-money, as stated in EBA Q&A 6366. Hence, in that MS's view, the changes proposed to the definition of 'funds' would lead to an extension of the concept of 'funds'.
- A minority of MS noted that they would prefer that a dual authorisation be avoided in all cases. One of these MS suggested a lighter registration process for CASPs providing payment services with EMTs, while another MS suggested a notification regime for CASPs similar to the one provided for in Article 60 MiCA.
- Some MS asked for a more detailed analysis to be conducted regarding all services that are likely to be qualified as both crypto-asset services under MiCA and payment services under PSD3/PSR before taking a view on what exemptions from the scope of PSD3/PSR were needed.

Taking into account the feedback received from MS, the PCY proposes building on the proposals discussed in the February CWP meeting, with some amendments that are explained below. The drafting amendments proposed by the PCY are highlighted in blue (for additions) and strikethrough (for deletions) using as a reference the proposals set out in the PCY's discussion note submitted for the February CWP meeting (unless specifically stated otherwise below). To improve readability, the changes proposed to previous versions of the text are not tracked.

Regarding the **definition of funds**, the PCY proposes the following clarification, in **the first subparagraph of Recital 16 PSD3**:

Regulation (EU) 2023/1114 lays down that electronic money tokens, as defined in that Regulation, shall be deemed to be electronic money. This is regardless of whether the electronic money tokens meet the definition of electronic money in this Directive and Regulation xx [PSR]. Accordingly, references to electronic money in this Directive should be understood to include electronic money tokens, unless otherwise stated in this Directive, and electronic money tokens should be included~~, as electronic money,~~ in the definition of funds. […]

Similarly, the PCY proposes amending the **first subparagraph of Recital 29 PSR** as follows:

> *Regulation (EU) 2023/1114 lays down that electronic money tokens, as defined in that Regulation, shall be deemed to be electronic money. This is regardless of whether the electronic money tokens meet the definition of electronic money in Directive xx [PSD3] and this Regulation. Accordingly, references to electronic money in this Regulation should be understood to include electronic money tokens, unless otherwise stated in this Regulation, and electronic money tokens should be included~~, as electronic money,~~ in the definition of funds.*

In this regard, the PCY notes that Article 48(2) MiCA states that EMTs are to be deemed e-money. In the PCY's view, the qualification of EMTs as e-money in MiCA implicitly puts EMTs within the definition of 'funds', regardless of whether those EMTs meet the definition of 'e-money' in PSD3/PSR.

Relatedly, the PCY notes that (based on text proposals discussed in the February CWP meeting) there are currently several articles and recitals in PSD3 and PSR that relate to the definition of 'funds', namely:

- Recital 15 PSD3: '*The definition of funds should cover all forms of central bank money issued for retail use, including banknotes and coins, and any possible future central bank digital currency, electronic money, including electronic money tokens, and commercial bank money. […]'*
- Article 2, point (23) PSD3: '"*funds*" *means central bank money issued for retail use, scriptural money, and electronic money, including electronic money tokens';*
- Recital 28 PSR: *'The definition of funds should cover all forms of central bank money issued for retail use, including banknotes and coins, and any possible future central bank digital currency, e-money, including electronic money tokens, and commercial bank money. […]';*
- Article 3, point (30) PSR: '"*funds*" *means central bank money issued for retail use, scriptural money, and electronic money, including electronic money tokens'.*

All of the above provisions refer to '*electronic money, <u>including</u> electronic money tokens'*. The PCY does not propose amending these references, which are in line with Article 48(2) MiCA. However, taking into account the clarifications proposed in Recital 16 PSD3 and Recital 29 PSR explained above, and the fact that the EMT definition in MiCA is different than the definition of e-money in PSD3/PSR (there can be e-money that is an not an EMT, but also EMTs that do not meet all the features of the definition of e-money), consideration could be given to whether more clarifications or amendments are needed in the text, e.g. as regards the reference in the definition of 'funds' to 'e-money, <u>including</u> EMTs'.

> *Q1. Do MS agree with the proposed changes in the first subparagraph of Recital 16 PSD3 and in the first subparagraph of Recital 29 PSR?*
>
> *Q2. Taking into account the above, do MS consider that more clarifications regarding the definition of funds in PSD3 and PSR are needed?*

Regarding the **potential overlap between CASP services under MiCA and payment services under PSD3/PSR**, one MS suggested clarifying that the service of custody and administration of EMTs as defined in MiCA is not a payment service *per se*, but that the additional service of enabling transfers to and from custodial wallets would be a payment service, taking into account the European Securities and Markets Authority (ESMA) Q&A 2071/2024, which clarified that transfer services under MiCA, when offered along with other crypto-asset services (including custody and administration), are self-standing services subject to authorisation under Article 59 MiCA[1].

Taking into account MS' feedback, the PCY proposes clarifying the following points in **subparagraphs (2) to (5) of Recital 16 PSD3**.

- The service of custody under MiCA does not in itself constitute a payment service. However, where such service is provided together with transfer services under MiCA for EMTs, then the respective services would qualify as payment services. This takes into account the ESMA Q&A mentioned above, as well as the fact that, unlike in PSD2, the payment services listed in the Annex to PSD3 no longer refer to '*the operations required for operating a payment account*'.

- *The* '*placing of crypto-assets*', as defined in MiCA, does not in itself amount to a payment service. The PCY notes that this service is defined in MiCA as '*the marketing, on behalf of or for the account of the offeror or a party related to the offeror, of crypto-assets to purchasers*'. Article 60(3) of MiCA, which concerns investment firms providing crypto-asset services equivalent to the investment services and activities for which they are specifically authorised, also provides that, for the purpose of that article: '*(e) the placing of crypto-assets is deemed equivalent to the underwriting or placing of financial instruments on a firm commitment basis and placing of financial instruments without a firm commitment basis referred to in Section A, points (6) and (7), respectively, of Annex I to Directive 2014/65/EU*'. In the PCY's view, based on the definition in MiCA, the '*placing of crypto-assets*' does not in itself constitute a payment service. This does not, however, exclude the need for a case-by-case assessment to determine whether a CASP offering such a service also provides other services that may qualify as payment services.

- Add a clarification in this Recital that exchanging EMTs for funds or crypto-assets is not a payment service where the CASP acts in its own name as seller or buyer of those EMTs, without intermediating between a buyer and a seller; this is not new and has been discussed previously in the CWP.

Accordingly, the PCY proposes the following changes in **subparagraphs (2) to (5) of Recital 16 PSD3**:

Likewise, ~~the requirements of this Directive should apply to crypto-asset service providers providing crypto-asset services with electronic money tokens, where such services are payment services. This concerns in particular transfers by crypto-asset service providers, on behalf of their clients, of electronic money tokens corresponding to~~ providing transfer services for crypto-assets on behalf of clients, ~~under~~ as defined in Regulation 2023/1114, with electronic money tokens~~. Such services~~ could qualify as the payment service of execution of payment transactions~~, for example where a crypto-asset service provider offers custodial wallets enabling transfers on behalf of its clients of electronic money tokens to and from third parties, or to other accounts of its clients.~~, including when such transfers are provided as part of other crypto-asset services, unless such transfers are covered by a specific exclusion from the scope of this Directive and Regulation xx [PSR].

~~By contrast~~ For example, the service of custody and administration of crypto-assets on behalf of clients, ~~or the service of placing of crypto-assets,~~ as defined in Regulation (EU) 2023/1114, does not constitute by ~~themselves~~ itself a payment service. However, where a crypto-asset service provider offers this service and also provides transfer services for crypto-assets on behalf of clients with electronic money tokens, or other payment services, then the respective services would qualify as payment services.

[1] More precisely, in the response to this Q&A, the European Commission clarified that: *'A crypto-asset service of providing transfer services as defined in Article 3(1), point (26), is a self-standing crypto-asset service referred to in Article 3(1), point (16)(j), along with other crypto-asset services. It follows from the definition of a crypto-asset service provider in Article 3(1), point (15), and Article 59 that a crypto-asset service provider may provide transfer services only if it is allowed to do so in accordance with Article 59. Therefore, if the provision of a service falls under the definition of providing transfer services, despite being regarded as part of another crypto-asset service, it is subject to Article 59 on authorisation and Article 82 on providing transfer services, including the guidelines developed under Article 82(2).'*

Likewise, transactions where the electronic money tokens are used as collateral for the purpose of conducting transactions with financial instruments do not constitute a payment service. Also, the placing of crypto-assets, as defined in Regulation 2023/1114, does not, in itself, constitute a payment service. Similarly, the exchange of electronic money tokens for funds or crypto-assets by a crypto-asset service provider acting in its own name, as seller or buyer of those electronic money tokens, without intermediating between a buyer and a seller, is not a payment service.

Given the market evolution since the adoption of Directive (EU) 2015/2366, and in order to avoid disproportionate requirements for crypto-asset service providers that provide services with electronic money tokens in accordance with Regulation (EU) 2023/1114, and also to ensure legal clarity as regards the scope of application of this Directive and Regulation xx [PSR] to services with electronic money tokens, it is appropriate to exclude from the scope of application of this Directive and Regulation xx [PSR] certain types of payment transactions with electronic money tokens, as specified in Regulation xx [PSR].

In line with the changes proposed above in Recital 16 PSD3, the PCY proposes similar changes in the **second subparagraph of Recital 29 PSR**:

Likewise, ~~the requirements of this Regulation should apply to crypto-asset service providers, providing crypto-asset services with electronic money tokens, where such services are payment services. This concerns in particular transfers by crypto-asset service providers, on behalf of their clients, of electronic money tokens corresponding to~~ providing transfer services for crypto assets on behalf of clients ~~under~~ as defined in Regulation 2023/1114 with electronic money tokens ~~Such services~~ could qualify as the payment service of execution of payment transactions ~~for example, where a crypto-asset service provider offers custodial wallets enabling transfers on behalf of its clients of electronic money tokens to and from third parties, or to other accounts of its clients.~~, including when such transfers are provided as part of other crypto-asset services, unless such transfers are covered by a specific exclusion from the scope of this Directive and Regulation xx [PSR].

Q3. Do MS agree with the proposed changes in subparagraphs (2) to (5) of Recital 16 PSD3 and in the second subparagraph of Recital 29 PSR? If not, please explain why.

Regarding the **exclusions from the scope of PSR**, building on the approach proposed in the CWP meeting in February, the PCY proposes limiting the cases in which a transfer of EMTs would be a payment service subject to both MiCA and PSD3/PSR by introducing exclusions from the scope of PSD3/PSR for:

- exchanges of EMTs between self-hosted addresses;
- exchanges of EMTs for funds or crypto-assets; and
- payment transactions between CASPs for their own account.

In this regard, in its discussion note for the February CWP meeting, the PCY proposed introducing in Article 2(2), points (a1), (h1) and (l1), three exclusions relating to EMTs, which read as follows:

This Regulation does not apply to the following: […]

a1) payment transactions with electronic money tokens, without any intermediary involved, including transfers of electronic money tokens between two self-hosted addresses; […]

h1) payments transactions carried out by a crypto-asset service provider where electronic money tokens are exchanged for funds or crypto-assets; […]

(l1) payment transactions carried out between crypto-asset service providers or their branches for their own account;

Regarding the exclusion in point a1), as explained in the discussion note submitted for the February CWP and in Recital 29b PSR, the PCY notes that, while this exclusion is not strictly necessary (since there is no PSP involved in such transfers, there is no payment service, so in principle no exclusion is necessary), it was nevertheless added for consistency with the exclusion in Article 2(a) PSR (imported from PSD2) which refers to '*payment transactions made exclusively in cash directly from the payer to the payee, without any intermediary intervention*'.

The majority of MS supported these exclusions. However, a comment was raised by one MS that '*the current wording could still include custodial wallets that are used only in the context of trading of crypto assets. Including such constellations would significantly widen the scope of application and would go against the intuition of the proposed recital 29a PSR. Hence, we would argue for a change of wording here in order to make sure to exclude those constellations from the scope*'.

In this regard, one option that could be further considered, in line with the policy objective behind the exclusion in Article 2(h1) PSR and recital 29a PSR, could be to **complement the exclusion in (h1) to cover**: '*payment transactions carried out by a crypto-asset service provider where electronic money tokens are exchanged for funds or crypto-assets,* ***as well as payment transactions where electronic money tokens are transferred between a custodial wallet or self-hosted address of a person and another custodial wallet of the same person that is used solely for the exchange of electronic money tokens for funds or crypto-assets'.*** This could be accompanied by a clarification in Recital 29a PSR that this exclusion should not include transfer services where EMTs are used to pay for goods or services, for peer-to-peer payment transactions or for other payment transactions between payment accounts of the same person.

Furthermore, related to the above exclusions, the PCY proposes introducing some small changes in **Recital 29a PSR,** taking into account:

- The comment from one MS who proposed to delete the reference from this Recital to EMTs being used '*for investment or trading purposes*', on the grounds that it would be difficult to determine in which situations an EMT would be used for such purposes;
- The comment from one MS who proposed to remove from this Recital the specific references to CASPs acting in their own name as buyer/seller of EMTs (which, in said MS's view, is unnecessary).

Regarding the first proposal, the PCY suggests amending said reference to refer to '*investment or trading activities*' (instead of '*purposes*'), rather than deleting it altogether. In the PCY's view, there is merit in keeping this reference only in Recital 29a, as it explains the rationale for the exemption in Article 2(2)(h1) PSR.

Regarding the second proposal, given that the PCY has clarified the point in question in subparagraph (4) of Recital 16 PSD3 (see proposals above), the PCY agrees with the suggestion to remove the reference to CASPs acting in their own name as buyer/seller of EMTs from Recital 29a.

Accordingly, the PCY proposes amending **Recital 29a PSR** as follows:

Given the market evolution since the adoption of Directive (EU) 2015/2366, and in order to avoid disproportionate requirements for crypto asset service providers that provide services with electronic money tokens in accordance with Regulation (EU) 2023/1114, and also to ensure legal clarity as regards the scope of application of this Regulation and Directive xx [PSD3] to services with electronic money tokens, it is appropriate to exclude from the scope of application of this Regulation and Directive xx [PSD3] certain types of payment transactions with electronic money tokens where

electronic money tokens are used for investment or trading ~~purposes~~ activities. This concerns in particular the exchange by crypto asset service providers of electronic money tokens for funds or crypto assets, ~~regardless of whether~~ including where the crypto asset service providers are intermediating between buyers and sellers~~, or acting in their own name as sellers or buyers of electronic money tokens~~. Such exclusion should cover ~~in particular~~ exchanges of electronic money tokens as part of the provision of the service of exchange of crypto assets for funds, exchange of crypto assets for other crypto assets, operation of a trading platform for crypto assets, reception and transmission of orders for crypto assets on behalf of clients or execution of orders for crypto assets on behalf of clients, as defined in Regulation (EU) 2023/1114. However, such an exclusion should not include transfer services where electronic money tokens are used to pay for goods or services, for peer to peer payment transactions or payment transactions between payment accounts of the same person.

In addition, as suggested by one MS, the PCY proposes making an editorial change in **Recital 29b PSR**, as follows:

*Taking into account that Directive (EU) 2015/2366 also included a specific exclusion regarding payment transactions made exclusively in cash directly from the payer to the payee without any intermediary intervention, it is appropriate to also include a similar exclusion as regards transactions with electronic money tokens carried out without any intermediary involved. This should include transfers of electronic money tokens between two self-hosted addresses, where there is no intermediary involved, ~~neither~~ **either** on the side of the payer ~~nor~~ **or** on the side of the payee, and should not include payment transactions between a custodial wallet and a self-hosted wallet.*

Q4. Do MS agree with the proposed exclusions from the scope of PSD3/PSR regarding EMTs in Article 2 points (a1), (l1), (h1) and recitals 29a and 29b PSR? If not, please explain why.

*Q5. Do MS consider that additional exclusions are needed in Article 2 PSR, for example to complement the exclusion in (h1) to cover 'payments transactions carried out by a crypto-asset service provider where electronic money tokens are exchanged for funds or crypto-assets, **as well as payment transactions where electronic money tokens are transferred between a custodial wallet or self-hosted address of a person and another custodial wallet of the same person that is used solely for the exchange of electronic money tokens for funds or crypto-assets**', while clarifying in the recitals that this exclusion would not include transfer services where EMTs are used to pay for goods or services, for peer-to-peer payment transactions or for other payment transactions between payment accounts of the same person?*

Furthermore, building on the approach proposed in the CWP meeting in February, the PCY proposes **streamlining the authorisation process where authorisation under both PSD3 and MiCA would be required**, as proposed in Article 3(3a) PSD3, with some additional small amendments. Said proposed changes take into account the comments from two MS who suggested: (i) including a specific reference to Articles 62 and 63 MiCA (regarding authorisation of CASPs); and (ii) covering the situation in which the NCAs under MiCA and PSD3 are different. The PCY proposes reflecting such comments through the addition indicated below, but acknowledges that Article 3(3a) PSD3 could be further improved and refined at a later stage, also taking into account the content of the forthcoming EBA no-action letter on the interplay between PSD2 and MiCA, once available.

Competent authorities shall not require undertakings that apply for authorisation to provide payment services under this Directive to provide any information referred to in paragraph 3 that they have already received under the respective authorisation procedures in accordance with Articles 62 and 63

of Regulation (EU) 2023/1114 provided that such previously submitted information or documents are still up to date. Where the competent authority responsible for the authorisation of payment institutions under this Directive is different from the competent authority responsible for the authorisation of crypto-asset service providers under Regulation (EU) 2023/1114, those competent authorities may exchange the information in question, where appropriate.

Q6. Do MS agree with the proposed changes in Article 3(3a) PSD3?

Related to the above, the PCY also notes that MS agreed to add the following **definitions** in Article 2 PSD3 and/or (as appropriate) Article 3 PSR (no comments on these definitions were received from MS):

- *'electronic money token' means an electronic money token as defined in Article 3(1), point (7) of Regulation (EU) 2023/1114;*
- *'crypto-asset service provider' means a crypto-asset service provider as defined in Article 3(1), point (15), of Regulation (EU) 2023/1114;*
- *'self-hosted address' means a self-hosted address as defined in Article 3, point (20), of Regulation (EU) 2023/1113;*
- *'custodial wallet' means a crypto-asset wallet address where a crypto-asset service provider ensures the safekeeping or control, on behalf of its client, of crypto-assets or of the means of access to such crypto-assets, where applicable in the form of private cryptographic keys.*

In addition to the above definitions, the PCY proposes adding two additional definitions of MiCA terms used in the text/recitals, as follows:

- *'crypto-asset service' means a crypto-asset service as defined in Article 3(1), point (16), of Regulation (EU) 2023/1114;*
- *'providing transfer services for crypto-assets on behalf of clients' means providing transfer services for crypto-assets on behalf of clients as defined in Article 3(1), point (26), of Regulation (EU) 2023/1114.*

II. Other changes proposed in Recital 6 PSD3

The PCY proposes introducing some changes in **Recital 6 PSD3**, taking into account the comment received from one MS who noted that Title III of EMD2, which pertains to conduct matters (e.g. prohibition of interest, issuance and redeemability), does not directly correspond to Title III PSD3, but rather corresponds to Article 30 of Title III PSR. Given the need to precisely map which provisions in PSD3/PSR the provisions in Titles II and III EMD will correspond to (this will be determined based on the correlation tables in the Annex to PSD3/PSR), the PCY proposes leaving the wording of Recital 6 PSD3 more open. Furthermore, the PCY proposes making some additional changes in the first part of Recital 6 PSD3 (which was not covered in the PCY's discussion note submitted for the February CWP). The reference text used is the drafting included in the consolidated text of PSD3 shared by the PCY ahead of the March CWP meeting. The proposed changes are as follows:

As evidenced in the review conducted by the Commission and given the evolution of the respective markets, businesses and risks ~~attached to the activities~~, it is necessary to update the prudential regime for payment institutions, including those ~~providing electronic money services by qualifying~~ issuing electronic money as a payment service, by requiring a single licence for providers of payment services not taking deposits. ~~Given that Regulation (EU) 2023/1114 of the European Parliament and of the Council lays down in its Article 48(2) that issuers of electronic money tokens should be deemed to be electronic money~~, tThe licensing regime for payment institutions, ~~as they~~ which will replace the regime applicable to electronic money institutions, ~~providing electronic money services~~ should also apply to issuers of electronic money tokens that are not credit institutions, and references in Regulation (EU) 2023/1114 to electronic money institutions issuing electronic money tokens should be read as

references to payment institutions issuing electronic money tokens. However, the specificities of the regime established by Regulation (EU) 2023/1114 as regards electronic money institutions issuing electronic money tokens should be maintained~~. In particular, in line with~~ taking into account Article 48(3) of that Regulation~~, Titles II and III of this Directive should apply with respect to e-money tokens unless otherwise stated in Title IV of Regulation (EU) 2023/1114.~~ […]

Q7. Do MS agree with the proposed changes in Recital 6 PSD3?

III. Safeguarding requirements

The majority of MS agreed with the proposed amendments in Article 9(1) and (4) PSD3 regarding EMTs put forward by the PCY in the February CWP meeting. However, some MS asked some further questions regarding the interplay between the PSD3 safeguarding requirements for payment institutions issuing EMTs and Article 54 of MiCA.

Taking into account the feedback received from MS, the PCY proposes introducing some further clarifications in **Article 9(1) PSD3**, as follows:

Member States shall require a payment institution which provides payment services as referred to in Annex I, points (1) to (5), or point (8), to safeguard all funds other than electronic money tokens it has received from payment service users or through another payment service provider for the execution of payment transactions, or where applicable the funds received in exchange for electronic money that has been issued, in one or several of the following ways: […]"

[…] By way of derogation from subparagraph 1, and without prejudice to paragraph 4, where a payment institution issues electronic money tokens, it shall ~~comply with~~ safeguard the funds received in exchange for the electronic money tokens in accordance with the methods set out in Article 54 of Regulation (EU).

This aims to clarify that payment institutions issuing EMTs should comply with the methods prescribed in Article 54 MiCA to safeguard the funds received in exchange for issuing those EMTs; in such cases, the safeguarding methods prescribed in Article 9(1) PSD3 would not apply. However, as regards the timelines for safeguarding those funds, the provisions in the first subparagraph of Article 9(4) PSD3 continue to apply.

For ease of reference:

- The text of **Article 9(4) PSD3** as proposed by the PCY in the February CWP meeting reads as follows:

Where a payment institution issues electronic money, funds received for the purpose of issuing electronic money need not be safeguarded until the funds are credited to the payment institution's payment account or are otherwise made available to the payment institution in accordance with the execution time requirements laid down in Regulation XXX [PSR]. In any event such funds shall be safeguarded by no later than the end of the business day following the day when the funds have been received after the issuance of electronic money.
A payment institution issuing electronic money shall ensure that all holders of electronic money both the payment service user having exchanged funds for electronic money and the beneficiary of a payment transaction in electronic money are always entitled to redemption at par value and upon request. […]

- The above provisions in Article 9 PSD3 regarding EMTs should be read together with **Recital 31 PSD3**, which reads as follows (minor editorial changes to the text proposal discussed in the February CWP meeting have been added in blue):

> *[…] To ensure a level playing field between payment institutions providing payment services by issuing electronic money and providing other payment services, it is appropriate to align as much as possible the regimes applicable to the safeguarding of users' funds, whilst preserving the specificities of electronic money. Furthermore, the requirements in this Directive should be without prejudice to the requirements in Regulation (EU) 2023/1114 regarding the investment of funds received by issuers of electronic money tokens in exchange for electronic money tokens. It is also appropriate to specify that the safeguarding measures in this Directive do not require payment institutions executing payment transactions with electronic money tokens to safeguard the electronic money tokens themselves. Applying the safeguarding methods set out in this Directive to electronic money tokens themselves would be very difficult to achieve in practice and disproportionate. Furthermore, Regulation (EU) 2023/1114 already requires crypto asset service providers to ensure the safekeeping of their clients' crypto assets, which includes electronic money tokens given the dual nature of these tokens as both crypto assets and funds. This is without prejudice to the application of the safeguarding requirements in this Directive to funds other than electronic money tokens. […]*

Q8. Do MS agree with the changes proposed in Article 9(1) PSD3?

IV. Application of other provisions in PSR to payment transactions with EMTs

As regards the provisions in PSR on the maximum execution timeline, MS agreed with the proposal put forward by the PCY in the February CWP meeting to add the following text in the **second subparagraph of Article 70 PSR**:

> *In the case of payment transactions with electronic money tokens from a custodial wallet to a self-hosted address, the payment service provider of the payer shall transfer the funds to the self-hosted address of the payee within the time limit laid down in Article 69(1).*

Likewise, MS agreed with the clarifications proposed by the PCY in **Recital 146 PSR**, which reads as follows:

> *References to amounts in euro, are to be understood as the national currency equivalent as determined by each non euro Member State. References to payment transactions in euro or other currencies are to be understood as payment transactions with funds denominated in euro or other currencies, including electronic money tokens denominated in euro or other currencies.*

Regarding the application of other provisions in PSR to payment transactions with EMTs, the PCY notes that in past CWP discussions on EMTs, some MS were of the view that no EMT-specific amendments were needed in PSD3/PSR as regards:

- the D+1 maximum execution timeline;
- the Open Banking provisions in PSR;
- the SCA requirements in PSR – which some MS believe should apply to payment transactions with EMTs that are within the scope of PSD3/PSR in the same way they apply to other payment transactions in scope.

In their written feedback following the February CWP meeting, some MS asked for a more detailed analysis to be conducted of the application of each provision in PSR to payment transactions with EMTs

before they decided whether or not any further amendments to PSR were needed to take into account the specificities of EMTs. However, no concrete proposals for amendments were suggested by MS.

One specific point that was identified by MS as requiring a more in-depth discussion is whether the requirement regarding verification of the payee in Article 50 PSR should also apply to payment transactions with EMTs and, if so, how this could be designed.

In this regard, the PCY notes that:

- Article 5c of Regulation (EU) 260/2012 (the 'SEPA Regulation', as amended by the IPR) requires PSPs offering credit transfers in euro to offer to the payer a service ensuring verification of the payee to whom the payer intends to send a credit transfer (the verification of payee or 'VoP' service); under the SEPA Regulation, these provisions apply to credit transfers in euro, regardless of whether they are 'standard' or instant credit transfers;
- according to Article 2(1)(f) of the SEPA Regulation, the SEPA Regulation does not apply to '*payment transactions transferring electronic money, unless such transactions result in a credit transfer or direct debit to and from a payment account identified by BBAN or IBAN*'.

In the PCY's view, this means that EMT transfers that do not result in a '*credit transfer or direct debit to and from a payment account identified by BBAN or IBAN*' are not subject to the above mentioned VoP requirements in the SEPA Regulation.

In the March CWP meeting, in the context of the discussions on the VoP provisions in Article 50 PSR, the majority of MS were of the view that the VoP requirements in PSR should be aligned, to the extent possible, with those in the SEPA Regulation, but that they should extend also to other credit transfers that are not covered by the SEPA Regulation, including intra-EU credit transfers in currencies other than euro and credit transfers to beneficiaries whose payment accounts are not identified by IBAN (subject to further analysis and input from MS outside the euro area). However, these discussions in the CWP meeting did not focus on payment transactions with EMTs.

One possible way to address this could be to specify in Article 50 PSR, or in a recital in PSR, that the VoP provisions in that Article should also apply to credit transfers with EMTs (even if they do not fall within the scope of the SEPA Regulation). If this were acceptable to MS, then:

- it should be added that the VoP requirements do not apply in cases of payment transactions with EMTs between a self-hosted address and a custodial wallet, since in such cases there would not be a PSP on both sides of the transaction and it would therefore not be possible to apply the VoP requirements;
- consideration could also be given to clarifying that for the purpose of the VoP provisions in PSR, the references to the payment account identifier as defined in the SEPA Regulation should be construed as referring to the unique identifier used to unambiguously identify the payment account of the payee.

Moreover, more analysis may be needed to determine whether any specific amendments are needed in PSR regarding cases of transfers between a self-hosted address and a custodial wallet. In the PCY's view:

- provisions in PSR that are applicable to the payer's PSP would not apply in cases of transfers from a self-hosted address, as in those cases there is no payer's PSP;
- similarly, provisions applicable to the payee's PSP would not apply in cases of transfers to a self-hosted address, as in those cases there is no payee's PSP;
- further consideration should be given to whether there are any other cases, beyond the VoP requirements mentioned above, where a PSP's fulfilment of its obligations is dependent on the existence of a PSP on the other side of the transaction; if there are such cases, then specific provisions along the lines suggested above for the VoP requirements may be needed.

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Finally, on the broader question of whether further changes or clarifications are needed in PSR to address the specific features of EMTs or of payment transactions with EMTs, the PCY acknowledges that some aspects may need to be further analysed and finetuned, should, for example, any inconsistencies between MiCA and PSR be identified, including in the context of the EBA/ESMA work on the forthcoming EBA non-action letter on the interplay between PSD2 and MiCA.

Q9. Are MS of the view that the provisions on the VoP service in Article 50 PSR should also apply to payment transactions with EMTs, except for payment transactions with EMTs between a self-hosted address and a custodial wallet? If so, do MS have any proposals on how this could be designed? And if MS are of the view that the provisions on the VoP service in Article 50 PSR should not apply at all to payment transactions with EMTs, please explain why.

Q10. Do MS have any specific proposals for other amendments that they believe may be needed in PSD3/PSR to take into account the specificities of EMTs, or of payment transactions with EMTs, or of payment transactions with EMTs between a self-hosted address and a custodial wallet?