Dear Commissioner McGuinness,

As representatives of the financial industry, we welcome the Commission's proposal and ambition to support instant payments across the European Union – and hope this ambition is maintained throughout the negotiations. Instant credit transfers offer a range of benefits to European merchants and consumers, while also promoting a more digitally interconnected European society. We are very supportive of the Commission's proposal, as it has the potential to foster innovation by making instant payments the new normal. At the same time, the proposal exempts electronic money institutions (EMIs) and payment institutions (PIs) from the requirement to offer instant payments due to the existing legal barriers that prevent them from directly accessing payment systems. This legal barrier put in place by the Settlement Finality Directive (SFD) excludes PIs and EMIs as potential participants in payment systems, resulting in not all firms having equal access to the payment infrastructure and therefore not able to offer instant payments directly.

This access is primarily available to credit institutions, which provide indirect access to those firms unable to directly connect themselves. This is facilitated through commercial agreements, in which banks – which are often competing in the same markets as EMIs or PIs - charge on a per-transaction basis well over the wholesale cost, and give them insight into their business performance. It also means that those banks facilitating access to PIs and EMIs need to adhere to SCT Inst before the PI or EMI is able to offer this payment innovation to their customers. In some cases, instant payments are offered as a premium service, which hurts the business case for innovative payment firms to take up instant payments. While the Commission proposal takes steps to address banks' own adherence to instant payments and the pricing of their own instant payments, PIs and EMIs would still be dependent upon choices made by those banks. Therefore, we ask the Commission to address this matter before the negotiations conclude.

Considerable progress has been made in Europe in recognizing the significance of non-bank payment service providers. With the Electronic Money Directive and the Payment Services Directive, the EU established new forms of payment service providers (PSPs). This decision acknowledged that payments could be facilitated without a full banking license and has since brought significant innovation, improved consumers' choices, and contributed to a more integrated and efficient European payments market. This has made the financial sector more inclusive, catering to a wider range of merchants and consumers. The increased role and importance of innovative PIs and EMIs in the European payment ecosystem has been particularly evident with the acceleration of digitalization seen throughout the pandemic. In the years to come, PIs and EMIs will continue to serve European businesses and consumers.

However, while there are good regulatory foundations, a true level playing field can only exist if non-banks are granted access to the payments infrastructure. The solution is simple. Article 2b of the SFD sets out that only certain types of institutions are eligible to open an account at the central bank and become direct participants in payment systems.

This is the remaining legal blocker for non-bank PSPs to directly access payment systems in the EU. The success stories of different countries outside of the EU, such as Brazil, India, Singapore, Switzerland, and the UK that facilitated direct access for non-bank PSPs to payment systems show the possibility of overcoming legal and regulatory, financial, operational, and technical barriers. It is worth noting that countries that have successfully opened their payments infrastructure to non-banks have not reported any increased risk to their payment systems.

Even though some countries in the EU, such as Hungary and Lithuania, have granted an enhanced form of access to PIs and EMIs to payments systems, no harmonized European approach is yet in place. Improved access to payment systems for non-bank PSPs is not only a key element of the EU's Retail Payment Strategy but also one of the core objectives of the G20 roadmap for enhancing cross-border payments. Until access to settlement accounts is extended, non-bank PSPs are only able to access the payment infrastructure indirectly, through banks.

We firmly believe that providing non-banks with the option to directly access the fundamental clearing and settlement infrastructures for payments is vital not only to create a level playing field but also to make instant payments a true success in Europe. This would make instant payments accessible to more consumers and give more businesses access to instant liquidity.

These infrastructures, where commercial banks have direct access while PIs and EMIs do not, will play an increasingly significant role in retail payments, with the expected rise of instant account-based payments. However, the reachability of service is key for European consumers and businesses. Therefore, the more PSPs offer instant payments the more successful instant payments in the EU will be.

We understand that this topic could be addressed in the forthcoming review of the Payments Services Directive. However, even if the new legislative proposal, planned for Q2 2023, addresses this issue, it could take some time for negotiations to finish.

The upcoming European elections in May 2024 and the end of the Commission's mandate could derail the timelines. We are concerned that this could result in a substantial time lag between the application of this current legislative proposal on instant payments and the point where non-bank firms will have legal clarity on their ability to really make the most of instant payments.

The Commission has shown its ambition with the implementation timelines included in the instant payments proposal. Enabling PIs and EMIs to directly access payment infrastructures would help to ensure that instant payments can succeed. That's why we ask that European policymakers address this matter in a timely fashion by amending the Settlement Finality Directive before the implementation phase of the instant payments regulation, enabling all types of payment firms to choose to directly participate in the payments infrastructure. The Payment Services Directive review can then further reflect these necessary changes to ensure all Directives and Regulations are aligned.

We remain at your disposal to provide further clarifications.