

**Blockchain and virtual currencies Working Group reply to the European Commission  
Targeted Consultation on the review of the  
Directive on settlement finality in payment and  
securities settlement systems**

The following are the preliminary comments of the “Blockchain and Virtual Currencies Regulatory Working Group” (BVC WG) on the European Commission Targeted consultation on the review of the Directive on settlement finality in payment and securities settlement systems (SFD), which was published on the 12 February 2021.

The BVC WG supports the European Commission objective, as set out in its Retail Payment Strategy<sup>1</sup>, to extend, in its review, the scope of the SFD to include e-money and payment institutions, subject to appropriate supervision and risk mitigation, in order to ensure a level playing field and provide legal certainty in a cross-border context. The BVC WG shares the Commission’s opinion and concerns.

We would like to stress that the BVC WG follows a strong pro-regulation approach, given that regulation, if appropriate, can increase both the credibility of the virtual currencies (VCs) industry and customer confidence, allowing for a level playing field.

We would like equally to note that in the public consultation on the EU’s retail payments strategy, nearly 43% of respondents thought that direct participation in SFD qualifying systems should be allowed for such entities and at BVC WG we believe such direct participation will increase competition and open access to payment systems across Europe. Furthermore, adding e-money and payment institutions to the list of (direct) SFD participants would open up the possibility to allow their participation in TARGET2; in our view this could reduce credit and liquidity risk arising from settlement in commercial bank money.

We anticipate that this should allow companies such as some of the Members of the BVC WG to grow faster and offer innovative solutions. We would also hope that this will drive greater competition and consumer choice and ultimately better customer outcomes.

We would like now to comment and elaborate on the following aspects of the Consultation Document.

**Question 2.1 Should the list of currently eligible SFD participants be either limited or extended or otherwise modified? Please explain your reasons for each type of participant where relevant.**

No need for modifications

Should be extended

Should be limited. Some participants should no longer be eligible

Should be otherwise modified

Don’t know / no opinion / not relevant

**Question 2.1.1 Please specify how it should be extended:**

We believe that direct participation for e-money and payment institutions should be allowed as

---

<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0592>

dependency on banks, which in some circumstances are competitors, does not aid competition in the market and can lead to inefficiencies. More precisely, we believe that direct access to TARGET 2 for non-banks is very important, as indirect participation implies competition issues and would have non-banks bound to that institution if there were ever to be issues relating to public relations, insolvency, regulatory censure.

In the views of the BVC WG direct access avoids phenomena such as debanking taking place, when a commercial bank decides to cut out a non-bank, it ensures a reduced likelihood of IT failure, as by minimising the number of parties offering technological support, the system is more resilient in providing an even better service and, finally, allows the non-bank customers to leverage the direct access and the operational benefits it passes on, allowing them to focus on their own customer proposition.

We would also like to note that over the past years some of the Member States national competent authorities have recognised that the SFD Directive limits direct and indirect access of e-money institutions and payment service providers to clearing and settlement service providers. Apart from the adaptation of the Directive itself, the elimination of this barrier to competition should also be addressed. In practice an adapted SFD will only truly have an effect if those providers of clearing and settlement services are also obliged to honour those changes. It would be most beneficial to an open and competitive market if providers of such clearing and settlement systems would have the obligation to explicitly disclose, before the new SFD turns into effect, whether or not their services will become available to e-money and payment service providers in an indiscriminatory way. The BVC WG would like to suggest adding an obligation to that effect in the revised SFD Directive, with a content similar to the current Article 36 in the PSD2.

**Question 2.3.1 What is your opinion about *payment institutions* being (potential) participants?**

Should not be direct participants

Should be direct participants (only)

Should only be indirect participants who may be considered direct participants, if that is justified on the grounds of systemic risk

Should be direct participants and indirect participants who may be considered direct participants, if that is justified on the grounds of systemic risk

Other

Don't know / no opinion / not relevant

**Question 2.3.2 What is your opinion about *e-money institutions* being (potential) participants?**

Should not be direct participants

Should be direct participants (only)

Should only be indirect participants who may be considered direct participants, if that is justified on the grounds of systemic risk

Should be direct participants and indirect participants who may be considered direct participants, if that is justified on the grounds of systemic risk

Other

Don't know / no opinion / not relevant

**Question 2.4 Please state your opinion on the following:**

**a) If payment institutions and e-money institutions are added to the list of participants, they should be subject to a specific risk assessment.**

1 - Disagree

2 - Rather not agree

3 - Neutral

4 - Rather agree

5 - Fully agree

Don't know / no opinion / not relevant

**Please provide some comments/explanations on your opinion to proposal 2.4 a)**

The BVC WG would like to share with the European Commission its knowledge about the functioning of the direct participation in payment systems as an e-money institution (EMI) in the UK, with a direct settlement at the Bank of England. We understand that amongst the criteria for direct access to the Bank of England, there is a requirement for completion of an initial enhanced supervisory assessment by the FCA (NCA). There is also a requirement for Non-bank PSPs holding a settlement account at the Bank to be subject to on-going, strengthened supervisory oversight to assess their continuing compliance with the regulatory requirements. We believe this provided the correct balance between opening up access and lowering risk / ensuring system integrity.

We believe that in the UK in the range of 5 - 10 of the larger EMI's have obtained settlement accounts at the central bank and joined schemes direct in the last 3-4 years.

As far as we are aware no adverse settlement issues have occurred due to EMI participation in this time. This we believe is due to:

- a) General requirement for EMI's to hold 100% of client funds safeguarded
- b) Requirement for enhanced supervision of client funds security and processes by NCA
- c) Requirement to hold funds available for settlement at the central bank equivalent to the maximum exposure in any net settlement cycle (this is applicable for all scheme participants)

We believe that it is critical for the success of EMI's direct access to have a method of securing funds that are 100% sufficient for any scheme settlement exposure, but not in excess of this. This is due to the fact that EMI's are generally covering the settlement exposure at the central bank with safeguarded client funds, and typically have high inflows/outflows vs held balances.

**Question 2.6 In case a risk assessment is deemed useful: How often should risks be assessed?**

Annually (and ad hoc when necessary)

Every two years (and ad hoc when necessary)

As defined by a competent authority

Don't know / no opinion / not relevant

**Question 2.6.1 Please elaborate on your answer to question 2.6:**

The BVC WG is fully supportive of measures by the European Commission to open up direct access to TARGET 2 for e-money institutions and payment institutions under the review of the SFD; this would allow in our view to:

1. Increase price competition: access through other financial institutions and their internal costs and mark-ups being added to direct scheme costs disadvantage non-bank Financial Institutions from being able to compete in a price effective manner. This can result in end users paying more if they want to use a different provider for their payments;
2. Allow for product innovation. Direct access allows product innovation that is not subject to oversight of a competitor that may scrutinise and limit business models and products before allowing a non-bank Financial Institution to access through its direct connection;
3. Create more diverse payment arrangements with fewer single points of failure.

**Question 3.1 Do you consider the SFD to be technologically neutral?**

Yes, everything is sufficiently clear no matter the technology used.

No, I do not know how to apply certain concepts or definitions of the SFD for specific technologies which creates legal uncertainty.

Don't know / no opinion / not relevant

The BVC WG would like to note that the SFD is meant to be technologically neutral. Tech neutrality is primarily achieved by referring key requirements (e.g. the moments of entry into the system and irrevocability) to the rules of the SFD system, rather than mandating them in the SFD, itself. This approach, has largely allowed SFD systems to develop as needed, without major legislative change, so far.

The Commission has received input from various stakeholders who argue that some of the SFD's requirements create obstacles to the use of distributed ledger technology (DLT) and crypto-assets. Their main concerns refer to the application of the SFD in a decentralised permission-less DLT and in a context where multilateral as opposed to mainly bilateral relationships prevail. We understand the most important issues for permission-less DLT are that there is no centralised operator, and functions can be attributed simultaneously to several participants, in principle impeding the attribution of clear legal responsibilities.

In this respect, the BVC WG believes that, as the pilot regime on DLT market infrastructures currently being analysed under the legislative procedure does not apply to DLT payment systems, the European Commission may wish to specify and clarify, under the SFD review, certain definitions and concepts in the SFD (e.g. system, transfer order, bookentry, settlement account and agent, conflict of laws, links with other financial market infrastructures), which will ensure they are tech neutral.

**Question 3.2 Do you agree that the concepts of the SFD do not work in a permissionless DLT environment?**

Yes, important concepts of the SFD do not work in a permissionless DLT environment, especially as legal responsibilities might be unclear. It is indeed problematic that there is no centralised operator, unidentified participants can enroll without restriction and functions can be attributed simultaneously to several participants.

No, I do not see any problem to apply the concepts of the SFD in a permissionless DLT environment.

Don't know / no opinion

**Question 3.2.1 Please provide detailed information on your answer to question 3.2:**

The BVC WG would like to note that access to European Central Bank's (ECB) money is necessary for CASPs/VASPs given that banks will not very likely change their behaviour towards the crypto industry and that CASPs' access to TARGET 2 would lower the risk associated with their activities.

While the BVC WG recognizes that banks play a determinant role in all business sectors, the MiCA Regulation is giving banks an important role in the crypto-business ecosystem, too. For instance, **Article 63(3)** says that CASPs shall place any client's funds with a central bank or a credit institution and take all necessary steps to ensure that the clients' funds are held separately and identifiably from the funds belonging to the CASP.

Nevertheless, it is a fact that the serious phenomenon referred to as "de-risking", namely financial institutions restricting access to or withdrawing from providing financial products or services, or servicing a particular customer or category of customers so as to avoid any kind of related risk, is an existing issue that severely affects businesses dealing with cryptocurrencies. In fact, the European

Banking Authority (EBA) collected evidence thereof and launched its consultation entitled “Call for input on ‘de-risking’ and its impact on access to financial services” on 15 June 2020<sup>2</sup>; we would like to inform the European Commission in this respect that the BVC WG replied to that consultation explaining in detail how the industry is experiencing de-risking practices. The majority of our members have been experiencing “de-risking” since their birth, despite the fact that the regulators or Supervisory Authorities (SA) in the European country of their main establishment had licensed them and despite being, then, fully compliant with all the relevant regulations. Some of our BVC WG members have also been experiencing in some Member States, like for example Estonia, national laws requiring CASPs to open a bank account prior to the obtention of their license. In the case of Estonia, the previous law was requesting CASPs to open a bank account after the obtention of their license and banks were already denying them access in that setting. Currently, banks keep denying access to bank accounts for CASPs, and this especially in this new pre-obtention of the license scenario.

Also, banks deciding not to enter into business relationships with stakeholders from our industry or withdrawing existing ones have been registered across several Member States (e.g., France, Denmark, Malta, the Netherlands, etc.). Furthermore, while the fact that the entity in question holds a license and is consequently a licensed entity is the primary review point of the banks, our BVC WG Members have also experienced cases where banks did not request the review of the virtual asset service providers (VASPs)/CASPs risk-related policies and procedures, which would have in our view allowed the banks in question to get comfortable with the level of risk VASPs/CASPs bear, but instead were only reviewing the corporate and ownership structure alone.

We strongly believe that with the advent of MiCA, this phenomenon can no longer be acceptable. The mere fact of holding a license or being an authorized entity under Member States’ national laws has not prevented banks from acting this way so far, which makes the BVC WG fear that having the MiCA Regulation in place would not definitively stop such practices.

Therefore, the BVC WG believes that a proper review of the SFD may bring to an end the de-risking practices on the banks’ side, may direct access to TARGET 2 be granted to VASPs/CASPs.

\* \* \* \* \*

\* \* \* \* \*

\* \* \*

We would be happy to discuss these issues and their implications further as required in the near future. If you need more information on any of the points raised above, please contact Monica Monaco, Secretary General of the BVC WG at [monacom@trusteuaffairs.com](mailto:monacom@trusteuaffairs.com).

---

<sup>2</sup> The EBA Public Consultation is retrievable via the following link: <https://eba.europa.eu/eba-calls-input-understand-impact-de-risking-financial-institutions-and-customers>.

## The Blockchain and Virtual Currencies Working Group

The Working Group is registered in the European Transparency Register under number: [635727423661-17](#) and is a member of the European Commission Payment Systems Market Expert Group (PSMEG). Our main aim is to educate European regulators in shaping regulation that will promote innovation in the blockchain and virtual currencies space, while ensuring the protection of consumers and market players. Members include nearly one representative per type of business which exist in the blockchain and virtual currencies space, such as wallet providers, virtual currencies exchange platforms, virtual currencies payment processors, market makers, virtual currencies wallet providers, as well as companies using the blockchain technology to analyse transactions trails. The following companies are members of the “Blockchain and virtual currencies Working Group” (BVC WG):

Anycoin Direct  
B2C2 Ltd.  
Bitcoin.de  
BitFlyer  
Bitonic  
BitPay  
Bitso  
Bitstamp  
Bitvavo  
CelsiusNetwork  
CEX.io  
Chainalysis  
Coingate  
Coinify  
CryptoProcessing  
Elliptic  
Keyrock  
Koban  
LocalBitcoins  
Scorechain  
Stex

More information on the Blockchain and Virtual Currencies Working Group can be found on our website: <https://www.blockchainwg.eu>