European Central Bank
Sonnemannstrasse 20
60314 Frankfurt am Main
Germany

26 September 2024

Dear President Lagarde,
Dear Mr. Cipollone,
Dear Mr. Bindseil,

Re: Eurosystem Policy on access by non-bank payment service providers to central bank-operated payment systems and to central bank accounts

We, the trade associations listed below, are writing to express our concern over some parts of the Eurosystem "Policy on access by non-bank PSP to central bank-operated payment systems and to central bank accounts" published in July 2024 ("**the Policy**"). We are specifically concerned by the refusal to allow non-bank PSPs ("**NBPSP**s") the facility to safeguard funds with Eurosystem central banks. We are further concerned by the corollary provision for funds held solely for settlement purposes, not to qualify as safeguarded funds, when held by central banks.

The two issues are distinct but together give rise to a range of concerns that include: (i) promoting greater dependence on accounts offered by competing private banks, at a time of scarcity of access to such services (especially for small fintechs), (ii) increasing the costs of direct participation in payment systems, by requiring funding for additional safeguarded funds, and (iii) a consequent deterrence to direct participation in payment systems.

The Policy comes at a time when legislators - seeking greater competition in the financial services market - have introduced conditional provisions for central bank safeguarding services in the recently adopted Instant Payments Regulation ("**IPR**")[1] and in the forthcoming revised Payment Services Directive[2] ("**PSD3**"), suggesting that central banks exercise discretion in this regard. The Policy risks sending a pre-emptive signal to both Eurosystem and other EU Central Banks that such discretion should only be exercised in the negative. If set as a general policy binding all Eurosystem central banks, it would run counter to the wording and intention of Article

[1] Regulation (EU) 2024/886 of the European Parliament and of the Council of 13 March 2024, amending Regulations (EU) No 260/2012 and (EU) 2021/1230 and Directives 98/26/EC and (EU) 2015/2366 as regards instant credit transfers in euro.

[2] See Article 9(1) of European Commission "Proposal for a Directive of the European Parliament and of the Council on a payment services and electronic money services in the Internal Market amending Directive 98/26/EC and repealing Directives 2015/2366/EU and 2009/110/EC" (COM (2023)366 final).

10(1) of PSD2[3] / Article 9(1) draft PSD3. This would effectively remove the newly introduced option for NBPSPs to safeguard funds at a central bank. The discretion conferred explicitly to individual central banks - under these PSD2/3 Articles - would not then be exercisable, since Eurosystem central banks would be bound by the policy and would have to reject safeguarding requests without consideration of the national merit of such provisions. Further details are set out in the paragraphs below.

Section 4 of the Policy informs the rationale for the decision, and we have provided comments on these matters in the paragraphs below. The ECB's objective of supporting the EU's general economic policies[4] may be achieved through a more nuanced proposition, perhaps by adopting a calibrated approach to the offering of safeguarding facilities to NBPSPs.

A final matter that merits discussion and one which is alluded to in the Policy, that of "*conflating e-money and other forms of money, including central bank money in the minds of the public thereby distorting perception of risk*". This argument could also be balanced by another, that of the potential competitive impact of central bank issued digital currencies ("**CBDC**") on the market for private e-money, and other commercial money products. CBDCs status as legal tender, as well as the absence of market and credit risk will likely lead to the displacement and substitution of private products with CBDCs. For e-money at least, which is intended to be a private 'surrogate for coins and banknotes', the extension of safeguarding with central banks may go some way to mitigate this imbalance.

1. Legislative developments and policy alignment

The IPR as well as the draft PSD3 propose similar languages[5], allowing NBPSPs to safeguard funds with Central Banks, at the discretion of those Central Banks. This legislative approach - by providing NBPSPs with the possibility to access to the same secure payments infrastructure traditionally reserved for banks - is designed to foster a more competitive and secure payment services environment, and to facilitate the uptake of instant credit transfers.

The discretion of the central banks in deciding whether to offer safeguarding accounts to NBPSPs is an integral part of the provision; yet the ECB and Eurosystem are *de facto* taking an EU wide policy decision for 20 Member States, and sending a clear signal to other EU central banks that this is an undesirable outcome.

The Policy sets out the objections at section 4 as follows:

[3] As amended by Article 3 of the IPR.
[4] Article 127 of the Treaty on the Functioning of the European Union.
[5] Draft Article 9(1) of PSD3 provides for funds to be deposited: "…*either in a separate account in a credit institution authorised in a Member State, or at a central bank at the discretion of that central bank*;"

- It is not the function of the central bank to act as a substitute for credit institutions in providing safeguarding services,
- De-risking has been addressed by enhanced legislative proposals at Article 32 of the draft PSR[6],
- There is a potential impact on the safety and soundness of the financial system, in the following way:
    - Funds held in exchange for e-money and for payment services by Electronic Money Institutions ("**EMIs**") and Payment Institutions ("**PIs**") do not qualify as deposits, nor benefit from the deposit guarantee scheme; they do not therefore benefit from the same level of protection, and this needs to be made clear,
    - Holding funds at the central banks could be turned into a selling proposition for EMIs and PIs,
    - If all safeguarded funds in relation to an e-money product were held at the central bank, the product could be regarded as a synthetic CBDC, presented as such, potentially misleading the market,
    - This could attract depositors looking for a safe haven, especially during periods of market uncertainty or volatility, crowding out bank deposits,
    - This could undermine the lending activity of credit institutions,
    - It also blurs the distinction between private and central bank money.

We believe the central banks can provide banking services to both the banking sector and the payments sector in equal measure; this should not be an exclusive service to credit institutions, nor does it have to be the sole means of safeguarding for EMIs and PIs. This would provide a means of safeguarding funds, whilst benefiting from the reduced risk, and without having to make commercial disclosures to entities with whom EMIs and PIs are competing directly.

Access to Central bank safeguarding can also go some way to mitigate market and credit risk. The value of this was recently demonstrated in the recent collapse of Silicon Valley Bank and its branch in the UK. This had systemic consequences and required central bank intervention to address the risk to an entire class of electronic money and payment institutions based in the UK.

As to the objection to address de-risking, we note that de-risking related provisions have been in place since the implementation of PSD2 in 2017, but have had little if any impact; it is unclear if the new (draft) provisions - which fall short of making access to bank accounts a right for any authorised PSP - will provide an effective remedy. This is additionally uncertain given that

[6] European Commission "Proposal for a Regulation of the European Parliament and of the Council on payment services in the internal market and amending Regulation (EU) No 1093/2010" (COM (2023)367 final).

negotiations on the PSR draft are ongoing, the text may change, and even if retained, its application is unlikely to commence before the end of 2025, at the earliest.

This issue warrants swift resolution, and policy that seeks to promote a more equal treatment of all payment service providers. In this respect the Bank of Lithuania - provided much needed respite for many authorised EMIs and PIs in this respect.

The safety and soundness of the financial system are key to the Policy, but we believe a calibrated approach to offering safeguarding facilities would mitigate much of the risk. **The flight of funds to EMIs and PIs could be addressed by restricting the percentage of safeguarded funds that can be held with central banks for example, in a manner that is not unlike the restrictions on balances that are being adopted for the digital euro.**

Holding some part of safeguarded funds at central banks would also provide some mitigation to the failure of banks that may hold safeguarded funds for EMIs and PIs. This would be a helpful measure that would contribute to the safety and soundness of the financial system.

This may also address the synthetic CBDC concern, and could **reinforce confidence in the payment system**, given that there will be a mix of safeguarding strategies that include central bank assets.

The distinctions between private money and central bank issued money will need to be elaborated in any event, upon the issuance of the digital euro. Allowing some safeguarding to take place with central banks will be comparable to credit institutions holding some of their balance sheet at the central bank. This approach should also apply to issuers of EMTs, as e-money issuers, and in accordance with the provisions of Article 70 of MiCAR.

We urge the Eurosystem/ECB to examine the merits of this submission and to consider an allowance for safeguarding a proportion of EMI and PI funds with central banks.

2. Participation in designated payment systems

Enabling direct NBPSP access to payment systems designated under the Settlement Finality Directive ("**SFD**")[7] is an important and welcome step in fostering competition. We understood the Eurosystem welcomed this development, not least as it enables direct participation by NBPSPs in a potential digital euro system.

[7] Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems.

The proposal to restrict the balance that can be held in settlement accounts, to an amount which is required to meet scheme obligations is understood.

However, excluding safeguarded status for such balances is at odds with encouraging direct participation, and - as a policy - it fails to provide desirable mitigation of the risks to the safety and soundness of the financial system. The risks outlined in section 4 of the Policy - which are commented on in paragraph 1 above - do not apply. There are no capital flight risks, no consumer confusion, and no de-risking related concerns..

The sole objective for regarding such funds as safeguarded is to be able to use safeguarded funds when making transfers to settlement accounts. Funds that are not yet paid out - which are still in a PI/EMI's account - have to be safeguarded; so, if funds in central bank accounts cannot be regarded as safeguarded, then EMIs and PIs must find other funds of an equivalent amount of money, which must be deposited in a safeguarding account with a credit institution pending settlement.

This cost will act as a premium on direct participation that only EMIs and PIs will have to pay, and which will not be borne by credit institutions undertaking the same activity. Given the current cost of capital, this is likely to result in an immediate withdrawal from any such proposed participation. The cost of capital is likely to exceed the revenue generated by payment services , thus **undermining the value of direct participation for NBPSPs wishing to make use of this functionality.**

We urge the Eurosystem/ECB to reconsider its position on the status of funds in settlement accounts as a matter of urgency.

3. Some immediate concerns

The practical implications of the Policy are significant and immediate. As of December 2023, there were 122 NBPSPs benefiting from CENTROlink System arrangements, and who also operated through accounts held with the Bank of Lithuania.

These NBPSPs are likely to need to find alternative banking arrangements in a relatively short period of time, potentially disrupting business and putting users' payment services at risk.

Separately, those utilising CENTROlink for payment processing, will need even more time to find a suitable partner, and potentially integrate with their system, to be able to offer services over the SEPA payment schemes.

We urge the Eurosystem/ECB to take account of these operational difficulties for NBPSPs and to provide for a significantly longer period for transition.

4. Conclusion

In summary, the NBPSPs key concerns outline above are:

- The Eurosystem Policy rightfully seeks to safeguard the safety and soundness of the financial system. It concluded that extending safeguarding facilities to EMIs and PIs risked compromising this objective. **We urge the Eurosystem to consider a calibrated approach allowing some safeguarding to take place, applying suitable restrictions, in a similar manner to that utilised for the digital euro**. This could provide benefits for the payment system and its users.
- Excluding safeguarded status for settlement funds has the potential to make **direct participation in SEPA, a future digital Euro, and other designated payment systems, economically unworkabl**e.
- EMIs and PIs, currently benefiting from safeguarding and payment processing services offered by the Bank of Lithuania, will need significantly more time to find alternative services. **9 months is not a realistic timeframe for finding service providers, contracting, integrating, testing and going live. We suggest 18-24 months as a minimum.**

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We remain committed to working collaboratively and acknowledge the Eurosystem/ECB's role in meeting its monetary policy and financial stability objectives. We hope this can be achieved whilst balancing the interests of all payment services providers and maintaining effective competition in the financial services marketplace.

Yours sincerely,

Representatives of the:

Electronic Money Association **(EMA)**

European Digital Payment Industry Alliance **(EDPIA)**

European Fintech Association (**EFA**)

European Payment Institutions Federation **(EPIF)**

European Third Parties Providers Association (**ETPPA**)

Fintech Hub LT

Spanish Fintech & Insurtech association **(AEFI)**