



Briefing

FinTech



Virtual currencies - regulatory creep

To date, virtual, digital and crypto-currencies (collectively, virtual currencies) have avoided the contemplation (and, perhaps, comprehension) of the regulation-wielding European Commission. As such, virtual currency exchange platforms and “wallet providers” have been allowed to operate unhindered. In many respects, despite the many positive aspects of virtual money, this lack of regulatory oversight has perpetuated the theory that virtual currencies are simply the tender of technology enthusiasts, gamblers and people looking to carry out some kind of illegal (and even terrorist) activity - in this regard see [the presentation](#) given by Luc Laeven, Director-General for DG Research at the European Central Bank to the Chief Economists Workshop at the Bank of England in May 2015.

The current position, however, looks to be changing.

On 12 February, as part of a broad package of measures aimed at strengthening the fight against the financing of terrorism, the Council of the EU (in approving an Action Plan proposed by the European Commission) called on the Commission to submit targeted amendments, based on proper analysis (i) to the 4th Anti-Money Laundering Directive and if necessary to the 2nd Payment Services Directive as soon as possible and no later than the second quarter of 2016 and (ii) to the Cash Controls Regulation no later than the fourth quarter of 2016. This package of proposals is intended to give regulators more control over the forms of payment and currency that allow terrorist organisations to obtain finance and it is pursuant to this mission that virtual currency exchanges and wallet providers, even when operating legitimately, will come under the purview of financial regulation.

So what does this mean for me?

Well, first, the Commission (supported by the Council) is calling on all Member States to agree to bring forward the date for effective transposition and entry into application of AMLD 4 to the end of 2016 at the latest. All entities caught under AMLD 4 will, therefore, be required to bring forward their compliance reviews in this area. For more on the general provisions of AMLD 4 see our earlier [briefing](#).

Second, it is proposed that virtual currency exchange platforms be brought into the scope of AMLD 4 and be supervised under national anti-money laundering / countering terrorist financing legislation.

Third, the Payment Services Directive 2 provisions dealing with licensing and supervision will be expanded also to include virtual currency exchange platforms and virtual currency wallet providers. Such changes are likely to require these kind of entities to obtain a licence to carry on providing payment services and to be supervised by the relevant competent authority for those activities for which they have a licence.

The overall package of measures proposed by the Commission will also include changes which, amongst other things, will (i) allow for the better control of pre-paid instruments (based on the rationale that they may be used to finance terrorism) and (ii) establish a mandatory system of centralised bank and payment account registers (which can be used by law enforcement authorities to track the accounts of and payments made and received by people suspected of terrorist related activities).

When will this all happen?

The Commission is proposing to present a legislative proposal to amend AMLD 4 “at the latest by 2nd quarter 2016” and, as noted above, is calling on all Member States to agree to bring forward the date for entry into application of AMLD 4 to the end of 2016 at the latest.

We will continue to keep an eye on developments in this area, so if you have any questions or concerns about the proposals please contact a member of the FinTech team or your usual Burges Salmon contact.

Contact:



Adrian Shedden
Senior Associate

+44 (0) 117 307 6813
adrian.shedden@burges-salmon.com



Gareth Malna
Solicitor

+44 (0) 117 902 2799
gareth.malna@burges-salmon.com

Burges Salmon LLP, One Glass Wharf, Bristol BS2 0ZX Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400
6 New Street Square, London EC4A 3BF Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7980 4966

www.burges-salmon.com

Burges Salmon LLP is a limited liability partnership registered in England and Wales (LLP number OC307212), and is authorised and regulated by the Solicitors Regulation Authority. It is also regulated by the Law Society of Scotland. Its registered office is at One Glass Wharf, Bristol BS2 0ZX. A list of the members may be inspected at its registered office. Further information about Burges Salmon entities, including details of their regulators, is set out in the ‘Who we are’ section of the Burges Salmon website at www.burges-salmon.com.

© Burges Salmon LLP 2016. All rights reserved. Extracts may be reproduced with our prior consent, provided that the source is acknowledged. Disclaimer: This briefing gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

Data Protection: Your details are processed and kept securely in accordance with the Data Protection Act 1998. We may use your personal information to send information to you about our products and services, newsletters and legal updates; to invite you to our training seminars and other events; and for analysis including generation of marketing reports. To help us keep our database up to date, please let us know if your contact details change or if you do not want to receive any further marketing material by contacting marketing@burges-salmon.com.