Blockchain and Virtual Currencies Working Group reply to the European Commission public Consultation on a retail payments strategy for the EU

The following are the preliminary comments of the Blockchain and Virtual Currencies Working Group[1] (WG) on the European Commission Consultation on a retail payments strategy for the EU, which was published on the 3rd of April 2020. WG 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 the payment systems across Europe. We anticipate that this should allow companies such as the WG Members Companies to grow faster and offer even more innovative solutions.

As mentioned in the Consultation Document, we at WG 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:

[1]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" (WG): AnycoinDirect, B2C2, Bitcoin.de, Bitflyer, Bitonic, BitPay, Bitso, Bitstamp, CEX.io, Chainalysis, Coingate, Coinhouse, Coinify, Cryptoprocessing, Elliptic, Ledger, LocalBitcoins, Scorechain, Koban. More information on the Blockchain and Virtual Currencies Working Group can be found on our website: https://www.blockchainwg.eu.

The WG would like to note that the current authorisation and prudential regime for electronic money institutions is not adequate for the time being, and going forward should instead take into account products such as certain types of stablecoins, and should accordingly adjust capital requirements and safeguarding of funds .

A stablecoin is usually a token that is a digital representation of value that is designed to maintain a stable price. It can be attached to a legally established currency, a basket of currencies, or to any other kind of physical or virtual asset. When attached to a legally established currency, a stablecoin can currently fall under national e-money legislation under certain conditions, such as a pre-funded nature or a redeemability option.

Such stablecoins are excluded in the "virtual currencies" definition of the European 5th Anti-Money Laundering Directive (5th AMLD) and the Financial Action Task Force (FATF) definition of "virtual assets". Stablecoins that are not attached to a legally established currency do however fall under these definitions.

Notably, under the current framework, stablecoins can be a way to circumvent EU regulation of virtual currency exchange services, as they allow trades of virtual currencies against fiat values without using a fiat currency. However, these kinds of services do in almost all cases fall under the definition of a custodian wallet provider, so that they still need to be licensed or registered somehow.

As the most commonly used types of stablecoins are not fiat money and are excluded from the 5th AMLD definition of virtual currencies, exchange services that enable the exchange from a virtual currency to a stablecoin can even be out of scope if the exchange from one virtual currency to another virtual currency was to become a regulated activity. What if the exchange of one virtual currency to another virtual currency or a stablecoin, would also be considered as a virtual currency exchange service under 5th AMLD? Then stablecoin would also fall under the 5th AMLD definition of a virtual currency exchange, so that the exchange of ICO tokens can only be offered by entities that are registered or licensed entities under EU law and conduct KYC measures.

In the WG's view, this could be done by simply changing the definition of a virtual currency exchange service in the 5th AMLD from "providers engaged in exchange services between virtual currencies and fiat currencies" to

"providers engaged in exchange services between virtual currencies and fiat currencies, exchange services between virtual currencies and digital representations of fiat currencies or exchange services between virtual currencies and other virtual currencies".

The WG has already shared these views with the European Commission team in charge of putting together a legal framework for Virtual Assets Services Providers.

As for how the current authorisation and prudential regime for electronic money institutions should take into account products such as certain types of stablecoins, and should accordingly adjust capital requirements and safeguarding of funds measures, the WG would like to note that capital requirements and safeguarding of funds measures shall be tailored to the nature of the existent prepaid products, which include also some stablecoins, and more precisely those with a pre-funded nature and a redeemability option. Difficulties in implementing the prudential requirements

stemming from practical aspects, for example the difficulties in obtaining insurance for the safeguarding of users' funds, are also particularly relevant for these types of products.

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?

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	○	○	x	○	○	○
Difficulties in implementing the prudential requirements due to unclear or ambiguous legal requirements	○	○	○	x	○	○
Difficulties in implementing the prudential requirements stemming from practical aspects (e.g. difficulties in obtaining an insurance for the safeguarding of users' funds)	○	○	○	x	○	○
Other	○	○	○	○	○	○

Question 32. Do you see "programmable money" as a promising development to support the needs of the digital economy?

Yes

Question 32.1 If you do see "programmable money" as a promising development to support the needs of the digital economy, how and to what extent, in your views, could EU policies facilitate its safe deployment?

'"Virtual currencies", as defined under the 5th AMLD, are a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is

accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically.

As far as virtual currencies are concerned, Bitcoin can be used to transfer value directly from peer-to-peer without using an intermediary such as common financial services. A Bitcoin can be divided down into eight decimal places, allowing transactions that would otherwise not be economically feasible in terms of operational cost. A service offering to facilitate Bitcoin micropayments for content providers is for example Satoshipay.io: (SatoshiPay Ltd: https://satoshipay.io). The Satoshi Pay example illustrates the ways in which virtual currencies can create market openings for new business models such as for magazines and information workers.

Another example of virtual currencies utility in terms of financial inclusion is Bitwala, a service that allows users to perform a SEPA credit transfer with Bitcoins. Bitwala allows its customers to purchase goods from shops that usually require a bank account or credit card for payment, allowing for financial inclusion of the unbanked. According to their website: "One of our big goals at Bitwala is to make the benefits of Bitcoin accessible to everyone, especially those without a bank account. Transferring money abroad is expensive when you have a bank account, but will cost a fortune when you do not." (http://about.bitwala/bitwala-is-introducing-12-new-currencies/

The value of digital currencies in terms of social inclusion is also acknowledged by the FATF; who have stated that: "Virtual currency may also facilitate micro-payments, allowing businesses to monetise very low-cost goods or services sold on the internet, such as one time game or music downloads". "Virtual currency may also facilitate international remittances and support financial inclusion in other ways, as new virtual currency-based products and services are developed that may potentially serve the under and un-banked.

Most applications which make use of Blockchain technology are in the form of virtual currencies and allow a payment to take place directly between two parties without the need of a trusted intermediary. This comes at the cost of taking the time to obtain virtual currencies and educating oneself on how to perform a payment.

Finally, the WG would like to note that the new product possibilities could be endless, as virtual currencies and Blockchain technology could be used as a payment mechanism and a settlement mechanism; we could for example foresee any of the following uses:

- Social payments: small value consumer payments (e.g. pay-per-click on social media);

- Merchant payments: purchases of goods; faster settlement on Blockchain across border;

- Cross-border payments: lower costs compared to traditional wire or remittance options for cross-border payments, greater visibility to correspondent type payments, high value items which need the speed, efficiency and the transparency of the Blockchain.

As far as **costs** are concerned, the WG would like to highlight that, may the Lightning Network be the standard, the cost of virtual currencies transactions in terms of transaction fees would be much lower than the cost of retail electronic payments and international transfers using traditional currencies. It is important to note, that for transfers of large value amounts, transaction fees of virtual currencies (even for on-chain transactions) are already much lower than the transaction fees

of traditional currencies, because transaction fees of virtual currencies are not based on the amount of value sent, but rather on the transaction size in bytes. Furthermore, while some stakeholders charge users a percentage of the transaction, the revenue model in most cases is based on the fees charged for the conversion from and into fiat currencies between processors, exchange platforms and users, minimizing the costs for each entity in the transaction chain, including (most importantly) for the final user.

What EU policy could do to facilitate the safe deployment of virtual currencies is, in the case that a European licensing regime be in place at a later stage, that this regime should be passportable to allow these entities to access the internal market for payments. We would like to note that any restriction to passporting would result in having the main stakeholders move outside Europe, and in having smaller entities limit their operations and offers to the national level, as such entities may not be able to afford licensing in more than one member state.

Furthermore, as virtual currency firms tend by nature to be cross-border, such a nationally exclusive regime could - by being overly onerous via a multiple registration process - be anti-competitive and in contradiction with the European Commission objective of creating a Single European Payment market.

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The WG 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 Monica Monaco at monacom@trusteuaffairs.com.

Yours faithfully,

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Secretary General, Blockchain and Virtual Currencies Working Group