Have your say: Payment services – revision of EU rules (Directive)

Public Comment by the Digital Currencies Governance Group

Digital Currencies Governance Group (DCGG) is a trade association that represents digital assets issuers and service providers in the European Union and the United Kingdom. Our mission is to facilitate an open dialogue and encourage communication between policymakers and digital asset experts to support the design of a sound and proportionate regulatory framework that ensures safety for all market participants. Our Members include Tether - currently the largest stablecoin issuer worldwide, Ledger - a leading technology service provider for self-custody, Bitfinex - a major centralised crypto-assets exchange, ZKValidator (ZKV) - a leading proof-of-stake validator, and Iden3 - a solutions provider for self-sovereign identity management.

DCGG and its members support the European Commission's initiative to introduce a revised Directive on Payment Services and Electronic Money Services in the Internal Market (the PSD3). As a trade association representing digital asset market players, we find it particularly relevant and important as to how the PSD3 would align with the Markets in Crypto-Assets (MiCA) Regulation.

According to the Commission proposal, e-money institutions (EMIs) authorised under the E-Money Directive (EMD) would be considered "payment institutions" once PSD3 enters into force and the EMD is subsequently repealed. The MiCA regulation currently stipulates that issuers of electronic money tokens (EMTs) would need to be initially authorised as EMIs under the EMD, meaning that PSD3, when enforced, would be the governing framework in the context of MiCA authorisation for EMT issuers.

Notwithstanding, we are concerned that the new proposal could unintentionally discriminate against EMTs compared to other e-money institutions, and we urge the Commission for an alignment of MiCA with the new rules. In particular, MiCA Article 23 outlines that there will be quarterly limits imposed on the circulation of EMTs not denominated by the Euro[1] associated to uses as means of exchange, and issuers would be required to cease issuance once this circulation limit is reached.

Unfortunately, we see no such limit being proposed for other forms of e-money and EMIs under the proposed PSD3. We see this discrepancy in treatment of e-money token issuers as opposed to other EMIs as contradicting the principles of proportionality and technological neutrality that should be promoted in the EU. The circulation limits and disproportionate reporting burdens imposed on EMT issues under MiCA imply there is a higher level of risk carried by these instruments solely because they are based on the Blockchain, and we see this assumption as very harmful for the digital assets industry.

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[1] Article 23: Restrictions on the issuance of asset-referenced tokens used widely as a means of exchange
1. Where, for an asset-referenced token, the estimated quarterly average number and average aggregate value of transactions per day associated to its uses as a means of exchange within a single currency area is higher than 1 million transactions and EUR 200 000 000, respectively, the issuer shall:
(a) stop issuing that asset-referenced token

Any restriction of non-EUR denominated EMTs is inconsistent with rules applied to EMIs under the PSD3. These do not appear to be restricted from allowing users to both store and transact within Europe from e-wallets which are not denominated in Euro. It is important that the Commission takes a non-discriminatory approach to ensure there is an adequate level of fairness in the authorisation and subsequent regulatory obligations for all EMIs, including e-money tokens.

Due to the impracticality, disproportionate reporting burden and to be consistent with the treatment of other e-money institutions, there should be no limit to transactions and issuance of non-EU currency denominated EMTs in MiCA. We urge the Commission to seek alignment in the new PSD3 proposal and a reflection of this principle in MiCA.

For any general enquiries or to request further feedback on our members' views on this proposal, please do reach out to info@dcgg.eu