DARTE SERIES
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JOINT INTERPRETIVE NOTE BY DARTE – MULTIJURISDICTIONAL ISSUANCE OF E-MONEY TOKENS

The initiative for this note follows from the discussion opener delivered by Max Atallah (LL.M., Managing Partner of Nordic Law) at the DARTE Roundtable session held in Helsinki on 18 November 2025.

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Summary of the problem and proposed solutions

MiCA does not prohibit — and in several respects accommodates — multijurisdictional issuance of e-money tokens (EMTs), meaning a situation where at least two (2) different entities from at least two (2) different geographical and juridical areas issue the one and the same non-EU currency EMT, e.g. USD-based EMT. Under EU law, private actors are free to structure their business models unless legislation expressly restricts them; in line with EU case law and general legal theory, the absence of a prohibition must therefore be given full effect. On that basis, multijurisdictional issuance is legally possible under MiCA. The challenge arises from recent ECB and ESRB materials, which object to such models on prudential and financial-stability grounds. These concerns, however, do not amount to legal prohibitions: the ECB is not a legislator and cannot narrow MiCA's scope through interpretation or supervisory practice. Yet supervisory resistance has already created legal uncertainty and constrained authorised issuers. The central issue is thus not whether MiCA permits multijurisdictional issuance — it does — but whether supervisory authorities may impose de facto bans based solely on policy objections. Under EU law and the separation-of-powers principle, they may not.

Against this background, the DARTE Report for the Helsinki session concluded with the following calls to action for this topic:

- *Develop a joint interpretive note explaining why MiCAR already permits multi-jurisdictional EMT issuance, providing immediate clarity without waiting for formal EU guidance.*
- *Create a neutral EU Stablecoin Association to coordinate best practices, promote supervisory convergence, and serve as a single point of engagement for EU institutions.*
- *Establish shared operational standards for reserve management and redemption processes to reduce supervisory hesitation and strengthen consumer protection across jurisdictions*

1. PURPOSE OF THIS DOCUMENT

The purpose of this note is to bring together the collective expertise of practitioners, legal experts and policy specialists to articulate a shared interpretation of why multijurisdictional issuance of e-money tokens (EMT) is possible under the Markets in Crypto Assets Regulation (MiCA).

This note proceeds from two foundations. First, MiCA does not prohibit multijurisdictional issuance of EMTs. In a rule-of-law based regulatory system, the absence of express prohibition means that such issuance remains legally permissible. Second, MiCA's own structure, drafting technique and cross-referencing mechanisms demonstrate that MiCA was designed to accommodate, and in certain respects presupposes, EMT issuance models that span more than one jurisdiction.

The need for this note arises from the current supervisory debate. Recent material from especially the ECB and the ESRB raises prudential, financial stability and strategic autonomy concerns regarding multijurisdictional issuance structures. These are serious policy considerations, but they do not amount to legal prohibitions. Within the EU constitutional order, the ECB does not possess legislative power and cannot unilaterally determine which business models are permitted under MiCA. Decisions concerning the legality of market structures lie exclusively with the EU legislator acting through formal legislative instruments, not with supervisory authorities acting through interpretative guidance or administrative practice. Maintaining this division of roles is essential to safeguarding legal certainty, predictability and the separation of powers, particularly at a time when supervisory positions have already had significant effects on existing issuers and on the ability of new market participants to enter the market.

Further, the present supervisory stance has already produced significant negative market effects, restricting existing issuers, deterring new entrants and creating legal uncertainty that undermines innovation and competition. This note aims to clarify that these market impacts stem from prudential policy preferences rather than from the legal text of MiCA itself. Ensuring that market participants and competent authorities distinguish between legal constraints and supervisory risk assessments is central to preserving a functioning, innovation-friendly regulatory environment.

With this in mind, this note focuses exclusively on the legal question of whether multijurisdictional issuance of EMTs is permissible under MiCA. It does not take a position on any other dimension of such models, including prudential, operational, governance, market-integrity or consumer-protection considerations. These are analytically distinct questions that require separate assessment and should not be conflated with the threshold question of legality. Furthermore, as MiCA applies only to entities within its territorial scope, this note focuses on the assessment of an EU-based entity involved in a multi-jurisdictional issuance.

This note further assumes that the reader is already familiar with the basic architecture of multijurisdictional issuance models. For that reason, it does not reproduce any other definitions, operational descriptions, or introductory explanations of the model, except for the very basic concept of it (see section 2). The rationale for this approach is twofold: first, the technical policy debate surrounding multijurisdictional issuance has advanced beyond foundational descriptions, and second, the legal analysis presented here relies on a precise understanding of the model's mechanics, which would not benefit from high-level restatements.

2. WHAT IS MULTIJURISDICTIONAL ISSUANCE OF EMTS?

Multijurisdictional issuance of EMTs refers to a situation where one and the same EMT is issued and offered in at least two (2) different geographical and juridical areas, typically, through at least two (2) different entities. From MiCA's perspective (and thus, EU's perspective), this topic is viable only with EMTs that peg their value to a currency that is not an official currency of the EU (Foreign Currency EMT), as Art. 48(2) explicitly states that EMTs that peg their value to an official currency of the EU (EU Currency EMT) are by default offered in the EU, whereby in accordance with Art. 48(1), they may be offered to EU, if the issuer is credit institution or electronic money institution (EMI) authorised in the EU. This position is reaffirmed by the EBA in its "Statement on the application of of MiCAR to ARTs and EMTs" on 5 July 2024.

With the aforementioned in mind, in the context of this note "multijurisdictional issuance of EMTs" refers to a situation where at least two (2) different entities from at least two (2) different geographical and juridical areas issue the one and the same Foreign Currency EMT. For avoidance of doubt, this note focuses solely on the entity issuing such Foreign Currency EMT from EU.

3. MICA DOES NOT PROHIBIT MULTIJURISDICTIONAL ISSUANCE OF EMTS

The first foundation for this note is that MiCA contains no provision that prohibits multijurisdictional issuance of EMTs or requires that an EMT be issued only by a single entity in a single jurisdiction. Where the EU legislator has wished to restrict market structure or business models, it has done so explicitly. For example, the legislator *de facto* prohibited the offering of EU Currency EMTs outside the EU (see section 2). No comparable wording is used to exclude multijurisdictional or multi-issuer structures for Foreign Currency EMTs. On the contrary, EU legislator has set precise limitations to Foreign Currency EMTs through cross-referencing technique, which also takes into account the issuance by multiple issuers.[1] This distinction is legally meaningful: where the legislator expressly tries to limit the issuance of EU Currency EMTs to the Union, but does not impose such a rule for Foreign Currency EMTs, the only reasonable inference is that the latter are not subject to similar territorial issuance restrictions.

Beyond this explicit legislative contrast, MiCA affirmatively contemplates multi-issuer configurations. MiCA expressly contemplates that "several issuers issue the same e-money token", which presupposes the possibility of multiple issuers for the same EMT.[2] Similarly, the multi-issuer configuration has been assessed by the EBA through its guidelines on redemption plans[3] and recovery plans[4] under MiCA, where "issuance of the same ART or EMT by multiple issuers" is clearly recognized. Given that MiCA does not regulate the conduct of non-EU issuers, and given that Foreign Currency EMTs may lawfully be issued inside the Union by different entities, the concept of multijurisdictional issuance is plainly compatible with the regulatory framework.

[1] See. Art. 58(3) and 23(1) and (3) of MiCA.
[2] E.g. Arts. 23(3), 43(3) and 56(2) of MiCA.
[3] EBA/GL/2024/13, pp. 15.
[4] EBA/GL/2024/07, pp. 22.

In a rule-of-law based regulatory system, the absence of a prohibition is not a neutral silence. As Hans Kelsen formulates, "*that which is legally not prohibited is legally permitted*", a foundational positivist principle meaning that legal constraints require explicit normative grounding.[5] Georg Henrik von Wright's analysis of normative systems leads to the same conclusion: in a system built on obligations and prohibitions, everything not placed under a prohibition remains within the class of permitted actions.[6] In contemporary legal-theory terms, Navarro similarly emphasises that actions not selected by the legislator as normatively relevant remain unregulated and therefore permissible; determining whether something is "unregulated" means examining what the legislator has actually chosen to regulate.[7] Taken together, these authorities reinforce a single, coherent proposition: unless the legislator expressly prohibits or regulates an act, private actors operate within a zone of legal freedom.

It is important to recognise that the converse logic – that what is not expressly authorised may be forbidden – applies only in narrowly defined areas of EU law, specifically where the legal framework is built on enumerated powers for public authorities or for regulated entities whose powers derive exclusively from authorisation. The Court of Justice of the EU (CJEU) has repeatedly held that Union institutions and national authorities may act only within the limits of the powers conferred on them.[8] In contrast, private companies operating in competitive markets do not function under a conferred-powers model: EU law recognises a presumption of private autonomy unless the legislature restricts it (reflected in the principle of legal certainty and the requirement of a clear legal basis for restrictions, see e.g. Case C-17/03 VEMW). Keeping these domains analytically separate is essential: constraints on public authorities or on entities exercising delegated public powers cannot be transposed onto private economic actors without a clear statutory basis.

The CJEU has, in its own case-law, recognised this maxim as part of the legal vocabulary used in economic-regulatory argument. In Case 32/65, the Court recorded an argument advanced against Regulation No 19/65 as alleging infringement of "the principle according to which everything is permitted which has not been forbidden" and a replacement by the converse principle "under which everything is forbidden which has not been authorised".[9] While the ECJ ultimately rejected the specific conclusion drawn from that argument in the competition-law context, the judgment shows that the "everything not forbidden is permitted" maxim is treated as a relevant and intelligible principle in EU economic-law discourse.

Recent supervisory documents do not alter this legal conclusion. The ECB's non-paper[10] and the ESRB's 2025 material[11] raise extensive policy concerns regarding third-country multi-issuance, but

[5] Kelsen, H. Pure Theory of Law (1967), pp. 243.
[6] Wright, G.H. Is There a Logic of Norms? Ratio Juris. Vol. 4 No. 3 December 1991, pp. 280-281.
[7] Navarro, P. The Uncertain Limits of Law. Some Remarks on Legal Positivism and Legal Systems. ANALISI E DIRITTO 2018: 9-38 (2018), pp. 22.
[8] Case 22/70 Commission v Council (ERTA) and Case C-270/12 UK v Council and Parliament.
[9] C 32-65, Italian Republic v Council of the European Economic Community and Commission of the European Economic Community, pp. 404.
[10] WK 4742/2025 COR 1.
[11] ESRB, Crypto-assets and decentralised finance – Report on stablecoins, crypto-investment products and multi-function group (2025).

they do not identify any MiCA provision that prohibits it. Indeed, the ECB acknowledges that "a permissive interpretation of MiCAR would allow third-country multi-issuance" and argues only that such an interpretation would have undesirable prudential, financial-stability, and strategic-autonomy consequences.[12] Policy objections do not convert regulatory silence into a legal prohibition; rather, they confirm that MiCA leaves this model legally possible unless the legislator decides otherwise.

Taken together, doctrinal, institutional and textual sources support a consistent conclusion: in EU economic regulation, structural constraints on companies must be expressly stated in legislation. Where the legislature intends to forbid a business model, it uses explicit wording (as with the EU Currency EMTs). No parallel provision restricts Foreign Currency EMTs or multijurisdictional issuance. Accordingly, once a credit institution or EMI is duly authorised, structuring the issuance of a Foreign Currency EMT on a multijurisdictional basis falls within the domain of private autonomy, subject to provisions of MiCA and other applicable legislation.

4. MICA ACCOMMODATES MULTIJURISDICTIONAL ISSUANCE OF EMTS

MiCA does not merely refrain from prohibiting multijurisdictional issuance of EMTs; its internal structure, cross-referencing technique and prudential architecture presuppose that EMT issuance may occur within broader, potentially global issuance frameworks. This is most clearly demonstrated by MiCA's deliberate cross-reference chain: Art. 54 (EMT reserve requirements) refers directly to Art. 38(1) (eligible reserve assets for ARTs), which itself implements the prudential framework articulated in Rec. 54, a provision drafted specifically for stablecoins marketed both inside the Union and in third countries. The result is a structural incorporation of the ART cross-border prudential logic into the EMT regime.

This cross-reference chain is legally meaningful. Art. 54 could have established a standalone EMT reserve regime. Instead, the legislator chose to incorporate by reference the reserve-composition rules of Art. 38(1), a provision expressly constructed to safeguard Union holders in issuance models that operate simultaneously across jurisdictions. Rec. 54 clarifies the purpose of Art. 38: to ensure that reserve assets reliably back tokens regardless of whether the tokens are marketed within the Union or abroad, and to protect Union holders through a prudential ring-fence. When Art. 38 is imported into Art. 54, the logic of Rec. 54 also follows, because recitals guide the interpretation of the operative provisions they illuminate.

Thus, the EMT reserve regime is not an isolated construct but an incorporated subset of a wider prudential framework designed for cross-border stablecoin issuance and offering. This deliberate drafting technique cannot be dismissed as accidental: an incorporation of substantive rules makes sense only if the legislator understood that the same prudential logic is relevant for EMT issuance models that may likewise span jurisdictions. In the absence of such a possibility, importing a cross-border prudential structure into the EMT regime would be legally incoherent.

The same technique is visible in Art. 55, which imports the recovery and redemption planning provisions of Art. 46–47 (ART regime) "with the necessary adaptations" for EMT issuers. These

[12] WK 4742/2025 COR 1, pp. 2.

ART provisions are built on the same Rec. 54 logic of protecting Union holders irrespective of where tokens circulate or where their backing assets are located. The use of incorporation with adaptation is a standard legislative method for extending a prudential logic beyond the confines of the original category. Its application here shows that the EMT framework was crafted to function within a broader stablecoin architecture that is not geographically confined.

This Level 1 reading is reinforced by Level 2 sources. Commission Delegated Regulation (EU) 2024/906 explicitly clarifies in Rec. 5 that the market capitalisation of a token "on an international scale" includes the same token issued outside the Union, and distinguishes this global figure from the Union-specific market capitalisation under Article 43(1)(b) MiCA, thereby operationally recognising internationally issued, fungible tokens. Likewise, Commission Implementing Regulation (EU) 2024/2902 requires in point 21 of Annex IV of crypto-asset service providers to transmit data enabling issuers to calculate the aggregated value of tokens issued in the Union and the related reserve of assets, expressly acknowledging scenarios in which the same token is also issued outside the EU.

The EBA's final report on the implementing technical standards under Article 22(7) MiCA (EBA/ITS/2024/04) further confirms this architecture in para. 27, noting that issuers must receive information from CASPs on the overall number of tokens held, in light of Rec. 54 and Arts. 36 and 38 MiCA, and stressing that this mechanism is particularly relevant for global, fungible tokens issued both inside and outside the Union. The EBA has reiterated this operational assumption in p. 43 and comment 24 of its final guidelines on supervisory templates under Titles III and IV MiCA (EBA/GL/2024/16), explaining that daily transmission of information to issuers is necessary precisely where tokens are issued on an international scale.

The Commission's 2020 impact assessment accompanying MiCA (SWD/2020/381 final) likewise proceeded in in its section 6.2 on the basis that stablecoins could be issued globally, observing that where such tokens qualify as e-money, the issuer should have at least one branch in the Union with a single competent authority responsible for authorisation and supervision – a structure that presupposes parallel issuance outside the Union rather than its exclusion.

This structural reading is further reinforced by the deliberate distinction MiCA draws between EU Currency EMTs and Foreign Currency EMTs. Where the legislator intended to prohibit or confine issuance models, it did so expressly – most notably through Art. 48(2), which limits the offering of EU Currency EMTs to EU-authorised credit institutions and EMIs, and in Art. 58(3), which refers to the specific limits applicable (only) to Foreign Currency EMTs under Art. 23(1). The legislator did not replicate any comparable territorial or issuer-specific restriction for Foreign Currency EMTs, nor added similar limits to EU Currency EMTs.

This asymmetry matters: it shows that when the legislator sought to prohibit a category of multijurisdictional issuance, it articulated that prohibition explicitly. Their decision not to impose any such limitation in the Foreign Currency EMT regime confirms that multijurisdictional issuance of those tokens remains legally accommodated within MiCA's architecture, under the specific restrictions set for them.

5. CONCLUSION: MULTIJURISDICTIONAL ISSUANCE OF EMTS IS POSSIBLE UNDER MICA

MiCA contains no provision that prohibits multijurisdictional issuance of EMTs, and nothing in its structure implies that EMT models must be confined to a single issuer or a single jurisdiction. On the contrary, MiCA's text, architecture and cross-referencing technique presuppose a regulatory environment in which stablecoin instruments may operate across jurisdictions, backed by prudential safeguards designed to protect Union holders regardless of where the parallel issuance occurs. The only categories for which the legislator explicitly restricted issuance are: i) EU Currency EMTs, which may be offered to EU only if they are issued by EU-authorised credit institutions and EMIs, and ii) the amount of Foreign Currency EMTs that can be issued. The fact that the legislator chose to impose such an explicit restriction for EU Currency EMTs, but not for Foreign Currency EMTs, confirms that when the legislator intends to prohibit a structure, it does so expressly.

The licensing framework confirms this interpretation. MiCA requires that EMTs offered in the Union be issued by an EU-authorised credit institution or EMI. This rule defines who may issue EMTs in the EU; it does not regulate whether another entity outside the Union may issue the same (Foreign Currency) EMT in its own jurisdiction, nor does it imply that such issuance would prevent an EU-authorised issuer from providing its authorised services. MiCA has no extra-territorial effect (apart from EU Currency EMTs). It does not and cannot prohibit a third-country entity from issuing a Foreign Currency EMT outside the Union, just as it cannot regulate how such an entity operates beyond the reach of EU law.

So even if one were to momentarily assume – contrary to the analysis afore – that MiCA somehow prohibits multijurisdictional issuance of EMTs, it immediately becomes unclear who would be prohibited from doing what and on what legal basis. MiCA does not regulate conduct of third-country entities outside the Union, nor does it contain any provision that would forbid an EU-authorised issuer from issuing a Foreign Currency EMT simply because a third-country issuer issues the same token abroad. Equally, nothing in MiCA restricts the technical or economic interoperability of tokens issued by different entities in different jurisdictions, as long as the EU entity issues the token in accordance with MiCA. For a prohibition to exist, it would need to be identifiable in the legal text and addressed to a specific legal subject. Yet no such provision exists. To claim that MiCA nonetheless forbids multijurisdictional issuance would require reading into MiCA a rule along the lines of: "An issuer of an electronic money token may not issue the same electronic money token as an entity established outside the European Union." Without wording of this nature the alleged prohibition has no textual anchor, no identifiable addressee and no operable legal effect. In the absence of such a rule, MiCA cannot be interpreted as forbidding conduct that it does not regulate, does not address, and does not even describe. Under the rule-of-law principle that restrictions on private actors must be explicit, a prohibition that cannot be located in the text cannot be treated as legally binding.

Supervisory concerns raised by the ECB and ESRB do not alter this legal conclusion. Both institutions articulate prudential, financial-stability and strategic-autonomy objections to multijurisdictional structures, but neither identifies a MiCA provision that prohibits them. The

ECB itself explicitly concedes that "a permissive interpretation of MiCAR would allow third-country multi-issuance." Its argument is not that MiCA forbids such issuance, but that it ought to be forbidden for policy reasons.

Under the EU constitutional order, however, supervisory bodies cannot transform policy preferences into binding legal prohibitions. The ECB is not a legislator. It cannot, through interpretation or supervisory practice, convert regulatory silence into a substantive ban. Decisions on the scope of permissible business models under MiCA belong exclusively to the EU legislator, acting through formal legislative instruments. Allowing supervisory authorities to create *de facto* prohibitions to EU entities operating in compliance with EU legislatios would undermine legal certainty, the predictability of the regulatory environment and the separation of powers.

Finally, even though this is not relevant for the discussion whether or not multijurisdictional issuance is possible under MiCA, it has to be pointed out that the suggestion that the legislature "did not anticipate" multijurisdictional models is both factually and legally implausible. Cross-border stablecoin issuance pre-dated MiCA, was the subject of extensive public and regulatory debate and was a significant motivation for introducing the stablecoin chapter of MiCA in the first place. It would be illogical to assume that the legislator – operating in the immediate aftermath of global stablecoin discussions, impact assessments and public consultations – drafted prudential rules referencing cross-border issuance scenarios without understanding that stablecoins are inherently global instruments. Had the legislator intended to prohibit multijurisdictional issuance, it would have said so explicitly, just as it explicitly restricted EU Currency EMT issuance. It did not. The absence of such a prohibition must therefore be given full legal effect.

Supervisory concerns, however legitimate from a prudential-policy perspective, cannot substitute for legislative authority and cannot be invoked to create extra-statutory prohibitions. EMT issuers must comply with all applicable MiCA obligations within the Union, but the decision to structure issuance in parallel with a third-country issuer remains a matter of private autonomy unless and until the legislature amends MiCA to provide otherwise. Accordingly, the only coherent reading of MiCA is that multijurisdictional issuance of EMTs is legally permissible.