



Mastercard feedback to EU regulatory framework proposal for crypto-assets (MiCA)

As a technology company overseen by the ECB and a global leader in electronic payments, Mastercard recognizes the importance of the proposed Regulation on Markets in Crypto-Assets (MiCA). It will ensure a robust and competitive European payments market as new forms of assets, services and means of payments emerge in the wake of digitalization.

Mastercard plays an important network role linking customers and partners. We therefore welcome the ambition to provide regulatory clarity and oversight for this market, setting a standard that will provide increased trust in the use of currently unregulated crypto assets, safeguard consumer protection and promote innovation.

We fully support the principle of **"same business, same risk, same rules"** and believe that any crypto-assets activity for payments should be supported by a framework that:

- Provides strong consumer protection, including privacy and security of the consumers' information and transactions
- Delivers a level playing field for all stakeholders
- Operates in full compliance with all applicable laws and regulations, including those applicable to AML/CTF risks.

With these principles in mind we would like to draw attention to the aspects of the proposal where we believe discussion, and possibly amendments, are needed to ensure that consumers are appropriately protected and that there is a level playing field to support fair competition in the Union.

Consumer protection

Payments protection

*Under the MiCA proposal, less consumer protections are available for payments made with asset referenced tokens than for payments made with e-money tokens, or other types of funds under PSD2. This does not align with the principle of **"same business, same risk, same rules"**.*

We are concerned that the consumer protection for payments made with asset referenced tokens, are different to protections for payments made with e-money tokens. Article 43 in MiCA states that 'e-money tokens' are deemed electronic money for the purpose of Directive 2009/110/EC' (EMD2). This means that e-money tokens fall within the definition of 'funds' for the purposes of Directive 2015/2366/EC (PSD2). In turn, this means that all consumer protections for payments in PSD2, such as those for lost payments, incorrect payments, limits on liability for fraudulent transactions, consumer focused dispute resolution and so on, apply to payments made with e-money tokens.

The Regulation recognizes that asset referenced tokens “often aim at being used by their holders as a means of payment to buy goods and services”¹. However, under the current proposal, payments made with asset referenced tokens would not benefit from the same consumer protections as e-money tokens or other ‘funds’. This is because asset referenced tokens do not fall within the definitions of funds under PSD2.²

Safeguarding

*The treatment of safeguarded funds under MiCA and the Payment Services Directive (PSD)³ offers a different approach to the principle of “**same risk, same rules**”.*

We believe that the MiCA provisions regarding consumer access to safeguarded funds, allowing direct access in the event that the issuer of the e-money token does not redeem within 30 days, provides consumers with a level of protection beyond the provisions in PSD2. However, it might lead to confusion for consumers and for the industry since it is unclear how these proposals will work when funds are safeguarded using the insurance method. We also believe that further clarity is necessary on the interaction of these provisions with existing insolvency law.

Consumer Transparency

Inconsistent application of crypto-asset definitions under MiCA to new products could result in consumer harm.

We strongly support the requiring of consumer-facing documents to be clear, fair and not misleading. However, the volume and frequency of information, and the lack of consistency in the use of terminology by crypto asset issuers, is unlikely to be beneficial to consumers. This will undermine the objective of empowering consumers with the transparency they need to make informed decisions and make it difficult for consumers to compare and shop around for products.

Level Playing Field

The issues we detail above suggests that the proposed Regulation does not achieve a level playing field between the issuers and service providers of asset referenced tokens and e-money tokens. The issuance and use of asset referenced tokens for payments pose the same consumer protection risks as e-money tokens and consumers should therefore have the same protection.

About Mastercard

Mastercard has been active in the payments technology sector for more than 50 years, investing in new infrastructures and offering new payment solutions in an increasingly competitive market, while also safeguarding consumers. Using its technology and knowhow, Mastercard operates a network that enables companies to do business with their consumers conveniently and securely. Through its global network it connects consumers, financial institutions, merchants, governments and businesses in more than 210 countries and territories.

¹ Recital 9

² We note the extension to definition of funds in PISA to specifically included digital assets (stablecoins)

³ Article 7 EMD 2 applies PSD safeguarding requirements

