

**The “Blockchain and Virtual Currencies Regulatory Working Group” reply to the Financial Stability Board Consultative document “Addressing the regulatory, supervisory and oversight challenges raised by “global stablecoin” arrangements (“Stablecoins Consultation”)**

The following are the preliminary comments of the “Blockchain and virtual currencies Regulatory Working Group” (BVC WG) about the Financial Stability Board (FSB) “Stablecoins Consultation”. The BVC WG would be delighted to further elaborate on the various aspects of the Consultation as appropriate.

**Question 1: Do you agree with the analysis of the characteristics of stablecoins that distinguish them from other crypto-assets?**

We understand that the FSB comes to the conclusion that stablecoins can be defined as crypto-assets aiming to maintain a stable value relative to a specified asset, or a pool or basket of assets, with the value of these assets typically determining or affecting the market value of stablecoins themselves. Moreover, the FSB asserts that the presence of a stabilisation mechanism (either asset-linked or algorithmic) and the combination of multiple functions and activities typically provided by stablecoin arrangements, namely (i) issuance, redemption and stabilisation of the value of the coins, (ii) transfer of coins and (iii) interaction with coin users for storing and exchanging coins, may distinguish stablecoins from other crypto-assets.

The additional difference between stablecoins and global stablecoins (GSCs) has been voluntarily excluded from the scope of this answer, given that question one above does not refer to it.

We would like to note that 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.

The BVC WG shares the FSB’s view with regard to the risk of regulatory arbitrage caused by differentiated regulatory, supervisory and oversight arrangements across jurisdictions. Furthermore, loopholes can foster the misuse of stablecoins, paving the way for frauds and regulatory circumvention, potentially leading to money laundering (ML) and terrorist financing (TF).

By way of example, when attached to a legally established currency, stablecoins can fall under national e-money legislation under certain conditions (as mentioned above). Such stablecoins are excluded from the ‘*virtual currencies*’ definition as outlined in the European 5th Anti-Money Laundering Directive (5th AMLD)<sup>1</sup>. Stablecoins that are not attached to a legally established currency do however fall under these definitions. Therefore, stablecoins can be used as a way to circumvent the EU regulation of virtual currency exchange services because they allow trades of virtual currencies against fiat values without using a fiat currency.

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<sup>1</sup> Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU.

Hence, the BVC WG aims to have stablecoins broadly, consistently and appropriately regulated, in order to avoid loopholes and prevent regulatory arbitrage. Furthermore, this position is perfectly in line with the ‘pro-regulation’ nature of the BVC WG.

Moreover, we believe that an excessive classification of stablecoins by type might be counterproductive and redundant. For instance, marking a clear line between utility and investment tokens is senseless: as long as the utility token is transferable and has some kind of value, it could also be used as an investment or payment token. To this end, in its exchanges with several national supervisory authorities (NSAs) across Europe, the BVC WG has shared, *inter alia*, the Danish Financial Supervisory Authority’s (FSA) approach towards stablecoins. The Danish FSA treats stablecoins as it treats virtual currencies and have them falling under the same definition, with the only difference that stablecoins can be similar to e-money under certain circumstances.

Consequently, while the BVC WG, on the one hand, is definitely inclined towards having stablecoins regulated and included in the scope of the legislation regarding virtual assets (*i.e.* within the future 6<sup>th</sup> AML Directive or 1<sup>st</sup> AML Regulation), on the other hand, we believe it is necessary to avoid any disproportionate regulation which would unavoidably lead to fragmentation in the market, redundancy and regulatory arbitrage across worldwide jurisdictions.

The BVC WG supports stablecoins to be legally treated as virtual currencies, should not they be considered as e-money.

**Question 6: Do you agree with the analysis of the vulnerabilities arising from various stablecoin functions and activities (see Annex 2)? What, if any, amendments or alterations would you propose?**

We understand that the FSB comes to the conclusion that many risks may arise from the use of stablecoins. More precisely, the FSB stresses the potential high risk related to financial stability with special regard to Global Stablecoins (GSCs), whereas the same risk is contained in relation to ‘normal’ stablecoins due to the small-scale phenomenon they currently represent.

As regards GSCs and, especially, Facebook’s Libra, the BVC WG shares the FSB’s concerns of a systemic risk linked to financial stability due to the amount of potential reachable customers and the embedded consequent lack of transparency. Because of Libra’s peculiarity and incalculable extent, it is clear that such an arrangement could potentially lead to unexpected consequences.

Instead, as mentioned above, the same systemic risk cannot be posed by ‘normal’ stablecoins. Such prospective disruptions causing financial instability cannot be considered neither an actual nor a foreseeable risk. Nevertheless, the only risk currently posed by stablecoins is connected to the fact that, in Europe, they do not fall under the scope of the 5<sup>th</sup> European Anti-Money Laundering

Directive (5<sup>th</sup> AMLD)<sup>2</sup> and, therefore, they can be easily exploited for money laundering and terrorist financing (ML/TF) purposes. For instance, fundamental AML activities, such as KYC, do not currently apply to stablecoins-related services.

The 5<sup>th</sup> AMLD only covers the “*exchange services between virtual currencies and fiat currencies*”. Hence, under the current framework, the EU regulation of virtual currency exchange services can be deceived by the use of stablecoins because they allow trades of virtual currencies against fiat value without using a fiat currency. To this end, it is useful to remind that 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 fall under national e-money legislation under certain conditions, such as a pre-funded nature or a redeemability option. When attached to a legally established currency, such stablecoins are excluded in the ‘*virtual currencies*’ definition of the European 5th Anti-Money Laundering Directive (5th AMLD). Stablecoins that are not attached to a legally established currency do however fall under these definitions.

As the most commonly used types of stablecoins are excluded from the 5th AMLD definition of virtual currencies, exchange services that enable the exchange between virtual currencies and stablecoins can be out of scope of the 5<sup>th</sup> AMLD. On 7 May 2020, the European Commission launched an Action Plan for a comprehensive Union policy on preventing ML/TF and a parallel public consultation<sup>3</sup> built on six pillars to be delivered, through a legislative initiative, by early 2021. In its exchanges of views with the Commission, the BVC WG has understood that it is still not clear whether this new initiative will result in a new AML Directive (*i.e.* 6<sup>th</sup> AMLD) or in a Regulation (*i.e.* 1<sup>st</sup> AMLR), in which case the aim of the regulator would also include the will to address the lack of harmonization across the EU thanks to a Regulation direct applicability in each Member State.

Including stablecoins within the new European Commission’s legislative initiative, should it be 6<sup>th</sup> AMLD or 1<sup>st</sup> AMLR, would be in our view the only way to address the current ML/TF risk posed by stablecoins. This could be done by simply changing the definition of a virtual currency exchange service in the 5<sup>th</sup> 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*”.

Consequently, the BVC WG would like to stress once more that the only way to efficiently mitigate the sole present risk - namely money laundering and terrorist financing risks- currently posed by stablecoins, is to thoroughly regulate them by including them under the scope of the 6<sup>th</sup> AMLD or

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<sup>2</sup> Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU.

<sup>3</sup>The information is retrievable through the following link: [https://ec.europa.eu/info/publications/200507-anti-money-laundering-terrorist-financing-action-plan\\_en#:~:text=Search-Action%20plan%20for%20a%20comprehensive%20Union%20policy,money%20laundering%20and%20terrorism%20financing&text=On%207%20May%202020%2C%20the,money%20laundering%20and%20terrorism%20financing.&text=The%20Commission%20intends%20to%20deliver%20on%20all%20these%20actions%20by%20early%202021](https://ec.europa.eu/info/publications/200507-anti-money-laundering-terrorist-financing-action-plan_en#:~:text=Search-Action%20plan%20for%20a%20comprehensive%20Union%20policy,money%20laundering%20and%20terrorism%20financing&text=On%207%20May%202020%2C%20the,money%20laundering%20and%20terrorism%20financing.&text=The%20Commission%20intends%20to%20deliver%20on%20all%20these%20actions%20by%20early%202021).

1<sup>st</sup> AMLR, simply by extending the definition of a virtual currency exchange service as previously explained.

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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@trasteuaffairs.com](mailto:monacom@trasteuaffairs.com).

## **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):

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>.