

MODULR reply to the European Commission public Consultation on a retail payments strategy for the EU

The following are the preliminary comments of Modulr FS Europe Limited (MODULR)¹ on the European Commission consultation on a retail payments strategy for the EU, which was published on the 3rd of April 2020. MODULR supports the European Commission objective of enhancing an Internal Market for Payments where the access to and use of payment services functions smoothly across all Member States and is encouraged by European plans to increase competition and open access to payment systems across Europe. We anticipate that this should allow companies such as MODULR 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

As mentioned in the Consultation Document, we at MODULR agree that payments are vital to the economy and to growth, while the smooth functioning of payment systems is paramount to financial stability. Furthermore, we agree with the Commission on the fact that it will be important to avoid outcomes that re-create fragmentation in the Single Market, when a substantial degree of harmonisation has been achieved in the framework of SEPA.

We would like to respond to some of the specific questions addressed in the Consultation Document, with the aim of outlining policy actions which we believe are needed to achieve a well-functioning and competitive European market for payments.

Issues for discussion under the Consultation Document object of this consultation

Question 30. Do you consider the current authorisation and prudential regime for electronic money institutions (including capital requirements and safeguarding of funds) to be adequate?

No.

Question 30.1 Please explain your answer to question 30:

We would like to suggest the introduction at the European level of a standardised authorisation process, as this would attain full harmonisation across Europe while facilitating any cross border activity in Europe for electronic money institutions. We would like to note in this respect that individual Member States currently have authorisation timescales which can vary widely.

Question 30.2 If you do you not consider the current authorisation and prudential regime adequate, what are most relevant factors as to why the prudential regime for electronic money institutions may not be adequate?

¹ Modulr FS Europe Limited (a company incorporated in the Republic of Ireland under Company Number 638002) has applied to become authorised as an EMI by the Central Bank of Ireland (CBI) in the Republic of Ireland (**Modulr EU**).

Please rate each of the following proposals

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
Imbalance between risks and applicable prudential regime	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Difficulties in implementing the prudential requirements due to unclear or ambiguous legal requirements	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Difficulties in implementing the prudential requirements stemming from practical aspects (e.g. difficulties in obtaining an insurance for the safeguarding of users' funds)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

30.2 Please specify what are the other factor(s) make the prudential regime for electronic money institutions not adequate:

MODULR is keen to ensure that in the revision of the prudential regime for electronic money institutions, no measures which would have an adverse effect on customer protection should be taken and would not like to see, for example, safeguarding requirements reduced.

At the same time, under PSD2 and EMD2, the authorisation regimes for the provision of payment services and the issuance of E-money are distinct. However, a number of provisions that apply to payment institutions apply to electronic money institutions mutatis mutandis. Therefore, any European Commission attempt to frame such provisions together in a more aligned manner may, in our view, ensure further legal certainty.

Question 31. Would you consider it useful to further align the regime for payment institutions and electronic money institutions?

Yes.

Question 31.1 Please explain your answer to question 31:

MODULR believes that further alignment between the payment institutions and electronic money institutions regimes could be useful for achieving a more balanced and consistent approach but these regimes should remain separate, as payment institutions and electronic money institutions activities and capital requirements criterion and levels shall stay distinct.

Question 35. Is direct access to all payment systems important for payment institutions and e-money institutions or is indirect participation through a bank sufficient?

Yes, direct participation should be allowed.

Question 35.1 Why do you think direct participation should be allowed?

Dependency on banks, which in some circumstances are competitors, does not aid competition in the market and can lead to inefficiencies discussed below.

Question 35.2 Please specify the other reason(s) why you think direct participation should be allowed:

We believe that direct access to Target 2 for non-banks as well as 3rd party access to SEPA are very important, as indirect participation implies competition issues, while direct access permits the full embedding on non-banks in payment schemes.

Moreover, access via banks brings its own complexities and would have non-banks bound to that institution if there were ever to be issues relating to public relations, insolvency, regulatory censure. We would like to note also that Modulr FS Limited (a company registered in England & Wales under Company Number 09897919), which is an electronic money institution (EMI) authorised by the Financial Conduct Authority (FCA) in the UK, has already been through the direct access process with the Bank of England and is currently dealing with the associated administrative obligations. Such a direct participation entails that Modulr FS Limited is technically connected into the Faster Payments Service (FPS) and holds an account in the Bank of England's Real-Time Gross Settlement (RTGS) system so it can settle directly with other participants. 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.

Question 37. Do you see a need for action at EU level on cross-border payments between the EU and other jurisdictions?

Yes

Question 37.1 Please explain your answer to question 37

In our view more consistent regulations between all jurisdictions and common best practices are needed to ensure a level playing field for all parties involved in cross-border payments. Lack of transparency, loss of information, changing of the original payment instruction, lack of harmonized KYC requirements are the main issues we have been noting in cross-border payments between the EU and other jurisdictions.

We have a direct experience of IBAN discrimination, for example, which we would like to address in this framework. Article 9 of Regulation 260/2012, covers Payment accessibility and explains that

1. A payer making a credit transfer to a payee holding a payment account located within the Union shall not specify the Member State in which that payment account is to be located, provided that the payment account is reachable in accordance with Article 3;
2. A payee accepting a credit transfer or using a direct debit to collect funds from a payer holding a payment account located within the Union shall not specify the Member State in which that payment account is to be located, provided that the payment account is reachable in accordance with Article 3.

We would like to highlight cases as the following:

- A company insisting that for them to pay you must provide an account with an IBAN from the same country
- A company insisting that to pay them by direct debit the account must be in a particular country or IBAN format

While we understand that merchants or employers who do not accept IBANs from other member states are violating Article 9 above, consumers are left to contact their relevant national authority may they ever be affected by IBAN discrimination. In our view, this approach does not function well as consumers are generally not aware of complaint routes via national authorities, or they may be not even aware that this IBAN discrimination is not allowed and that they can complain. Different national authorities can make it easier or more difficult to find information and raise a complaint.

We understand from an answer given by Vice-President Dombrovskis on behalf of the Commission on the 12 July 2018² to a written question from the European Parliament, that the Commission is of the view that legal changes are not required at this stage. We regret this situation and we would urge the Commission to consider again possible actions which could be taken at the European level to avoid IBAN discrimination.

Question 38. Should the Commission play a role (legislative or other) in facilitating cross-border payments between the EU and the rest of the world?

Yes.

Question 40. Taking into account that the industry is developing or implementing solutions to facilitate cross-border payments between the EU and other jurisdictions, to what extent would you support the following actions: Include in SEPA SCT scheme one-leg credit transfers; Wide adoption by the banking industry of cross-border payment trackers such as SWIFT's Global Payments Initiative; Facilitate linkages between instant payment systems between jurisdictions; Support "SEPA-like" experiences at regional level outside the EU and explore possible linkages with SEPA where relevant and feasible; Support and promote the adoption of international standards such as ISO 20022; Other.

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
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² https://www.europarl.europa.eu/doceo/document/E-8-2018-002639-ASW_EN.html

Include in SEPA SCT scheme one-leg credit transfers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>		X	<input type="radio"/>
Wide adoption by the banking industry of cross-border payment trackers such as SWIFT's Global Payments Initiative	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	X	<input type="radio"/>
Facilitate linkages between instant payment systems between jurisdictions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>		X	<input type="radio"/>
Support "SEPA-like" experiences at regional level outside the EU and explore possible linkages with SEPA where relevant and feasible	<input type="radio"/>	<input type="radio"/>	X		<input type="radio"/>	<input type="radio"/>
Support and promote the adoption of international standards such as ISO 20022	<input type="radio"/>	<input type="radio"/>	X	<input type="radio"/>		<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	X	<input type="radio"/>	<input type="radio"/>	

Question 41. Would establishing linkages between instant payments systems in the EU and other jurisdictions: Reduce the cost of cross-border payments between the EU and other jurisdictions? / Increase the costs of cross-border payments between the EU and other jurisdictions? / Have no impact on the costs of cross-border payments between the EU and other jurisdictions? / IDK.

Reduce the cost of cross-border payments between the EU and other jurisdictions.

Question 41.1 Please explain your answer to question 41:

We would like to note that establishing linkages between instant payments systems in the EU and other jurisdictions may reduce cost, as there would be less need for bespoke relationships and different infrastructures. Moreover, such a linkage could, over time, bring: i) efficiency gains, by creating synergies between international and SEPA payments; ii) positive effects in payment claims, fraud and financial crime investigations and AML activities (e.g., using common KYC directories, advanced transaction analytics solutions). We hope that this would lead to faster, more efficient consumer experiences.

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MODULR would be happy to discuss these issues and their implications further in the near future as required. If you need more information on any of the points raised above please contact Richard Buckley at MODULR or Monica Monaco monacom@trusteuaffairs.com.