

**Question ID**2024\_7084

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**Legal act**Regulation (EU) No 2023/1114 (MiCAR)

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**Topic**Scope and definitions (MiCAR)

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**Article**3

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**COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations**Not applicable

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**Article/Paragraph**N/A

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**Name of institution / submitter**Autorité de contrôle prudentiel et de résolution

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**Country of incorporation / residence**France

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**Type of submitter**Competent authority

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**Subject matter**Qualification of crypto-asset service in case of exchange of electronic money tokens for other crypto-assets

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**Question**Should the service consisting in exchanging electronic money tokens for other crypto-assets be qualified as exchange of crypto-assets for crypto assets or as exchange of funds for crypto assets?

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**Background on the question**

Crypto asset services providers (CASPs) will in the future provide the regulated service consisting in exchanging electronic money tokens for other crypto assets.

However, due to the fact that electronic money tokens are a type of crypto-asset deemed to be electronic money (MiCAR 48(2)), and that electronic money is to be considered as "funds", it is therefore not entirely clear if CASPs would, in this situation, exchange crypto-assets (understood as EMT) for crypto assets or exchange funds (i.e. EMT) for crypto assets.

This can have an impact on the compliance of said CASPs regarding payment regulation (PSD2) since if the collection of "funds" occur for a third party (in specific cases where the CASP acts as an intermediary between holders and liquidity providers for example), then CASPs would need to either be authorized under PSD2 or be registered as an agent under the same directive.

Hence, clarification as to whether or not EMT are to be seen as funds or as crypto-assets in this situation is key to assess the overall compliance of CASPs' business models

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**Submission date**

14/05/2024

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**Final publishing date**

08/05/2026

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**Final answer**

Article 3(1), point (7) MiCAR defines e-money tokens as 'a type of crypto-asset that purports to maintain a stable value by referencing the value of one official currency'.

Article 3(1), point (14) MiCAR defines funds by referring to Article 4(25) of Directive (EU) 2015/2366. The notion of "funds" in Article 4(25) of Directive (EU) 2015/2366 includes 'electronic money'. Article 48(2) MiCAR provides that e-money tokens are to be deemed electronic money.

However, although e-money tokens are to be deemed electronic money pursuant to Article 48(2) MiCAR, and therefore be considered funds, they are defined, in Article 3(1), point 7 MiCAR, as a type of crypto-asset and should therefore be considered as such for the purpose of interpreting them within the scope of crypto-asset services governed by MiCAR.

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**Status**

Final Q&A

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**Answer prepared by**

Answer prepared by the European Commission because it is a matter of interpretation of Union law.

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