

Question ID2024_7168

Legal actRegulation (EU) No 2023/1114 (MiCAR)

TopicOther MiCAR topics

Article48, 146

COM Delegated or Implementing Acts/RTS/ITS/GLs/RecommendationsNot applicable

Article/ParagraphN/A

Name of institution / submitterAutorité de contrôle prudentiel et de résolution

Country of incorporation / residenceFrance

Type of submitterCompetent authority

Subject matterPassporting procedure for CIs and EMIs issuing tokens under MiCAR

Question

Are articles 146 (for credit institutions) and 48(3) (for e-money institutions) to be interpreted as submitting credit institutions and e-money institutions issuing ART/EMT on a crossborder basis to comply with the existing passporting framework set for these categories of establishments respectively by directives 2013/36/EU and 2009/110/EC?

Background on the question

MiCAR does not seem to create specific passporting procedures for credit institutions and e-money institutions issuing ARTs or EMTs on a crossborder basis. However, such crossborder activities seem to fall into the passporting procedures set by sectorial texts, i.e. :

- for credit institutions, title V of directive 2013/36/EU: we infer this from the fact that article 146 of MiCAR amends annex I of said directive which sets the list of activities subject to mutual recognition, which is the basis for passporting notifications as set by [Commission implementing regulation \(EU\) No 926/2014](#). In our view, this means that any credit institution issuing ART or EMT shall comply with passporting procedure under directive 2013/36/EU.
- for e-money institutions, directive 2009/110/EC, with reference to directive (EU) 2015/2366 : we infer this from article 48(3) of MiCAR which states that "Titles II and III of Directive 2009/110/EC shall apply with respect to e-money tokens unless otherwise stated in this Title". As no provision in MiCAR specifically create requirements regarding passporting for EMI issuing EMT, passporting framework from the directives mentioned above therefore applies.

Submission date

08/08/2024

Final publishing date

08/05/2026

Final answer

Yes, MiCAR Articles 146 (for credit institutions) and 48(3) (for e-money institutions) are to be interpreted as submitting credit institutions and e-money institutions issuing ART/EMT on a cross-border basis to comply with the existing passporting framework set for these categories of establishments respectively by Directives 2013/36/EU and 2009/110/EC.

More specifically:

- as regards credit institutions, Article 146 of MiCAR amended Annex I of Directive 2013/36/EU (CRD) explicitly adds the activity consisting in "Issuing electronic money including electronic-money tokens as defined in Article 3(1), point (7), of Regulation (EU) 2023/1114" to the list of activities subject to mutual recognition under CRD. It therefore requires any credit institution issuing ART or EMT to comply with passporting procedure under that Directive (including passporting notifications as set by Commission implementing regulation (EU) No 926/2014).

-as regards e-money institutions, Article 48(3) of MiCAR provides that "Titles II and III of Directive 2009/110/EC shall apply with respect to e-money tokens unless otherwise stated in this Title". Therefore, and in the absence of a specific provision in that regard in MiCAR, the passporting procedure laid down in Article 3(4) of Directive 2009/110/EC should be considered to apply to e-money institutions issuing e-money tokens.

Status

Final Q&A

Answer prepared by

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