

# A EUROPEAN OCTOPUS?

## On the European Central Bank's new "PISA" Framework

Interview with Alpay Soytürk, Spectrum Markets



The European Central Bank has published a new oversight framework for electronic payments – thereby further expanding their supervisory portfolio and entering into an area of significant public interest as the framework includes crypto-assets. But how does that fit with the Commission's upcoming crypto regulation?

How will duties be separated between the ECB and ESMA, the market supervisory authority? What will be the consequences for the European retail payments market and can the ECB at all handle this task? Alpay Soytürk, Spectrum's Chief Regulatory Officer, has the answers.

The European Central Bank (ECB) has published a new "oversight framework for electronic payment instruments, schemes and arrangements "PISA"- thereby entering into an area of significant public interest as the framework includes crypto-assets. We have asked Alpay Soytürk, Chief Regulatory Officer at Spectrum Markets, what PISA – which should not be confused with OECD's Programme for International Student Assessment, using the same abbreviation – is about.

### Alpay, let's start with the question of whether the ECB is expanding their supervisory reach beyond its mandate?

No, I don't think so. It is true that the PISA framework will cover crypto-asset-related services but only to the extent relevant to the task of promoting the smooth operation of payment systems, which is as central an element of the ECB's mandate as the definition and implementation of monetary policy, foreign exchange operations or the management of the euro area's foreign currency reserves. As an example of the scope of crypto-payments subject to the PISA framework, the ECB has mentioned the acceptance of crypto-assets by merchants within a card payment scheme and the option to send, receive or pay with crypto-assets via an electronic wallet. That is a clear focus on payment tokens and does not include utility tokens, security tokens, ICOs<sup>1</sup> or STOs<sup>2</sup>.

### Is this explicitly mentioned in the PISA framework?

Yes. PISA excludes services where the transfer of value has only an investment focus. It also excludes services for which the transfer of value is executed solely in banknotes and coins, paper cheques, paper-based bills of exchange, promissory notes or similar. Paper-based vouchers or cash card issuance are also not in scope. The latter refers to cards that are issued for the purpose of depositing funds on it at the disposal of the receiver of a payment.

In other words, PISA focuses on all mechanisms that are based on electronic payment instruments with a general purpose, i.e., whose value transfer function is not limited to a single type of payment recipient or specific use, including instant payments and payment mechanisms in the B2B-sector, plus the usage of electronic payment instruments to place or withdraw cash. The ECB defines electronic payment instruments as (sets of) personalised devices, software or procedures agreed between the end user and the payment service provider to request the execution of an electronic transfer. In practice, this covers payment cards, credit transfers, direct debits, e-money transfers and digital payment tokens. So, there are overlaps with the PSD2<sup>3</sup> rather than with the MiCA<sup>4</sup> or the DLT Pilot Regime<sup>5</sup> proposals. As such – to get back to your initial question – the ECB is expanding the scope of definitions to take into consideration the technological progress of recent years. For the ECB, all representations of value backed by claims or assets denominated or redeemable in euros are in scope as well as other digital assets that are accepted under the rules of a scheme for payment purposes or to discharge payment obligations in euros.

### This will mean additional efforts in terms of governance. How is the ECB going to tackle this given it doesn't have the capacity to oversee all relevant activities?

The ECB maintains a Crypto-Assets Task Force. Its analyses led to the conviction that there are potentially material financial stability risks and risks to the safety and efficiency of the payment system as a whole should payments via stablecoins remain unregulated – and following a 2020 public consultation, finally led to the establishment of the PISA framework. But it's true that the ECB lacks the infrastructure to perform the relevant surveillance and enforcement tasks. Consequently, for oversight purposes, i.e., the collection and assessment of information and implementation measures, the ECB assigns the primary oversight responsibility to the national central banks within the Eurosystem. The ECB has explained that, in this assignment, it considers the proximity to the entity subject to oversight (e.g., the country of incorporation, national laws attributing specific oversight responsibilities to central banks concerned, subject to any Treaty-based requirements).

### You have explained the relevant services in scope – what is the delineation in terms of entities the framework applies to?

PISA aims at the governance bodies of so-called "schemes" and "arrangements" that should behave in compliance with the ECB's oversight expectations. A scheme is defined as "a set of formal, standardised and common rules enabling the transfer of value between end users by means of electronic payment instruments", managed by a governance body – while in practice, the governance body and the payment services provider are identical. Examples of schemes are card payment schemes, e-money schemes, digital payment token schemes, credit transfer schemes and direct debit schemes. The ECB defines an "arrangement" as "a set of operational functionalities which support the end users of multiple payment service providers in the use of electronic payment instruments". An example of an arrangement is an electronic wallet. The definitions, which are cryptic in the most literal sense, are designed to cover the entirety of the relevant area which would be difficult with classic categorisations where a service is provided organisationally and physically decentralised.

### When will PISA take effect?

PISA was approved by the ECB's Governing Council on 15 November 2021 and becomes applicable as of 15 November 2022 for schemes that are already subject to oversight by a national central bank within the Eurosystem. New schemes and arrangements have to abide by the PISA rules within one year after being informed that they fall within its scope.

Thank you very much!

<sup>1</sup> Initial Coin Offerings

<sup>2</sup> Security Token Offering/ Equity Token Offering

<sup>3</sup> Directive (EU) 2015/2366, the "Payment Services Directive (PSD2)"

<sup>4</sup> Regulation on "Markets in Crypto-assets"

<sup>5</sup> Regulation on a "pilot regime for market infrastructures based on distributed ledger technology (DLT pilot regime)"

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