

European Blockchain Sandbox

Protocol for Participation

Contents

1. Subject of the protocol.....	1
2. Goal of sandbox	2
3. Pre-participation	2
4. Onboarding.....	3
5. Access platform	3
6. Sandbox operations	4
7. Governance	4
8. Funding & costs	4
9. General cooperation and information obligation.....	4
10. Communications relating to the Sandbox.....	4
11. Intellectual Property rights	5
12. Confidentiality.....	5
13. Data protection.....	6
14. Data retention.....	6
15. Liability for damages & warranties	7
16. Term of the sandbox.....	7
17. Amendments to the protocol.....	7
18. Annex.....	7

1. Subject of the protocol

1.1 This protocol for participation in the European blockchain regulatory sandbox (the “**Sandbox**”), initiated by the European Commission, governs the operation of the Sandbox and lays down the rights and obligations of the Parties in the Sandbox referred to in **Clause 1.3**.

1.2 The Sandbox is a safe environment in which through dialogue and close cooperation between one or more regulators and a blockchain use or other DLT use case (hereinafter referred to as “**Blockchain use case**”), the legal and regulatory questions pertaining to innovative blockchain solutions are explored with the aim to provide legal certainty and facilitate the development of best practices in certain regulatory areas. The Sandbox is described further in EU Tender CNECT/2021/OP/0019.

1.3 Parties in the Sandbox:

- European Commission: Initiator of the Sandbox

- Use case owner: The Blockchain use case owners who have been selected for participation in the Sandbox and have passed the final eligibility check as set out in the Application Terms ([hyperlink](#)).
 - Regulator(s): The regulator(s) that will participate in the Sandbox together with the Use case owner by Bird & Bird following the outcome of the selection of use cases. On average 1.5 Regulator per selected use case.
 - Bird & Bird Bird & Bird AARPI, Legal advisor and facilitator of the Sandbox, and its affiliates and subcontractors who have been procured by the EU Commission to set up and operate the Sandbox.
 - Panel of experts Multi-disciplinary panel of independent experts who will select the most innovative regulator or the best performing sandbox for the non-monetary award.
 - Sandbox Participants Use case owners & Regulator(s).
- 1.4 Access to the Sandbox for the selected Blockchain use case of the Use case owner is limited to the Parties set out in **Clause 1.3 (“the Parties”)** who have accepted this protocol (the **“Protocol”**).
- 1.5 All Sandbox Participants will have access to the general Sandbox information on Bird & Bird’s Access platform. Furthermore, the Sandbox Participants will only have access to the part of the Sandbox that is used in relation to the Blockchain use case for which they have been selected and not to any other part of the Sandbox.

2. Goal of sandbox

- 2.1 The goal of the Sandbox is to foster a meaningful dialogue and cooperation between the Use case owner and the pertinent Regulator(s) that have accepted to participate in the Sandbox to increase legal certainty for the deployment of innovative solutions. For each selected Blockchain use case Bird & Bird will select and invite one or more relevant regulators (on average 1.5 in accordance with EU Tender CNECT/2021/OP/0019).
- 2.2 The results of the sandbox for all selected Blockchain use cases will be included in best practices reports that will be made public without referring to the testing of specific Blockchain use cases and without disclosing Confidential Information as referred to in **Clause 12**. The best practices reports will identify general regulatory and legal issues and solutions as well as improvements of the sandbox experience with a focus of sharing insights and lessons learned across sectors.

3. Pre-participation

- 3.1 Bird & Bird will provide each Use case owner with a first set of legal advice of approximately 5 pages identifying applicable EU and national laws and identifying areas where particular regulatory questions may come up. This first set of legal advice will be on the basis of the non-confidential information contained in the application form of the Use case owner and will be followed by ongoing legal advice by Bird & Bird legal experts during the Sandbox meetings in accordance with the Sandbox operations roadmap (**Annex** to this protocol).

- 3.2 The Use case owner agrees that Bird & Bird will identify relevant regulators for each respective Blockchain use case, taking into account among others the application form and the first set of legal advice specified in **Clause 3.1** as well as the need to have a balanced spread of EU/EEA regulators across the various used cases that will participate in the Sandbox.
- 3.3 The standard engagement terms of Bird & Bird AARPI will apply to the legal advice and facilitating role of Bird & Bird in relation to the Sandbox including the first set of legal advice specified in **Clause 3.1** and legal advice provided in the course of the Sandbox operations.

4. Onboarding

- 4.1 Sandbox Participants must send Bird & Bird a list of a maximum of 5 persons to be given access to the Access platform, as described in more detail in **Clause 5.1**, including at least the person that uploaded the application form.
- 4.2 The 5 persons per Sandbox Participant are sent an invitation to create an account on the Access platform.
- 4.3 The application form and all related information will be copied from the relevant applications to the relevant subfolders on the Access platform for the Sandbox operations.
- 4.4 Bird & Bird and OXYGY will provide one, non use-case-specific, onboarding webinar via Microsoft Teams of 1 hour and a Use case owner/Regulator Sandbox Onboarding information memo.

5. Access platform

- 5.1 The exchange of written information and documents during the Sandbox operations will take place exclusively on Bird & Bird's secure platform for information sharing and communication: twoBirdsAccess ("**the Access platform**").
- 5.2 All Sandbox Participants will have to create an account to gain access to the Access platform with an e-mail address and password. Sandbox Participants will have to accept the Access Terms of Use ([hyperlink](#)), this protocol and the Privacy Policy on a landing page before accessing information on the Access platform.
- 5.3 Each Sandbox Participant will be given tailored and as-needed usage rights on the Access platform. Sandbox Participants in principle have so-called 'view-only' rights only allowing for the viewing (but not downloading or copying) of information on the platform unless another arrangement is agreed in writing.
- 5.4 Sandbox Participants will also have limited rights to upload certain information to the Access platform. Any communications, documents or information shared on the Access platform by Sandbox Participants shall be at their own responsibility and none of the other Sandbox Participants can be held liable for the contents.
- 5.5 With regard to information viewed on the Access platform, Sandbox Participants are not allowed to download or store it in any other way from the Access platform. Such information must remain on the platform.

6. Sandbox operations

- 6.1 The Sandbox operations roadmap is attached to this Protocol as **o- Sandbox operations roadmap**.

7. Governance

- 7.1 All Parties in the Sandbox, including the Use case owners and Regulators agree to participate in the Sandbox in accordance with the terms of this Protocol on the basis of which the Sandbox operations will be conducted.
- 7.2 All information that is discussed and shared in the Sandbox will only be used for the purpose of the Sandbox and not for any other purpose including supervising or enforcement tasks.
- 7.3 The Use case owners and Regulators are free to continue their discussions outside of the Sandbox operations under their own terms. The European Commission and Bird & Bird do not accept any responsibility for discussions or exchange of information outside the Sandbox.

8. Funding & costs

- 8.1 No funding will be given for and no costs will be reimbursed during participation in the Sandbox.

9. General cooperation and information obligation

- 9.1 Use case owners and Regulator(s) will support the dialogue and cooperation in the Sandbox by providing information and actively participating in the meetings referred to in the Sandbox operations roadmap included in the Annex in accordance with this Protocol.

10. Communications relating to the Sandbox

- 10.1 The Sandbox Participants agree that their participation in the Sandbox is made public along with the applicable EEA regions, a short description of the Blockchain use case and information for the best practices reports referred to in **Clause 2.2**. Bird & Bird will consult with the Use case owner on the short description of the Blockchain use case ahead of the publication and with the Participants in the sandbox and will not disclose Confidential Information as referred to in **Clause 12** in the best practices report.
- 10.2 In addition to **Clause 10.1** Bird & Bird may, in consultation with the European Commission, make public anonymised, aggregated information on the Sandbox and the Sandbox Participants.
- 10.3 The participation in the Sandbox does not represent an approval or endorsement by the European Commission or Bird & Bird of the Use case owner or the selected Blockchain use case. The Use case owner may not make any statement or announcement that suggests that Participants in the Sandbox or the European Commission have approved, endorsed, or otherwise accepted that the Blockchain use case complies with regulatory requirements.

- 10.4 Participants may only communicate about their participation in the Sandbox in accordance with the information that is made public through the website ([hyperlink](#)). They are not permitted to communicate any other information about their participation in the Sandbox to any third party, before, during or after the Sandbox operations.
- 10.5 The Clauses 10.1 – 10.4 do not preclude the Sandbox Participants to mutually agree in relation to the Blockchain use case pertaining to their dialogue in the Sandbox to communicate outside the context of the Sandbox about the outcome of their dialogue.

11. Intellectual Property rights

- 11.1 By participating in the Sandbox, the Use case owner does not transfer any of the pre-existing rights in the Blockchain use case including intellectual property rights. Notwithstanding the foregoing, the Union shall be entitled to use these pre-existing rights in relation to the EU Regulatory Sandbox for Blockchain CNECT/2021/Op/0019 project in accordance with article II.13 of the Model service contract - CNECT/2021/OP/0019 ([hyperlink](#)).
- 11.2 By participating in the Sandbox, the Use case owner agrees that the Blockchain use case information can be reviewed for the purpose of the Sandbox operations.
- 11.3 The Use case owner warrants that it has all rights and title to participate in the Sandbox and that the participation in the Sandbox does not infringe rights of any third party.
- 11.4 The Use case owner agrees to defend, indemnify, and hold harmless the other Parties in the Sandbox specified in **Clause 1.3** from and against any liability or loss (including, without limitation, any legal costs) incurred by them as a result of, or in connection with, the participation of the Use case owner in the Sandbox.
- 11.5 All Parties in the Sandbox agree that the results of the Sandbox in the form of best practices or other reports will accrue to the European Union. For the avoidance of doubt, the Parties therefore agree that, in accordance with article II.13 of the Service Contract referred to in **Clause 11.1** of this protocol, the European Union shall acquire the ownership of all rights (including intellectual property rights) to such results, as from the moment of creation thereof.

12. Confidentiality

- 12.1 The Sandbox Participants endeavour to minimise the involuntary or voluntary disclosure of business confidential information (“**Confidential Information**”) when participating in the Sandbox. If submission of Confidential Information cannot be avoided, the Sandbox Participant must clearly identify on the information provided which information is considered to be Confidential Information.
- 12.2 Information exchanged in the Sandbox will only be accessible to the individual persons who participate on behalf of the Sandbox Participants who have been granted access to the Sandbox and the Access platform. Information exchanged in the Sandbox may not be copied or disseminated outside this group unless otherwise permitted under this Protocol.
- 12.3 Bird & Bird will participate in the Sandbox on an as needed basis. The Bird & Bird lawyers are bound by – and comply with – the professional rules on integrity and client confidentiality applicable in the EEA Member States and are regulated by the bar in

those Member States. In addition, Bird & Bird lawyers comply with the Code of Conduct for European Lawyers.¹ Bird & Bird AARPI has stipulated that its subcontractors will adhere to the same integrity and confidentiality rules.

- 12.4 Confidential Information of a Participant will not be used or disclosed by Bird & Bird without the prior consent of this Sandbox Participant other than for support in connection with the sandbox and/or unless permitted or required to do so by law or court orders and/or unless otherwise permitted under this Protocol.

13. Data protection

- 13.1 The Parties acknowledge and agree that participation in the Sandbox may require the processing of personal data of the Parties, their employees and/or other data subjects for the Sandbox operations. Each of the Parties shall ensure that any processing of personal data on their side for the purpose of the Sandbox operations will comply with applicable data protection law.
- 13.2 Unless otherwise agreed, any personal data shared by the Parties on the Access platform for the Sandbox operations will be processed on behalf of the European Commission as the data controller in line with the Privacy Statement for Participants in the Regulatory Sandbox] and in accordance with the provisions and principles set out in applicable data protection law.
- 13.3 The Parties are responsible for providing a copy of the Privacy Statement for Participants in the Regulatory Sandbox to any employees or other data subjects whose personal data is shared by them on the Access platform for the Sandbox operations.
- 13.4 The Parties will take measures to ensure that no personal data is shared on the Access Platform unless this cannot be avoided. In case they do share personal data on the Access platform, they are responsible to ensure that this transfer is completed in compliance with applicable law (including applicable data protection law).
- 13.5 The Access platform cannot be used by the Use case owners for demonstrating their technology to a Regulator. Where a Use case owner participating in the Sandbox operations wants to demonstrate their technology for the purposes of the Sandbox, they will use their own facilities. In the event that a Use case owner wants to use personal data in the context of such a demonstration, the Use case owner will be the sole data controller for such processing and have sole responsibility for the compliance with applicable data protection law and sole liability in case of non-compliance.
- 13.6 This protocol does not apply to any processing of personal data obtained in the context of the Sandbox operations by the Parties for other purposes than the Sandbox operations. Where relevant, only the concerned Parties will be responsible for compliance with the applicable data protection law. The Parties that are not involved in the further processing will not be responsible or liable for this processing.

14. Data retention

- 14.1 Parties will be blocked from accessing the Sandbox Access platform at the end of the Sandbox operations of that cohort.

¹ CCBE (2013), Charter of Core Principles of the European Legal Profession and Code of Conduct for European Lawyers.

- 14.2 All data on the Access platform will be archived offline in accordance with the bar rules at the end of the Sandbox operations of that cohort.

15. Liability for damages & warranties

- 15.1 Bird & Bird will use reasonable care in operating the Sandbox and its interactions with the Participants in relation to the Sandbox.
- 15.2 The European Commission and Bird & Bird do not accept any liability or responsibility for:
- 15.2.1 breaches of this Protocol by Sandbox Participants;
 - 15.2.2 information or opinions shared by Sandbox Participants in the course of the Sandbox;
 - 15.2.3 failure to meet any of the deadlines specified in this Protocol; and/or
 - 15.2.4 any other liability under or in relation to the Sandbox and/or this Protocol whether in contract, tort (including negligence) or otherwise.
- 15.3 Given the nature of the Sandbox, Bird & Bird disclaims all representations and warranties and conditions with respect to all responsibilities and outcomes of the Sandbox, whether implied, express, or statutory.
- 15.4 Nothing in this Protocol seeks to limit the liability of the European Commission and Bird & Bird in any way which is not permitted by law.

16. Term of the sandbox

- 16.1 Failure to (continue to) comply with this Protocol may result in the Blockchain use case not being processed further during the Sandbox operations.
- 16.2 Participants acknowledge that due to the highly innovative nature of the Sandbox Bird & Bird is entitled to suspend or terminate the Sandbox at any time should the Sandbox trigger detrimental unexpected consequences for the European Commission, Bird & Bird or the Sandbox Participants.
- 16.3 In the event of termination, no costs or damages will be reimbursed.

17. Amendments to the protocol

- 17.1 The European Commission and Bird & Bird may amend this protocol at any time by giving the Use case owners and the Regulators reasonable notice in writing.
- 17.2 In the event of an intermediate change, the Sandbox Participants may withdraw their participation. Clause 16.3 is applicable.

18. Annex

- 18.1 The Annex to this protocol (the Sandbox operations roadmap) applies to and forms an integral part of this protocol.

ANNEX - SANDBOX OPERATIONS ROADMAP

The Sandbox operations are structured as follows:

- 1) Onboarding as described in **Clause 4** of the Protocol for Participation.
- 2) Selected Blockchain use cases will be provided with the concise first set of legal advice referred to in **Clause 3.1**.
- 3) Bird & Bird will organise two meetings per Blockchain use case with the Sandbox Participants of 1.5 hours each. The meetings will be organised online. Sandbox Participants can each bring up to five (5) persons to these meetings. The meetings will be chaired by Bird & Bird.
- 4) The agendas for the meetings will be shared at least 5 working days in advance. The Sandbox Participants can propose items for discussion before the agenda is shared which will be added to the agenda. These items can be proposed by uploading a document to the relevant meetings subfolder on the Access platform.
- 5) During both meetings, Bird & Bird will draft minutes of the meeting on the basis of a template. The minutes will be agreed by the attendees during the meeting and Confidential Information in these minutes will be marked. Once the minutes have been finalised, these will be uploaded to the Access platform. Only the involved Sandbox Participants will be able to view these minutes on the platform. Confidential information that should not be part of the best practices report will be marked.
- 6) A reasonable number of questions can be asked by the Participants during the operation of the Sandbox. These will be added to the agenda and discussed during the meetings but should leave sufficient room for the dialogue in the Sandbox.
- 7) The storage and archiving of the minutes on the Access platform will be in accordance with **Clause 14** of the protocol.
- 8) Feedback can be provided on the Access platform during the operation of the Sandbox and will be taken into account in the best practices report. The feedback will only be visible to the Participant asking the question or giving the feedback and to Bird & Bird.
- 9) The Sandbox Participants are requested to submit the feedback form at the end of the Sandbox operations.
- 10) The European Commission will be informed about the progress in the Sandbox. Information about the results of the Sandbox, including best practices reports, will be made public on the website ([hyperlink](#)) but always respecting that Confidential Information of the Participants referred to in **Clause 12** must be kept confidential.
- 11) The European Commission may, at its discretion, make public anonymised, aggregated information on the Sandbox and its participants including best practices reports.
- 12) If necessary adjustments to this roadmap can be agreed with the Sandbox Participants for an individual Blockchain use case.