

IBFed Letter to the FSB

London, 9th of September 2024

Dear Sir, Madam,

IBFed, in collaboration with EY¹, wishes to thank the FSB for the opportunity to respond to its consultation on regulating and supervising bank and non-bank payment service providers offering cross-border payment services.

The cross-border payments industry, projected to reach over \$250 trillion in value by 2027², is on the brink of radical transformation. This evolution is not just imminent but essential – driven by the global economy's demand for transactions that are not only swift, transparent, and secure, but also aligned with the broader vision of a seamlessly connected, technologically advanced and inclusive digital economy. In this context, the FSB's role becomes increasingly significant. As the industry grapples with the integration of diverse payment mechanisms such as mobile money, emerging digital currencies, and CBDCs, the FSB's ability to establish clear, standardized definitions and frameworks is vital. We believe that it is important that the FSB leverages the work of the payments industry in various regions, bringing value in addition to existing initiatives and fostering convergence in an already fragmented landscape.

In our response, we highlight 3 points:

- A. The role of the FSB in defining the key components of the payment ecosystem and standardizing money definitions and classifications.** The FSB should devise a clear taxonomy that distinguishes between different types of money, including mobile money, digital money, fiat money (including electronic money), central bank money, crypto-currencies, and crypto assets — and outlines the functions of various payment industry players. This classification should elucidate the roles and risks associated with entities such as banks, payment processors, and mobile payment service providers in cross-border transactions. By standardizing these definitions and including emerging forms of money like CBDCs, the FSB can ensure clarity and consistency in the payment landscape to maintain a level playing field, while also ensuring that all new forms of digital money are covered.
- B. "Same activity, same risk, same regulation and supervision".** This principle promotes a level playing field by advocating for a regulatory framework based on the nature of payment activities and their associated risks, rather than the type of entity performing them. It calls for a consistent approach to regulatory obligations for all players in the payment ecosystem, including an expanded and inclusive definition of 'non-banks' to capture the full spectrum of participants.
- C. The importance of adaptability and inclusivity in local regulatory frameworks.** Recommendations need to be adaptable to changes in the payment sector and inclusive of the diverse range of PSPs. The FSB should also ensure that the development of regulations is based on a wide array of industry input, supporting a market environment that encourages innovation and competition while safeguarding financial integrity and ensuring consumer protection regardless of which entities are involved in a given transaction.

Please see below for the detailed responses to the questions outlined in the consultation paper:

¹ EY Payment practices in the UK and the Netherlands

² [Cross-border payments | Bank of England](#)

1. Do the definitions contained in the report provide sufficient clarity and establish the common understanding necessary to facilitate the practical implementation of recommendations proposed in this report?

The FSB should expand the definition of payments in the report to include Central Bank Digital Currencies (CBDCs) as regulated future fiat currencies, as is already foreseen in the draft EU Payment Services Regulation. Given the increasing relevance of CBDCs and their coverage in other FSB papers, it is important for the report to reflect this evolving landscape.

Also, the report should provide a definition for non-CBDC cryptocurrencies and other crypto assets but clarify that they are not recognized as fiat money and so excluded as part of these recommendations. This distinction will ensure that the definitions provide sufficient clarity and establish a common understanding necessary for the practical implementation of the recommendations.

2. What adjustments are required to the draft definitions to improve clarity?

The FSB should provide a precise and comprehensive definition of 'competent authority' as mentioned in *Section 4, recommendation 1*, within the report. This definition should encompass the various forms that such authorities may take across different jurisdictions, including central banks, financial regulators, and other supervisory bodies responsible for overseeing different aspects of payment services. A well-defined term for 'competent authority' will enhance stakeholder engagement by ensuring that all parties clearly understand their roles and responsibilities, leading to more effective feedback and participation in the consultation process. Additionally, where multiple competent authorities are involved, the FSB should stress they should work closely together.

We encourage the FSB to refine the definition of "correspondent banking" as mentioned in *Chapter 1.1* to acknowledge the globally secured infrastructure underpinning it, including accounts and RTGS connections, to accurately reflect its operational reality.

3. What other terms should be defined in this section?

We suggest outlining a standard set of payment functions that are now typically conducted by new participants in the payments ecosystem to recognize the increasing specialization of functions.

The FSB should clarify the term "mobile payments" as mentioned in *Chapter 1, introduction*, within the scope of "cross-border operating market domains" and further to key point 1 in this response, the FSB should differentiate between "mobile wallet" and "mobile money" to promote a globally consistent definition of mobile payment modalities. We also recommend the consideration of the diverse concepts of money, particularly in the context of mobile money in some jurisdictions, and define money in a forward-looking and inclusive manner, possibly through illustrative examples.

The FSB should provide a clear and precise definition of 'licensing' as mentioned in *Section 4, recommendation 5*, within the context of the report, addressing whether it pertains to the regulation and supervision of entities or specifically to the license to offer cross-border payments. Clarification is essential as interpretations of licensing can vary significantly by country.

4. Does the explanation regarding the scope of the report provide sufficient clarity to promote the intended understanding of the recommendations?

The FSB should provide more specific clarification on the scope of the report, particularly whether it is intended to focus exclusively on retail payments or if it also encompasses wholesale payments as it is only mentioned in the definition of Payment System. For retail payments, there should be a harmonized definition to reconcile the varying interpretations to ensure consistent understanding between stakeholders. For wholesale, the risks associated with wholesale payments in addition to retail payments could be a valuable addition.

Further to this, the FSB should acknowledge the increasing convergence of retail and wholesale payment segments and consider the implications of this trend in their recommendations, so that the report reflects the evolving nature of the payments landscape to ensure the recommendations remain relevant and effective.

The FSB should clearly define the terms 'payee' and 'payer' as mentioned in the definition of Payments, within the context of the report and specify whether the recommendations are intended to include all segments of retail payments. Clear definitions will promote a better understanding of the roles and responsibilities of each party in cross-border transactions.

The FSB should ensure that disparities in responsibility and risk between banks and non-banks are eliminated, and "who is providing the service to whom" is clearly defined. This should address the distinct models where either banks are the sole participants (e.g. Lynx), or where "others" can participate (e.g. FPS). This could be updated in the definition of Payment Service Provider.

5. Do the descriptions of the roles of banks and non-banks in providing cross-border payment services adequately reflect current practices?

We advise the FSB to expand the categorization of "non-banks", as mentioned in *Chapter 1.2*, to encompass a broader range of entities such as network operators and processors, electronic money institutions, payment market infrastructures and payment institutions to reflect the diversity of players in the payment ecosystem.

The description of challenges faced by PSPs, especially those processing higher-risk remittance payments, focuses on the lower levels of supervision of non-bank PSPs compared to banks. We recommend that the FSB addresses the regulatory and supervisory inconsistencies highlighted in *Chapter 1.3. "Impacts of regulatory and supervisory inconsistencies"* from both bank and non-bank PSP perspectives.

In light of the compliance costs borne by banks due to the risks associated with high-risk PSPs, we advocate for a resolution to the regulatory and supervisory inconsistencies between banks and non-bank PSPs. This would ensure that non-bank PSPs bear appropriate and equitable compliance costs for providing safe and transparent financial services, fostering fair competition and safeguarding the integrity of the payment system.

6. What additional risks or frictions, within the scope of this report, are created by potential inconsistencies in the legal, regulatory and supervisory frameworks applicable to banks and non-banks in their provision of cross-border payment services?

The FSB should advocate for a level regulatory and supervisory playing field for all entities engaged in cross-border payment services. This would ensure that costs associated with AML/KYC and sanctions controls are equitable and that consumer protection is consistent across both banks and non-banks. This should be explicitly added in Recommendation 3. Regulations should be harmonized such that the same activity and associated risks are subject to the same rules, regardless of whether a bank or a non-bank is providing the service, adopting the principle of "same activity, same risk, same rules". This approach would protect consumers and ensure fair competition among all payment service providers. A harmonized regulatory framework would address the potential for regulatory arbitrage by preventing non-bank PSPs from exploiting jurisdictional differences for competitive advantage. Additionally, it should seek to reduce the cost and complexity of compliance for all participants, facilitating smoother payment processing and encouraging innovation within the payment system. This should be added as objective in Recommendation 4.

The FSB should recommend that regulations apply to entities both within and outside regulated jurisdictions to prevent frictions that arise when a service is provided by an unregulated entity in one jurisdiction and received by a regulated entity in another.

The FSB should recognize that inconsistencies in domestic regulatory requirements can lead to cross-border payment rejections. A more unified approach to regulation could mitigate such operational challenges within the payment system.

7. Do the identified principles provide sufficient support and appropriately frame boundaries for the recommendations in the report?

The FSB should ensure that the principles support proportionality, recognizing that cross-border payments constitute a small percentage of total payments. New rules should not disproportionately burden this segment of the payment industry.

The FSB should emphasize the importance of licensing and its implications within the principles. It should be ensured that all actors engaging in activities equivalent to those of banks are subject to the same rules and oversight, promoting a level playing field. This could complete *Section 4, recommendation 5*. A non-discrimination principle should be added to the existing regulatory framework, ensuring consistent regulations across Know Your Customer (KYC) and Customer Due Diligence (CDD) processes for all participants. This principle should apply equally to every segment of both bank and non-bank providers, as well as to all participants, whether they are indirect or direct. The goal is to foster a fair and level playing field in the financial ecosystem, preventing any form of bias that could undermine the integrity of the payment system.

8. Are the recommendations sufficiently granular, actionable, and flexible to mitigate and reduce frictions while accommodating differences in national legal and regulatory frameworks and supporting the application of proportionality?

The FSB could more explicitly recognize the diversity of national legal and regulatory frameworks and ensure that the recommendations are sufficiently flexible to be effectively applied in different national contexts, for example, there are different numbers of authorities in different geographical regions (such as Federal, Provincial and Territorial in Canada, but one authority in South Africa). Feedback from various jurisdictions should be sought to refine the recommendations and address potential inconsistencies. This could complement *Paragraph 4 of the introduction*.

The FSB should expand the recommendations to address information sharing among private institutions. Facilitating data sharing can significantly benefit regulated entities, especially in areas such as fraud prevention. In addition, information sharing is valuable to regulated entities from an AML perspective to support the flagging of bad actors and improve reporting to domestic authorities. This could be added to *Section 4, Recommendation 6*. It is important to note that information sharing needs to be tailored to accommodate jurisdictional privacy laws.

The FSB should ensure that the recommendations do not overcomplicate the customer journey in cross-border payments. Keeping processes simple and focused on the customer experience should be a guiding principle. This could be added as objective in Recommendation 3.

The recommendations might more explicitly include provisions that encourage innovation and the adoption of new technologies within the payments space. This could involve the creation of regulatory sandboxes to allow payment service providers to test new products and services in a controlled environment, which would foster innovation while ensuring consumer protection and regulatory compliance. This could be added as objective in Recommendation 3.

The FSB should recommend that the amendments to the European payment services law maintain a balanced approach to bank liability, ensuring that banks are not held accountable for customer misconduct. This balance is crucial to prevent unilateral and excessive liability that could create perverse incentives and inadvertently increase fraud cases. By advocating for this equilibrium, the FSB will support the dual objectives of combating fraud and enhancing consumer rights without imposing undue burdens on financial institutions. This could complement the *section on the EU in Annex 2*.

9. To what extent would the recommendations improve the quality and consistency of regulation and supervision of non-bank payment service providers (PSPs) active in cross-border payments services?

The FSB should continue to support the approach of treating banks and non-banks equally in terms of consumer experience and protection. However, it is important to consider the differing scopes of activities between banks and non-banks to avoid stifling innovation and competition, particularly for smaller PSPs that may face challenges meeting the same compliance requirements as larger banks.

The FSB should involve a broad range of industry participants, including non-bank PSPs, in the development and refinement of regulations. This inclusive approach will help ensure that the recommendations reflect the practical realities faced by PSPs and are informed by a diverse set of industry experiences and perspectives.

10. For the purpose of identifying material areas to be addressed from a priority and effectiveness perspective, should the report categorize the identified frictions created by inconsistencies in the legal, regulatory and supervisory frameworks applicable to banks and non-banks in their provision of cross-border payments services in terms of focus or order in which they should be addressed?

The FSB should prioritize addressing frictions related to banks in *Chapter 2 “Cross Border Payment Frictions and Risks”*, as resolving these issues could have the greatest impact on creating a level playing field. Regulatory adjustments in the banking sector often set the precedent for the broader financial ecosystem, and therefore, should be the initial focus.

Non-bank entities that provide services similar to banks should be subject to equivalent levels of supervision, which is proportionate to the activities they perform. This approach ensures service quality and maintains trust in the financial system, regardless of the type of institution providing the service.

11. Recommendation 5 focuses on domestic licensing. How and to what extent would licensing recognition regimes between jurisdictions support the goal of strengthening consistency in the regulation and supervision of banks and non-banks in their provision of cross-border payment services? What risks need to be considered?

The FSB should encourage the development of licensing recognition regimes between jurisdictions that support the goal of regulatory consistency for banks and non-banks providing cross-border payment services. This would involve recognizing and treating as equivalent the licensing requirements and regulatory standards across different countries. This could complete *Section 4, recommendation 5*.

Additionally, the FSB should welcome and support efforts to ensure that there is consistency across licensing requirements for cross-border payment services. This includes working towards harmonization of the different recommendations to facilitate their implementation and to promote equivalence in regulatory standards.

12. There are no comprehensive international standards for the regulation, supervision and oversight of non-bank PSPs and the cross-border payment services that they offer. Is there a need for such international standards?

The FSB should compile and analyze a collection of regulatory practices from different countries addressing the regulation and supervision of non-bank PSPs. This compilation should not necessarily label practices as "best" but should serve as a reference to understand the variety of approaches taken globally.

The FSB should initiate the creation of a global list of activities that are subject to regulation for cross-border payment services. This list would serve as a foundation for determining which activities require licensing and should be regulated internationally.

The FSB should encourage each country to publish a list of licensed non-bank PSPs. This transparency would facilitate the recognition of licensed entities across borders and contribute to a more secure and trustworthy payment ecosystem.

13. What, if any, additional issues relevant to consistency in the regulation and supervision of banks and non-banks in their provision of cross-border payment services should be considered in the report?

The FSB should consider the cost-benefit balance of regulatory controls for banks and non-banks. This is mentioned in *Chapter 1.3*. It is important to consider the equivalence and costliness of controls to ensure that regulatory requirements are proportionate and do not disproportionately burden any set of institutions.

We thank you in advance for considering our comments and would be pleased to discuss our letter in greater detail at your convenience should you have any questions.

Yours sincerely,

A handwritten signature in purple ink, consisting of a large, stylized initial 'H' followed by a long, horizontal stroke that tapers to a point on the right.

Hedwige Nuyens
Managing Director IBFed