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# Consultation on a new digital finance strategy for Europe / FinTech action plan

Fields marked with \* are mandatory.

## Introduction

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### 1. Background for this consultation

Digitalisation is transforming the European financial system and the provision of financial services to Europe's businesses and citizens. In the past years, the EU and the Commission embraced digitalisation and innovation in the financial sector through a combination of horizontal policies mainly implemented under the umbrella of the Digital Single Market Strategy, the Cyber Strategy and the Data economy and sectoral initiatives such as the revised Payment Services Directive, the recent political agreement on the crowdfunding regulation and the [FinTech Action Plan](https://ec.europa.eu/info/publications/180308-action-plan-fintech_en) ([https://ec.europa.eu/info/publications/180308-action-plan-fintech\\_en](https://ec.europa.eu/info/publications/180308-action-plan-fintech_en)). The initiatives set out in the FinTech Action Plan aimed in particular at supporting the scaling up of innovative services and businesses across the EU, for example through enhanced supervisory convergence to promote the uptake of new technologies by the financial industry (e.g. cloud computing) but also to enhance the security and resilience of the financial sector. All actions in the Plan have been completed.

The financial ecosystem is continuously evolving, with technologies moving from experimentation to pilot testing and deployment stage (e.g. blockchain; artificial intelligence; Internet of Things) and new market players entering the financial sector either directly or through partnering with the incumbent financial institutions. In this fast-moving environment, the Commission should ensure that European consumers and the financial industry can reap the potential of the digital transformation while mitigating the new risks digital finance may bring. The expert group on Regulatory Obstacles to Financial Innovation, established under the 2018 FinTech Action Plan, highlight these challenges in its report published in December 2019.

The Commission's immediate political focus is on the task of fighting the coronavirus health emergency, including its economic and social consequences. On the economic side, the European financial sector has to cope with this unprecedented crisis, providing liquidity to businesses, workers and consumers impacted by a sudden drop of activity and revenues. Banks must be able to reschedule credits rapidly, through rapid and effective processes carried out fully remotely. Other financial services providers will have to play their role in the same way in the coming weeks.

Digital finance can contribute in a number of ways to tackle the COVID-19 outbreak and its consequences for citizens, businesses, and the economy at large. Indeed, digitalisation of the financial sector can be expected to accelerate as a consequence of the pandemic. The coronavirus emergency has underscored the importance of innovations in digital financial products services, including for those who are not digital native, as during the lockdown everybody is obliged to rely on remote services. At the same time, as people have access to their bank accounts and other financial services remotely, and as financial sector employees work remotely, the digital operational resilience of the financial sector has becoming even more important.

As set out in the Commission Work Programme, given the broad and fundamental nature of the challenges ahead for the financial sector, the Commission will propose in Q3 2020 a new Digital Finance Strategy/FinTech Action Plan that sets out a number of areas that public policy should focus on in the coming five years. It will also include policy measures organised under these priorities. The Commission may also add other measures in light of market developments and in coordination with other horizontal Commission initiatives already announced to further support the digital transformation of the European economy, including new policies and strategies on data (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0066>), artificial intelligence (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0065>), platforms and cybersecurity.

## 2. Responding to this consultation and follow up

Building on the work carried out in the context of the FinTech Action Plan (e.g. the EU Fintech Lab), the work of the European Supervisory Authorities and the report issued in December 2019 by the Regulatory Obstacles to Financial Innovation Expert Group ([https://ec.europa.eu/info/publications/191113-report-expert-group-regulatory-obstacles-financial-innovation\\_en](https://ec.europa.eu/info/publications/191113-report-expert-group-regulatory-obstacles-financial-innovation_en)), and taking into account the contribution digital finance can make to deal with the COVID-19 outbreak and its consequences, the Commission has identified the following four priority areas to spur the development of digital finance in the EU:

1. ensuring that the EU financial services regulatory framework is fit for the digital age;
2. enabling consumers and firms to reap the opportunities offered by the EU-wide Single Market for digital financial services;
3. promoting a data-driven financial sector for the benefit of EU consumers and firms; and
4. enhancing the digital operational resilience of the EU financial system.

In this context and in line with Better Regulation principles ([https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how\\_en](https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how_en)), the Commission is launching a consultation designed to gather stakeholders' views on policies to support digital finance. It follows two public consultations launched in December 2019, focusing specifically on crypto-assets ([https://ec.europa.eu/info/publications/finance-consultations-2019-crypto-assets\\_en](https://ec.europa.eu/info/publications/finance-consultations-2019-crypto-assets_en)) and digital operational resilience ([https://ec.europa.eu/info/publications/finance-consultations-2019-financial-services-digital-resilience\\_en](https://ec.europa.eu/info/publications/finance-consultations-2019-financial-services-digital-resilience_en)).

This consultation is structured in three sections corresponding to the priorities areas 1, 2 and 3 presented above. Given that the ongoing consultation on digital operational resilience fully addresses the issues identified as part of this priority area, questions on this priority area are not reproduced in this consultation. As for priority area 1, this consultation includes additional questions given that this priority area goes beyond the issues raised in the currently ongoing consultation on crypto-assets. In addition, the Commission will also be consulting specifically on payment services. Payment services and associated technologies and business models are highly relevant for the digital financial fabric, but also present specificities meriting separate consideration. These considerations are addressed in a specific consultation on a Retail Payments Strategy ([https://ec.europa.eu/info/publications/finance-consultations-2020-retail-payments-strategy\\_en](https://ec.europa.eu/info/publications/finance-consultations-2020-retail-payments-strategy_en)) launched on the same day as this one. Finally, and specific to financial services, the Commission is also supporting the work of a High Level Forum on Capital Markets Union, that is expected to also address key technology, business model and policy challenges emerging from digitalisation.

**The first section of the consultation seeks views on how to ensure that the financial services regulatory framework is technology neutral and innovation-friendly**, hence addressing risks in a proportionate way so as not to unduly hinder the emergence and scaling up of new technologies and innovative business models while maintaining a sufficiently cautious approach as regards consumer protection. While an in-depth assessment is already on-going on crypto-assets, assessment of whether the EU regulatory framework can accommodate other types of new digital technology driven services and business models is needed. Looking at a potentially more complex financial ecosystem - including a wider range of firms, such as incumbent financial institutions, start-ups or technology companies like BigTechs - the Commission is also seeking stakeholders' views on potential challenges or risks that would need to be addressed.

**The second section invites stakeholder views on ways to remove fragmentation of the Single Market for digital financial services.** Building on the preparatory work carried out in the context of the 2018 FinTech Action Plan, the Commission has already identified a number of obstacles to the Single Market for digital financial services and is

therefore seeking stakeholders' views on how best to address these. In addition, the consultation includes a number of forward-looking questions aiming to get stakeholders' feedback as regards other potential issues that may limit the deepening of the Digital Single Market and should be tackled at EU level.

**Finally, the third section seeks views on how best to promote a well-regulated data-driven financial sector,** building on the current horizontal frameworks governing data (e.g. General Data Protection Regulation; Free Flow of Data Regulation) but also on the recent sectoral developments such as the implementation of the revised Payment Services Directive in the EU. Considering the significant benefits data-driven innovation can bring in the EU across all sectors, the Commission recently adopted a new European Data Strategy and a White Paper on Artificial Intelligence. Building on these horizontal measures, the Commission is now seeking stakeholders' views on the potential additional measures that would be needed in the financial sector to reap the full benefits of the data economy while respecting European values and standards. Responses to this consultation will inform forthcoming work on a Digital Finance Strategy/FinTech Action Plan to be adopted later in 2020.

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**Please note:** In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact [fisma-digital-finance@ec.europa.eu](mailto:fisma-digital-finance@ec.europa.eu) (<mailto:fisma-digital-finance@ec.europa.eu>).

More information:

- [on this consultation](https://ec.europa.eu/info/publications/finance-consultations-2020-digital-finance-strategy_en) ([https://ec.europa.eu/info/publications/finance-consultations-2020-digital-finance-strategy\\_en](https://ec.europa.eu/info/publications/finance-consultations-2020-digital-finance-strategy_en)),
- [on the consultation document](https://ec.europa.eu/info/files/2020-digital-finance-strategy-consultation-document_en) ([https://ec.europa.eu/info/files/2020-digital-finance-strategy-consultation-document\\_en](https://ec.europa.eu/info/files/2020-digital-finance-strategy-consultation-document_en)),
- [on digital finance](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/digital-finance_en) ([https://ec.europa.eu/info/business-economy-euro/banking-and-finance/digital-finance\\_en](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/digital-finance_en)),
- [on the protection of personal data regime for this consultation](https://ec.europa.eu/info/files/2020-digital-finance-strategy-specific-privacy-statement_en) ([https://ec.europa.eu/info/files/2020-digital-finance-strategy-specific-privacy-statement\\_en](https://ec.europa.eu/info/files/2020-digital-finance-strategy-specific-privacy-statement_en))

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## About you

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\*Language of my contribution

English

\*I am giving my contribution as

Non-governmental organisation (NGO)

\*First name

Paul

\*Surname

Fox

**\*Email (this won't be published)**

paul.fox@finance-watch.org

**\*Organisation name**

*255 character(s) maximum*

Finance Watch

**\*Organisation size**

- ☐ Micro (1 to 9 employees)
- ☒ Small (10 to 49 employees)
- ☐ Medium (50 to 249 employees)
- ☐ Large (250 or more)

**Transparency register number**

*255 character(s) maximum*

Check if your organisation is on the transparency register (<http://ec.europa.eu/transparencyregister/public/homePage.do?redir=false&locale=en>). It's a voluntary database for organisations seeking to influence EU decision-making.

37943526882-24

**\*Country of origin**

Please add your country of origin, or that of your organisation.

Belgium

**\*Field of activity or sector (if applicable):**

*at least 1 choice(s)*

- ☐ Accounting
- ☐ Auditing
- ☐ Banking
- ☐ Credit rating agencies
- ☐ Insurance
- ☐ Pension provision
- ☐ Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- ☐ Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- ☐ Technology companies
- ☐ Organisation representing European consumers' interests
- ☒ Organisation representing European retail investors' interests
- ☐ National supervisory authority
- ☐ European supervisory authority
- ☐ Other
- ☐ Not applicable

### \*Publication privacy settings

The Commission will publish the responses to this consultation. You can choose whether you would like your details to be made public or to remain anonymous.

☐ **Anonymous**

Only your type of respondent, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.

☒ **Public**

Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

☒ I agree with the personal data protection provisions ([https://ec.europa.eu/info/law/better-regulation/specific-privacy-statement\\_en](https://ec.europa.eu/info/law/better-regulation/specific-privacy-statement_en))

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## General questions

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Europe's strategic objective should be to ensure that European consumers and firms fully reap the benefits stemming from digital finance while being adequately protected from the potential new risks it may bring. To achieve that, the European financial sector needs to be at the forefront of innovation and its implementation in a market and production environment in order to better serve consumers and firms in an efficient, safe, sound and sustainable manner. Strong and innovative digital capacities in the financial sector will help improve the EU's ability to deal with emergencies such as the COVID-19 outbreak. It will help to further deepen the Banking Union and the Capital Markets Union and thereby strengthen Europe's economic and monetary union and to mobilise funding in support of key policy priorities such as the Green Deal and sustainable finance. It is also essential for Europe to safeguard its strategic sovereignty in financial services, and our capacity to manage, regulate and supervise the financial system in a way that promotes and protects Europe's values and financial stability. This will also help to strengthen the international role of the euro.

With a view to adopt a new Digital Finance Strategy/FinTech Action Plan for Europe later this year, the Commission is now seeking your views to identify the priority areas for action and the possible policy measures.

**Question 1. What are the main obstacles to fully reap the opportunities of innovative technologies in the European financial sector (please mention no more than 4)?**

**Please also take into account the analysis of the expert group on Regulatory Obstacles to Financial Innovation (XXXX) in that respect.**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Finance Watch agrees that the EU financial sector should embrace digitalisation. We do not subscribe to the view, however, that the regulation of financial services is an obstacle to innovation. The implicit narrative that technological innovation thrives in the absence of regulation is misguided and, by now, disproved. We observe, to the contrary, that states that have long applied light-touch regulation to support their technology industries are now increasingly ready to intervene with regulation to curb the negative externalities associated with the products and services they promote. It is well known that the adoption of new, disruptive technologies in its initial stages is always accompanied by overly optimistic, ultimately unrealistic expectations and projections (the 'hype cycle'). The role of regulators and policymakers, in our view, is to moderate that adoption process through its peaks and troughs in a balanced and impartial way. Regulation of financial services involves a broad and diverse set of stakeholders and complex trade-offs. It does not readily lend itself to experimentation and the suggestion that regulation should be adapted already in anticipation of the purported benefits of new technologies that have yet to mature and prove themselves in practice is, in our view, misguided. We largely concur, in this respect, with the recommendation of the Expert Group on Regulatory Obstacles to Financial Innovation (ROFIEG) in their recent report (30 Recommendations on Regulation, Innovation & Finance, 13 December 2019), which call for the EU to set an example of a principles-led approach to the adoption of technological innovation. Finance Watch is very supportive of embracing and promoting new technologies that offer tangible benefits to citizens and enhance the competitiveness of EU businesses on the global scale. We acknowledge that legislative restrictions imposed in some areas could conceivably limit the use of these technologies for financial services. This applies, in particular, for technologies that rely on processing personal user data, such as Biometrics, Internet of Things (location data), or Artificial Intelligence (see response to Q.6). We strongly believe that, as a matter of principle, EU citizens' rights to privacy and the protection of their data, as guaranteed by Articles 7 and 8 of the EU Charter of Fundamental Rights and Regulation (EU) 2016/679 (GDPR), should take precedence over any arguments of commercial interest, competitiveness or customer choice, and the same principle should apply in respect of other citizens' and consumer protection rights that EU law is obliged to uphold by virtue of Article 38 of the Charter and Articles 12 and 169 TFEU. Regulatory limitations on the use of technologies that are grounded in the protection of citizens' rights are, in our view, justified and should not be viewed as "obstacles" to technological progress. Digitalisation is not merely a transition but a transformative process that has the potential to profoundly disrupt the financial industry. It is critical, therefore, that a "new digital finance strategy for Europe" should heed the lessons that were learnt elsewhere. Due to 'network effects' the marginal utility of digital services for their users increases exponentially the more users share the same platform. This dynamic favours the development of oligopolistic, or near-monopolistic market structures and has led to the emergence of a small number of Big Tech firms, which dominate the digital space at a global scale. To speak of a 'level playing field' in this context is illusory: dominant digital platforms continue to expand into new market segments, where they hold an instant advantage over smaller, specialised competitors thanks to their huge, global customer bases and vastly superior financial resources. The recommendation of ROFIEG to "ensure a level playing field between incumbents and new market entrants, both FinTech start-ups and BigTech firms" (ROFIEG, pg. 13) therefore misses the point. Market entry by 'Big Tech' players will not increase consumer choice and enhance competition - to the contrary, it is likely to increase supply-side concentration and, as a corollary, systemic risk. We note at this point that the financial sector already faces the entrenched, and still unresolved problem of "systemically important" financial institutions, which derive a competitive advantage from

implicit public guarantees. A level playing field can only be guaranteed if competition is not distorted by the abuse of dominant market power. So far competition policy in the EU, and elsewhere, has not been successful in that respect. Finance Watch has taken note, however, of recent initiatives by the Commission, including the proposed Digital Services Act (DSA). We believe that a combination of ex-ante measures, which could be incorporated in the DSA, and robust ex-post enforcement of antitrust law, could go a long way towards redressing the balance.

**Question 2. What are the key advantages and challenges consumers are facing with the increasing digitalisation of the financial sector (please mention no more than 4)?**

**For each of them, what if any are the initiatives that should be taken at EU level?**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Finance Watch expects digitalisation to contribute to the availability and accessibility of financial services as customers are able to obtain information, receive offers and enter into contracts online, anywhere anytime. Customers also stand to benefit from the convenience of being able to access account information and to enter into transactions online, often in near-real time. Other potential benefits of digitalisation depend on framework conditions that may be more difficult to realise. If implemented properly, digitalisation should improve customer choice and enable customers to obtain better value from tailored offerings, based on digital profiles that reflect customers' requirements and preferences. In order to realise these benefits, EU regulatory initiatives will have to address, in particular, the following challenges:

1. "Big data", information asymmetry and the risk of unfair commercial practices  
In the digital era, consumer protection begins with data protection. Many citizens are still not alert to the Faustian bargain of trading their personal data against seemingly "free" digital services. The underlying economic terms of this trade are unknown and, arguably, unknowable for the individual citizen. There is ample evidence, however, that citizens are short-changed in this trade, because a) the marginal utility of data increases with volume, at least for the present time; and b) individuals are excluded from the (wholesale) markets where their data is monetised – the supply-side of the market for personal data is atomised and suppliers have no bargaining power. Insights gained by the supplier from the analysis of that data, individually and collectively, further increase the asymmetry of information and tilt the balance of bargaining power against the customer. That, in turn, significantly increases the risk of suppliers engaging in unfair commercial practices (exclusion from service, discriminatory pricing) or market abuse.

The General Data Protection Regulation (Regulation (EU) 2016/679, GDPR) was a first, important step towards returning to citizens ownership and control of their personal data. On its own, however, GDPR is not sufficient and its implementation in practice has been found wanting. Finance Watch is concerned about the interpretation by the European Data Protection Board (EDPB) of the scope and granularity of consent (Article 7), especially in respect of the processing of special categories of (sensitive) personal data (Article 9 GDPR) and "silent (third) party" data in its opinion of 05 July 2018 (EDPB-84-2018) on the Revised Payment Services Directive (Directive (EU) 2015/236, PSD 2). The threshold for conformity with GDPR that is implicit in this opinion is disappointingly low and sets a worrying precedent for the application of GDPR principles in the financial sector. To maintain consistency in the application of GDPR, and preserve its credibility, relevant secondary legislation, such as PSD 2, may need to be updated. Going forward, new legislation will be required, in particular, to address the challenges posed by the adoption of AI-based decision support systems.

2. Customer choice, network effects, and supply-side concentration

As mentioned previously (see our response to Q.1), network effects are a typical feature of markets for digital services: dominant market positions become self-reinforcing because the marginal utility of the service for all users increases with each additional user, resulting in a "winner takes all" scenario. Unless reined in at an early stage, the outcome in financial services may not be much different. The emergence of "too big to fail" digital service providers alongside, or in place of current "too big to fail" financial institutions will hardly increase consumer choice and enhance competition – it could result in the exact opposite. Market entry by "Big Tech" players, in particular, is highly likely to increase supply-side concentration and, as a corollary, systemic risk. This effect may take a while to manifest itself – not least because "Big Tech" players are more likely to co-opt, rather than compete with incumbents in the early stages. In due course, however, retail financial services, in particular, could end up being dominated by "Big Tech" brands. Particular scrutiny should

therefore be applied by competition authorities in respect of partnerships between “Big Tech” and incumbent financial institutions where the disparity in size and resources, and control of the customer relationship may, immediately or over time, result in the regulated entity being relegated to the role of a formally independent, but ultimately powerless junior partner, akin to a franchisee, while the technology firm could exercise effective control without being itself subjected to financial services regulation.

Building on previous policy and legislative work, and taking into account the contribution digital finance can make to deal with the COVID-19 emergency and its consequences, the Commission services are considering four key priority areas for policy action to spur the development of digital finance:

1. ensuring that the EU financial services regulatory framework is technology-neutral and innovation friendly;
2. reaping the opportunities offered by the EU-wide Single Market for digital financial services for consumers and firms;
3. promoting a data-driven financial sector for the benefit of EU consumers and firms; and
4. enhancing the operational resilience of the financial sector.

**Question 3. Do you agree with the choice of these priority areas?**

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not relevant

**Question 3.1 Please explain your answer to question 3 and specify if you see other areas that would merit further attention from the Commission:**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

While we do not disagree with the objectives proposed by the Commission, Finance Watch is of the view that other objectives are of much higher priority to ensure a future-proof and citizen-centric development of digital finance in the EU:

1. Consistent approach to data protection and the use of personal data  
Detailed legal definitions and guidelines need to be specified to determine what data may be required from customers in order to access different types of financial products and services. The use of personal data must be based on (explicit) consent and subject to the principles of "necessity" and "minimization", in strict application of the General Data Protection Regulation (GDPR) and subject to review by the European Data Protection Board (EDPB). The unnecessary disclosure of personal data, including that of "silent (third) parties" ought to be prevented, e.g. by requiring the anonymisation of data that is shared, e.g. under the Revised Payment Services Directive (PSD 2). Data portability is not a substitute for data protection.
2. Robust policies to maintain a competitive and diverse market  
As mentioned previously, we see a significant risk that the competitive dynamics of digitalisation could further concentrate supplier power in the hands of a small number of incumbents and "Big Tech" firms (see our response to Q.1 and Q.2 above). Digitalisation will only be beneficial for citizens if regulatory and competition policies succeed in maintaining a genuine level playing field, with a broad and diverse range of suppliers providing services to different segments of the market.
3. High standards of transparency and effective protection of customer rights  
The move of financial services online necessarily reduces the amount of face-to-face interaction between (potential) customers and providers. With support and advisory functions becoming increasingly automated, individual customers are likely to find it more difficult to obtain answers to questions that are specific to their personal circumstances. The same applies for creditworthiness assessments (CWAs) and suitability tests that rely on automated decision-support systems, increasingly based on Artificial Intelligence (AI). In order for customers to properly assess, and query providers' recommendations, offers or decisions high standards of transparency and disclosure must be maintained. To guarantee effective redress, decisions originated by automated (in particular AI-enabled) decision-support systems must always be supervised by human operators, and responsibility assigned to members of the provider's senior management. Customer rights need to be reinforced in view of the adoption of AI, in particular, to include a right to the full disclosure of data processed, and the logic applied in automated (AI-supported) decision-making. Such disclosure must be sufficient to facilitate a substantive judicial review, if necessary.
4. Harmonised regulation and effective, integrated supervision  
In order to guarantee a level playing field in a pan-European market - where passporting rights enable providers to readily offer financial services across national borders - regulation needs to be harmonised and supervisory practice standardised. A common taxonomy and terminology of financial products and services should be developed as a matter of priority, as recommended by the Expert Group on Regulatory Obstacles to Financial Innovation (ROFIEG) (rec. 10), and the proliferation of bespoke regulatory regimes reduced.

## I. Ensuring a technology-neutral and innovation friendly EU financial services regulatory framework

In order to be fit for the digital age, the EU financial services regulatory framework should neither prescribe nor prevent the use of particular technologies whilst ensuring that regulatory objectives continue to be satisfied. It should also not hinder the emergence and scaling up of innovative business models, including platform-based ones, provided that the new risks these new business models may bring are properly addressed. The Commission undertook an in-depth assessment of these issues in the context of the FinTech Action Plan and is already acting on certain issues. Even so, in this fast-moving and increasingly complex ecosystem, it is essential to monitor technological and market trends on a regular basis and to identify at an early stage whether new regulatory issues, including e.g. prudential ones, are emerging and, if so, how to address them in a proportionate manner.

**Question 4. Do you consider the existing EU financial services regulatory framework to be technology neutral and innovation friendly?**

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not relevant

**Question 5. Do you consider that the current level of consumer protection for the retail financial products and services established by the EU regulatory framework is technology neutral and should be also applied to innovative ones using new technologies, although adapted to the features of these products and to the distribution models?**

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not relevant

**Question 5.1 Please explain your reasoning on your answer to question 5, and where relevant explain the necessary adaptations:**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Although the response to question 5 is 'yes' there is a risk that existing issues with the current consumer protection framework that lead to discrimination and exclusion could be exacerbated by technological developments. Whilst the regulatory framework should aim at being technology neutral it should also take into account this risk. How to develop an easy and efficient control scheme of these black boxes? What is the best way to avoid negative impact on society? A possibility is to develop objective indicators and to monitor them: e.g. a) number of credit default per type of credit/per provider, b) a measure of company's capacity to serve all types of citizens: clients' geographic distribution of each company compared to citizens geographic distribution. Digitalisation and Big Data Analytics have the capacity to increase profiling (beyond mass use of data for increasingly targeted marketing) to allow services to better fit the personal situation of the consumer (in the best case scenario). However, currently client segmentation has a direct impact on consumer capacity to compare different offers for the financial service they are looking for. Generally only partial offers can be easily compared as obtaining the final price for a product requires inputting a lot of personal data, completing forms and at times waiting on a response, which is time-consuming and prevents many consumers from repeating the exercise with several different providers. This goes some way to explain an increasing use of comparison websites by certain consumers, but using these websites does not guarantee that the consumer will find the right product for their situation (this relies on the quality of the comparison websites (market coverage/ method.) and consumers might need a significant amount of time and knowledge to find the best website comparison). This is why we question what real benefits sophisticated client segmentation using big data analytics brings to consumers as a whole. It might be relevant to limit the number of profiles (based on a common typology) to allow effective comparison of different companies. However, we have concerns over the capacity to consumers to benefit from more personalised offers. People identified as presenting low risks, who are educated and comfortable using digital tools are likely to be able to make the most of this development, but what will happen to all the others? There is a risk that segmentation using big data analytics will increase the capacity for companies to charge higher prices to less well equipped and educated people and therefore limit their access. Given that some of these financial products are essential services, this can have negative impact at a societal level and put an end to mutualisation and socialisation of risk, which is at the core of many financial products and especially for insurance products. This type of discrimination is more at risk of happening and less at risk of being identified and supervised. Concretely, compliance is much harder to measure and enforce (with increase of unfair competition between the fair and unfair players). On-line direct marketing strategies can be hardly identified and supervised when they explicitly target lower risk groups or when advertising is dynamically adapted to certain profiles. Universal insurance companies (with a well developed level of mutualisation) might be put at risk by new comers and so are only willing to insure "low risks" by offering these consumers attractive premiums. When this happens, it can reduce the possibility for the average or higher risk consumer to access affordable premiums and means that the type of risk that is being covered is not actually being mutualised. Public authorities should be mandated to develop an open-source artificial intelligence solution that would analyse consumer data and provide them with an estimate of the prices of financial services. This solution could complement the establishment of a financial services price observatory. Such comparison tools exist comparing different telecommunications or mortgage credit providers, but in a fully digital financial world where all products are tailored to a consumers' profile, it would be much more interesting for a consumer to know from an independent source, the price range which fits their profile, and which prices are clearly

abusive. [Please see the document attached to the response for the full answer to the question]

## Identify areas where the financial services regulatory framework may need to be adapted

The use of Distributed Ledger Technology (DLT), and in particular the use of one of its applications, the so-called crypto-assets, have been identified as an area where the European regulatory framework may need to be adapted. A public consultation on crypto-assets is on-going to gather stakeholders' views on these issues. Beyond the area of crypto assets, and looking at other technological and market developments, the Commission considers that it is important to identify potential regulatory obstacles to innovation at an early stage and see how to best address these obstacles not to slow down the uptake of new technologies in the financial sector.

**Question 6. In your opinion, is the use for financial services of the new technologies listed below limited due to obstacles stemming from the EU financial services regulatory framework or other EU level regulatory requirements that also apply to financial services providers?**

Please rate each proposal from 1 to 5:

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
Distributed Ledger Technology (except crypto-assets)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cloud computing	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Artificial Intelligence/Machine learning	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Internet Of Things (IoT)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Biometrics	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Quantum computing	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Question 6.1 Please explain your answer to question 6, specify the specific provisions and legislation you are referring to and indicate your views on how it should be addressed:**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As mentioned previously, Finance Watch generally agrees with the assessment of the Expert Group on Regulatory Obstacles to Financial Innovation (ROFIEG) that EU financial sector regulation is “largely technology neutral” (ROFIEG, pg. 24). Legislative action may be needed in certain areas to ensure legal certainty, in particular regarding the adoption of Distributed Ledger Technology (DLT) and to a lesser extent, Cloud Computing. Genuine disruptive innovation, such as applications involving Artificial Intelligence (AI), will require active, and comprehensive intervention by legislators to update and enhance the relevant legal and regulatory framework, not only for the financial sector (see our response to Q.4.1).

In some other areas, in particular, related to technologies that rely on processing personal user data, such as Biometrics and IoT (location data), existing regulatory limitations that are grounded in the protection of citizens’ rights are, in our view, justified and should not be viewed as “obstacles” to technological progress (see also our response to Q.1).

We also note that technological innovation could be readily accommodated in many instances by adjusting the regulatory perimeter of existing legal regimes that already govern largely similar activities, instead of creating new, standalone regimes that add to fragmentation and encourage regulatory arbitrage. The decision to create a bespoke regulation for crowdfunding, instead of bringing it under the umbrella of the MiFIR/MiFID II framework, would be an exemplary case in point.

**Question 7. Building on your experience, what are the best ways (regulatory and non-regulatory measures) for the EU to support the uptake of nascent technologies and business models relying on them while also mitigating the risks they may pose?**

**Please rate each proposal from 1 to 5:**

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
Setting up dedicated observatories to monitor technological and market trends (e.g. EU Blockchain Observatory & Forum; Platform Observatory)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Funding experimentation on certain applications of new technologies in finance (e.g blockchain use cases)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Promoting supervisory innovation hubs and sandboxes	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Supporting industry codes of conduct on certain applications of new technologies in finance	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Enhancing legal clarity through guidance at EU level for specific technologies and/or use cases	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Creating bespoke EU regimes adapted to nascent markets, possibly on a temporary basis	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

## Assess the need for adapting the existing prudential frameworks to the new financial ecosystem, also to ensure a level playing field

Financial services providers are increasingly relying on technology companies to support delivery mechanisms for financial services. Technology companies are also increasingly entering financial services directly. Such trends will have an impact on the customers, the supply chain, incumbent financial institutions and their regulators and supervisors. Big technology companies are able to quickly scale up services due to network effects and large user bases. Their entry may accordingly over time significantly change market structures. This may require a review of how the EU financial legislative framework regulates firms and activities, in particular if technology companies were to become direct providers of specific services (e.g. lending) or a broader range of financial services or activities. This may also require a review of how to supervise the overall risks stemming from financial services of such companies.

Financial regulation should harness the opportunities offered by digitalisation – e.g. in terms of innovative solutions that better serve customers - while protecting the public interest in terms of e.g. fair competition, financial stability, consumer protection and market integrity. The Commission accordingly invite stakeholders' views on the potential impact of technology companies entering financial services and possible required policy response in view of the above public policy objectives.

**Question 8. In which financial services do you expect technology companies which have their main business outside the financial sector (individually or collectively) to gain significant market share in the EU in the five upcoming years?**

Please rate each proposal from 1 to 5:

	1 (very low market share - below 1%)	2 (low market share)	3 (neutral)	4 (significant market share)	5 (very significant market share - above 25%)	N. A.
Intra-European retail payments	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Intra-European wholesale payments	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Consumer credit provision to households with risk taking	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Consumer credit distribution to households with partner institution(s)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Mortgage credit provision to households with risk taking	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mortgage credit distribution to households with partner institution(s)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Credit provision to SMEs with risk taking	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Credit distribution to SMEs with partner institution(s)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Credit provision to large corporates with risk taking	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Syndicated lending services with risk taking	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Risk-taking activities in Life insurance products	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Risk-taking activities in Non-life insurance products	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Risk-taking activities in pension products	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Intermediation / Distribution of life insurance products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Intermediation / Distribution of non-life insurance products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Intermediation / Distribution of pension products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other insurance related activities, e.g. claims management	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Re-insurance services	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Investment products distribution	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Asset management	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Others	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Question 8.1 Please explain your answer to question 8 and, if necessary, describe how you expect technology companies to enter and advance in the various financial services markets in the EU Member States:**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Given that returns on equity in most financial services tend to be lower, on average, than in their core businesses we expect technology firms to take a selective approach, concentrating on segments that allow them to leverage their technological infrastructure, customer base and repository of customer data while minimising the use of capital – and hence dilution of returns. Fee-based activities, in particular payments and other transaction banking services, have proven particularly attractive to technology firms as they generate substantial, and relatively stable revenues streams, lend themselves to a high degree of automation and standardisation, and therefore produce high marginal returns on the firms' existing investment in data processing infrastructure.

In other areas, such as lending, asset management, and insurance, we expect technology companies to mostly limit themselves, at least initially, to partnerships and/or the distribution of third-party financial products. In lending, we would expect technology firms to focus on small-ticket, short-term, unsecured loans, such as consumer overdrafts and working capital facilities for SMEs, that allow for a high degree of risk diversification and do not require the valuation and management of collateral. This approach would be consistent with the objectives of minimising the use of own balance sheet-capacity and limiting the range of activities subject to strict financial services regulation and supervision.

In the first instance, technology firms are likely to focus on the retail and SME segments, capitalising on brand recognition, the ubiquity of their services, and their detailed knowledge of these customers, which is enabled by the availability of large, very granular datasets, sophisticated analytical tools and massive data processing capacity.

**Question 9. Do you see specific financial services areas where the principle of “same activity creating the same risks should be regulated in the same way” is not respected?**

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not relevant

**Question 9.1 Please explain your answer to question 9 and provide examples if needed:**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The 'open banking' initiative under Directive (EU) 2015/2366 (PSD 2) requires banks to grant technology firms access to customer data, subject to customer consent. There is no reciprocal obligation for technology firms' to provide data to banks, and other third parties with similar access to the customer data they hold. This is likely to further accelerate the concentration of EU citizens' personal data in the hands of a small number of large, global technology firms (ROFIEG, pg. 80). The unbundling of the value chain by PSD 2, creating a range of new, lightly-regulated categories of service providers, has created opportunities for technology firms to enter the business in a way that allows them to achieve a maximum of visibility, and traction with the end customer for a minimum of regulatory oversight. Drawing on the precedent of the unbundling of the telecom industry 20-30 years ago, incumbent financial services firms run the risk of being relegated to "dumb pipes", i.e. providers of regulated, commoditised capacity, while lucrative services are provided by others. Whereas Finance Watch supports the original intention of PSD 2 to render payment services more competitive we believe that misguided enthusiasm for "open banking" and "value chain engineering" has actually increased concentration risk, only that the likely beneficiaries are large technology firms rather than incumbents. The principle of "same activity - same risk - same regulation" is not being observed if legislators, while regulating certain activities, allow at the same time for the creation of other, less strictly or unregulated, activities that undermine the effectiveness of that very same regulatory effort. We would therefore welcome a review of PSD 2 to better align its data-sharing provisions with GDPR and caution against similar attempts at "value chain engineering" in other areas of digital financial services. Other areas where the principle of "same activity - same risk - same regulation" is not observed are, for instance, the markets for consumer credit, peer-to-peer lending and so-called 'payday loans'. These activities are currently conducted largely by entities that are not formally credit institutions and therefore not subject to banking-sector regulation (CRR II, CRD V, BRRD II, and others). Under the umbrella of the Consumer Credit Directive (Directive 2008/48/EC) a collection of national frameworks and regulators exist, largely in parallel and outside of the European System of Financial Supervision (ESFS). At the same time, their activities - the extension of credit to consumers - are, not substantially different from, or less risky than conventional credit extended by banks. Finally, we would highlight the market for crowdfunding, another area where the principle of "same activity - same risk - same regulation" is not applied. The proposed regulation for European Crowdfunding Services Providers (ECSPs) is a standalone regime that will be set up alongside the existing MiFIR/MiFID II framework. As with the Consumer Credit Directive, this approach appears to be informed by a mistaken interpretation of the principle of proportionality, i.e. that individual transactions are smaller, and therefore do not require the same level of regulation, in particular regarding prudential and disclosure requirements for providers. This argument is flawed: even if individual transactions are small, providers that engage in numerous transactions can become quite sizable, in particular if they operate on a pan-European scale. If crowdfunding were to become a major source of capital markets activity (which is not the case today), market participants would face a situation where the risks crowdfunding instruments may pose, to potential investors and for financial stability in general, are not regulated in the same way as they are for equivalent financial instruments that are distributed in a conventional manner (under MiFIR/MiFID II). We agree with the finding of the ROFIEG that it is currently too easy for technology firms, in particular, to gain an advantage over established, regulated institutions by engaging in regulatory arbitrage. We categorically disagree, however, with the solution proposed by the ROFIEG. Activity-based regulation is not the answer: it merely adds new layers of complexity, for no apparent gain in regulatory effectiveness; it is prone to the

same intrinsic weaknesses that have beset risk-weighted capital requirements and internal risk modelling under the Basel II/III framework since the beginning; it opens up new opportunities for incumbents, in particular large, well-resourced institutions, to fine-tune the regulatory perimeter in their favour and, as a result, weaken the existing prudential framework. [Please see the document attached to the response for the full answer to the question]

**Question 10. Which prudential and conduct risks do you expect to change with technology companies gaining significant market share in financial services in the EU in the five upcoming years?**

Please rate each proposal from 1 to 5:

	1 (significant reduction in risks)	2 (reduction in risks)	3 (neutral)	4 (increase in risks)	5 (significant increase in risks)	N.A.
Liquidity risk in interbank market (e.g. increased volatility)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Liquidity risk for particular credit institutions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Liquidity risk for asset management companies	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Credit risk: household lending	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Credit risk: SME lending	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Credit risk: corporate lending	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Pro-cyclical credit provision	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Concentration risk for funds collected and invested (e.g. lack of diversification)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Concentration risk for holders of funds (e.g. large deposits or investments held in a bank or fund)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Undertaken insurance risk in life insurance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Undertaken insurance risk in non-life insurance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Operational risks for technology companies and platforms	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Operational risk for incumbent financial service providers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Systemic risks (e.g. technology companies and platforms become too big, too interconnected to fail)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Money-laundering and terrorism financing risk	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Question 10.1 Please explain your answer to question 10 and, if necessary, please describe how the risks would emerge, decrease or increase with the higher activity of technology companies in financial services and which market participants would face these increased risks:**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As stated in our response to Question 8 above, we expect technology firms to enter the EU financial services market mainly through partnerships with incumbents, with the possible exception of certain payment and transaction banking services. Some of these entrants may, in due course, proceed to engage in deposit-taking activities, e.g. to complement their payment and transaction banking services for retail customers and SMEs and to support certain lending activities, such as consumer overdrafts and working capital facilities for SMEs. At that stage we could see some degree of competition for liquidity between entrants and incumbents, both in the market for retail and SME deposits and in the wholesale market for short-term funding where technology firms could potentially fund themselves at more favourable rates than many incumbents. Recent evidence, e.g. from China, points towards an increase in the volatility of bank deposits and short-term funding when technology firms offer alternative cash management services, such as electronic wallets, and money market funds (MMFs) that act as substitutes for savings products. EU markets are very different, however, in terms of maturity, the availability of banking services, and regulation of deposit-taking institutions. As stated above we do not currently expect technology firms to enter the EU credit markets at scale, at least not in the near term, and are therefore less concerned, at this stage, about technology firms competing in a significant way with incumbent banks for liquidity. We are more concerned about the potential impact of technology firms as distribution channels for saving and investment products. If technology firms are successful in providing a front-end for asset managers, their role as an aggregator of demand could lead to a concentration of the customer base. If so, the interlinkages between these activities and other activities of the technology firm, notably information and communication services, such as social media, could create, or reinforce, "herding" effects, such as mass redemptions, in times of heightened volatility that may jeopardise the liquidity position of the funds they distribute, and ultimately their managers. A similar effect could occur if technology firms choose to create their own structures, such as funds of funds, to intermediate investment, especially by retail customers, into collective investment schemes offered by incumbent managers. Based on the evidence available so far, we would expect technology firms to take a low-touch, data-driven approach, in contrast to the traditional, more relationship-driven approach of incumbent financial institutions. There is strong evidence from other areas of the financial markets that data-driven actors, such as fund managers using algorithmic trading models, behave in highly procyclical patterns, a factor that has been shown to increase systemic instability in times of crisis. Technology firms that engage in (retail and SME) lending are likely to be equally sensitive to changes in credit market sentiment and, consequently, prone to strongly procyclical behaviour. It is worth mentioning, too, that these firms' risk models are not subject to supervisory review and vetting and, as of now, unproven throughout a full cycle. As their engagement in credit provision grows, either directly or through partnerships, so will their marginal contribution to procyclicality. There is no doubt, in our view, that major global technology firms will become systemically important institutions in the financial markets where they are present. By virtue of their size, global customer base and the interconnectedness of their businesses, inside and outside the financial services industry, we expect them to rapidly achieve significant market share in their target segments. Given their geographically distributed business models, with very limited physical presence, and their reluctance so far to engage in regulated businesses it could become a major challenge for regulators to devise a framework that adequately manages the potential systemic risk emanating from these new entrants. The role of technology firms as a source of operational risk also deserves particular scrutiny. This applies for both the technology firms themselves and the financial institutions that are their customers and/or partners. In recent years, financial institutions have

outsourced large parts of their in-house IT services to be managed by global technology providers. They have also turned to these technology firms for the provision of cloud services in order to enable new, innovative product offerings. Many of these services support critical functions that are indispensable for the functioning of the financial institution. [Please see the document attached to the response for the full answer to the question]

**Question 11. Which consumer risks do you expect to change when technology companies gain significant market share in financial services in the EU in the five upcoming years?**

**Please rate each proposal from 1 to 5:**

	1 (significant reduction in risks)	2 (reduction in risks)	3 (neutral)	4 (increase in risks)	5 (significant increase in risks)	N.A.
Default risk for funds held in non-banks and not protected by Deposit Guarantee Scheme	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Liquidity risk	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Misselling of insurance products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Misselling of investment products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Misselling of credit products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Misselling of pension products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Inadequate provision of information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Inadequate complaint and redress process and management	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Use/abuse of personal data for financial commercial purposes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Discrimination e.g. based on profiles	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Operational risk e.g. interrupted service, loss of data	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

**Please specify which other consumer risk(s) you expect to change when technology companies gain significant market share in financial services in the EU in the five upcoming years:**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 11.1 If necessary, please describe how the risks would emerge, decrease or increase with the higher activity of technology companies in financial services and which market participants would face these increased risks:**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 12. Do you consider that any of the developments referred to in the questions 8 to 11 require adjusting the regulatory approach in the EU (for example by moving to more activity-based regulation, extending the regulatory perimeter to certain entities, adjusting certain parts of the EU single rulebook)?**

- ☐ Yes
- ☐ No
- ☐ Don't know / no opinion / not relevant

**Question 12.1 Please explain your answer to question 12, elaborating on specific areas and providing specific examples:**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

## Enhance multi-disciplinary cooperation between authorities

The regulation and supervision of Digital Finance requires more coordination between authorities in charge of regulating and supervising finance, personal data, consumer protection, anti-money-laundering and competition-related issues.

**Question 13. Building on your experience, what are the main challenges authorities are facing while supervising innovative/digital players in finance and how should they be addressed?**

**Please explain your reasoning and provide examples for each sector you are referring to (e.g. banking, insurance, pension, capital markets):**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 14. According to you, which initiatives could be put in place at EU level to enhance this multi-disciplinary cooperation between authorities?**

**Please explain your reasoning and provide examples if needed:**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

## II. Removing fragmentation in the single market for digital financial services

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Removing Single Market fragmentation has always been on the radar of EU institutions. In the digital age, however, the ability of firms to scale up is a matter of economic productivity and competitiveness. The economics of data and digital networks determines that firms with substantial network effects enjoy a competitive advantage over rivals. Only a strong Single Market for financial services could bring about EU-wide businesses that would be able to compete with comparably sized peers from other jurisdictions, such as the US and China.

Removing fragmentation of the Single Market in digital financial services while maintaining an adequate level of security for the financial system is also essential for expanding access to financial services for consumers, investors and businesses across the EU. Innovative business models and services are flourishing in the EU, with the potential to bring greater choice and better services to consumers. Traditional players and start-ups are both competing, but also increasingly establishing partnerships to innovate. Notwithstanding the opportunities provided by the Digital Single Market, firms still face obstacles when scaling up across the Single Market.

Examples include a lack of consistency in the transposition, interpretation and application of EU financial legislation, divergent regulatory and supervisory attitudes towards digital innovation, national 'gold-plating' of EU rules, cumbersome licensing processes, insufficient funding, but also local preferences and dampen cross-border and international ambition and entrepreneurial spirit and risk taking on the part of business leaders and investors. Likewise, consumers face barriers in tapping innovative digital products and being offered and receiving services from other Member States other than of their residence and also in accessing affordable market data to inform their investment choices. These issues must be further addressed if the EU is to continue to be an incubator for innovative companies that can compete at a global scale.

**Question 15. According to you, and in addition to the issues addressed in questions 16 to 25 below, do you see other obstacles to a Single Market for digital financial services and how should they be addressed?**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

## Facilitate the use of digital financial identities throughout the EU

Both start-ups and incumbent financial institutions increasingly operate online, without any need for physical establishment in a particular jurisdiction. Technologies are enabling the development of new ways to verify information related to the identity and financial situation of customers and to allow for portability of such information as customers change providers or use services by different firms. However, remote on-boarding relies on different technological means (e.g. use of biometric data, facial recognition, live video) to identify and verify a customer, with different national approaches regarding their acceptability. Moreover, supervisory authorities have different expectations concerning the rules in the 5th Anti-Money Laundering Directive permitting reliance on third parties for elements of on-boarding. The Commission will also consult shortly in the context of the review of the EU Anti-Money Laundering framework.

**Question 16. What should be done at EU level to facilitate interoperable cross-border solutions for digital on-boarding?**

Please rate each proposal from 1 to 5:

	1 (ir rel ev an t)	2 (rat her not rele vant )	3 (n eu tr al)	4 (r at he r rel ev an t)	5 (f ull y rel ev an t)	N · A ·
Harmonise rules governing customer due diligence requirements in the Anti-Money Laundering legislation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Harmonise rules governing the acceptable use of remote identification technologies and services in the Anti-Money Laundering legislation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Broaden access for obliged entities to publicly held information (public databases and registers) to enable verification of customer identities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Provide further guidance or standards in support of the customer due diligence process (e.g. detailed ID elements, eligible trusted sources; risk assessment of remote identification technologies)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Facilitate the development of digital on-boarding processes, which build on the e-IDAS Regulation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Facilitate cooperation between public authorities and private sector digital identity solution providers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Integrate KYC attributes into e-IDAS in order to enable on-boarding through trusted digital identities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Question 17. What should be done at EU level to facilitate reliance by financial institutions on digital identities gathered by third parties (including by other financial institutions) and data re-use/portability?**

Please rate each proposal from 1 to 5:

	1 (ir rel ev an t)	2 (rath er not relev ant)	3 (n eu tr al)	4 (rat her rel ev an t)	5 (fu lly rel ev an t)	N . A .
Make the rules on third party reliance in the Anti-Money Laundering legislation more specific	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Provide further guidance relating to reliance on third parties for carrying out identification and verification through digital means, including on issues relating to liability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Promote re-use of digital identities collected for customer due diligence purposes in accordance with data protection rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Promote a universally accepted public electronic identity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Define the provision of digital identities as a new private sector trust service under the supervisory regime of the eIDAS Regulation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Question 18. Should one consider going beyond customer identification and develop Digital Financial Identities to facilitate switching and easier access for customers to specific financial services?**

**Should such Digital Financial Identities be usable and recognised throughout the EU?**

**Which data, where appropriate and in accordance with data protection rules, should be part of such a Digital Financial Identity, in addition to the data already required in the context of the anti-money laundering measures (e.g. data for suitability test for investment services; data for creditworthiness assessment; other data)?**

**Please explain your reasoning and also provide examples for each case you would find relevant.**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 19. Would a further increased mandatory use of identifiers such as Legal Entity Identifier (LEI), Unique Transaction Identifier (UTI) and Unique Product Identifier (UPI) facilitate digital and/or automated processes in financial services?**

☐ Yes

- ☐ No
- ☐ Don't know / no opinion / not relevant

## Make it easier for firms to carry out technology pilots and scale up across the Single Market

Currently, three national competent authorities have established regulatory sandboxes with five more under development. Regulatory sandboxes are most often schemes to enable firms to test, pursuant to a specific testing plan agreed and monitored by a dedicated function of the competent authority, innovative financial products, financial services or business models. Besides, almost all competent authorities have established innovation hubs. Innovation hubs provide a dedicated point of contact for firms to ask questions to competent authorities on FinTech related issues and to seek non-binding guidance on regulatory and supervisory expectations, including licensing requirements. The European Forum of Innovation Facilitators (EFIF) is intended to promote greater coordination and cooperation between innovation facilitators established by financial sector supervisors to support the scaling up of digital finance across the Single Market, including by promoting knowledge-sharing between innovation hubs and facilitating cross-border testing in regulatory sandboxes.

**Question 20. In your opinion (and where applicable, based on your experience), what is the main benefit of a supervisor implementing (a) an innovation hub or (b) a regulatory sandbox as defined above?**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We refer to our answer to Question 7. Generally, we believe that the creation of an innovation hub is a) a more flexible and less costly option (than sandboxing) as it requires, primarily, one or more regulatory expert(s) with a minimum of infrastructure; and b) is significantly less problematic (than sandboxing) in terms of preserving the integrity of the regulatory framework as it does not involve the creation of a parallel regulatory sphere. As mentioned previously, Finance Watch strongly recommends that innovation hubs should not be hosted by the supervisory authority itself but by other organisations, such as trade associations or chambers of commerce to ensure that advisory and supervisory functions are properly separated.

**Question 21. In your opinion, how could the relevant EU authorities enhance coordination among different schemes in the EU?**

Please rate each proposal from 1 to 5:

	1 (ir rel ev an t)	2 (rath er not relev ant)	3 (n eu tr al)	4 (rat her rel ev ant )	5 (fu lly rel ev an t)	N . A .

Promote convergence among national authorities in setting up innovation hubs and sandboxes, through additional best practices or guidelines	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Facilitate the possibility for firms to test new products and activities for marketing in several Member States ("cross border testing")	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Raise awareness among industry stakeholders	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ensure closer coordination with authorities beyond the financial sector (e.g. data and consumer protection authorities)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Promote the establishment of innovation hubs or sandboxes with a specific focus (e.g. a specific technology like Blockchain or a specific purpose like sustainable finance)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Question 21.1 If necessary, please explain your reasoning and also provide examples for each case you would find relevant:**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 22. In the EU, regulated financial services providers can scale up across the Single Market thanks to adequate licenses and passporting rights.**

**Do you see the need to extend the existing EU licenses passporting rights to further areas (e.g. lending) in order to support the uptake of digital finance in the EU?**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As set out in our responses to questions Q.6. and Q.9.1. above, Finance Watch is strongly in favour of cross-border regulatory convergence in the EU. Levelling the playing field for financial institutions, and securing equal protections for users are necessary prerequisites for achieving a true "single market" for financial services. We note, however, that such harmonisation should always aspire to the highest standards and be guided by "best practice" among member states. In particular, we could see significant benefit, potentially, in bringing specific legal regimes under the umbrella of a broader framework that already regulates very similar activities, e.g. CRR II/CRD V for consumer credit or MiFIR/MIFID II for crowdfunding.

In the consumer and mortgage credit markets, the current situation varies greatly from one Member State to another: in some, credit is exclusively a banking activity, while in others it is not. The result is an unfortunate disparity in market supervision and regulation. While banking activity in Europe benefits from a strict framework and harmonised regulatory monitoring, the situation is different for non-bank players. The resulting divergences, e.g. in lending practices, introduce a level of legal uncertainty that is not conducive to the objective of creating a "single market" for financial services. Another key consideration in this context is the need to introduce responsible lending practices (i.e. based on new approaches to the design and process of creditworthiness assessments), that place particular emphasis on the protection of the privacy and personal data of applicants.

In addition, supervisory requirements and practices deviate between member states, e.g. for monitoring the credit market and, in particular, lending standards and the quality of customer portfolios.. For these reasons, it seems essential to consolidate and harmonize regulation and supervision at the European level.

Finally, it is important to ensure that member states' legal frameworks for personal insolvency rights, forbearance, and repossession procedures are more harmonised, in order to help open up national markets to cross-border competition while preserving the highest standards of protection for users of financial services, and citizens generally.

## **Ensure fair and open access to relevant technical infrastructures for all financial service providers that wish to offer their services across the Single Market**

*(It should be noted that this topic is also included, from the payment perspective, in the [Retail Payments consultation \(https://ec.europa.eu/info/publications/finance-consultations-2020-retail-payments-strategy\\_en\)](https://ec.europa.eu/info/publications/finance-consultations-2020-retail-payments-strategy_en))*

The emergence of providers of technical services supporting the provision of financial services bring both opportunities and challenges. On the one hand, such providers can facilitate the provision of cross-border services. On the other hand, they may in certain cases limit access to the platform or relevant devices' interface, or provide it under unfair and non-transparent terms and conditions. Certain Member States are starting to take measures in this respect.

**Question 23. In your opinion, are EU level initiatives needed to avoid fragmentation in the Single Market caused by diverging national measures on ensuring non-discriminatory access to relevant technical infrastructures supporting financial services?**

**Please elaborate on the types of financial services and technical infrastructures where this would be relevant and on the type of potential EU initiatives you would consider relevant and helpful:**

5,000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

## Empower and protect EU consumers and investors using digital finance across the Single Market

An increasing number of new digital financial products and services expose consumers and retail investors to both opportunities and risks: more choice, more tailored products, more convenience, but also bad advice, mis-selling, poor information and even discrimination. Accordingly, it is important to carefully consider how to tap the potential of innovative products, services and business models while empowering and protecting end-users, to ensure that they benefit from a broader access to, and range of innovative products and services across the Single Market in a safe and sound manner. This may also require reviewing existing legislation to ensure that the consumer perspective is sufficiently taken into account. In addition, promoting financial education and digital financial skills may be important to ensure that consumers and retail investors are able to make the most of what digital finance has to offer and to select and use various digital tools, whilst at the same time increasing the potential size of the market for firms.

**Question 24. In your opinion, what should be done at EU level to achieve improved financial education and literacy in the digital context?**

Please rate each proposal from 1 to 5:

	1 (ir rel ev an t)	2 (rath er not relev ant)	3 (n eu tr al)	4 (ra th er rel ev an t)	5 (f ull y rel ev an t)	N · A ·
Ensure more affordable access at EU level to financial data for consumers and retail investors	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Encourage supervisors to set up hubs focussed on guiding consumers in the digital world	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Organise pan-European campaigns and advisory hubs focusing on digitalisation to raise awareness among consumers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Collect best practices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Promote digital financial services to address financial inclusion	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Introduce rules related to financial education comparable to Article 6 of the Mortgage Credit Directive, with a stronger focus on digitalisation, in other EU financial regulation proposals	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Question 25: If you consider that initiatives aiming to enhance financial education and literacy are insufficient to protect consumers in the digital context, which additional measures would you recommend?**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

### III. Promote a well-regulated data-driven financial sector

Data-driven innovation can enable better and more competitive financial services for consumers and businesses, as well as more integrated capital markets (e.g. as discussed in the on-going work of the High-Level Forum). Whilst finance has always been a data-intensive sector, data-processing capabilities have substantially improved over the recent years, enabling fast parallel computing at low cost. Large amounts of data have also become available as computers and their users are increasingly linked, supported by better storage data capabilities. These developments have enabled the use of artificial intelligence (AI) applications to make predictions about future outcomes at a lower cost. Following on to the European data strategy adopted on 19 February 2020, the Commission services are considering a number of steps in this area (see also the parallel consultation on the Mifid review).

**Question 26: In the recent communication "A European strategy for data", the Commission is proposing measures aiming to make more data available for use in the economy and society, while keeping those who generate the data in control.**

**According to you, and in addition to the issues addressed in questions 27 to 46 below, do you see other measures needed to promote a well-regulated data driven financial sector in the EU and to further develop a common European data space for finance?**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In its report, the ROFIEG points out that digitalisation of the EU financial sector should be informed by "fundamental European values, such as data privacy and competition" (ROFIEG, pg. 11). Finance Watch fully agrees with this statement. The rights to privacy and the protection of personal data are guaranteed by Articles 7 and 8 of the Charter of Fundamental Rights and, in secondary legislation, primarily by the GDPR (Regulation (EU) 2016/679). It is the responsibility of the (joint) EU legislators to enact secondary legislation, such as the GDPR, that gives effect to the guarantees of the Charter and, ex-post, the prerogative of the judiciary to assess whether such legislation conforms to the Charter and the Treaties.

We disagree, therefore, with the recommendation of the ROFIEG (rec. 1) that "the European Commission should, in cooperation with the ESAs and relevant international standard-setting bodies, develop measures clarifying the circumstances under which requirements aiming at explainability and interpretability of AI and associated technologies, ... are appropriate," and "provide guidance on how to meet explainability and interpretability requirements." If such measures were to be enacted by the European Commission, on its own, they would have to take the form of delegated or implementing acts, as defined by Articles 290 and 291 TFEU. As of today, Finance Watch is not aware of a delegation or general provision in secondary law that would provide a legal basis for such a mandate.

Likewise, we disagree with the recommendation of the ROFIEG (rec. 25) that the European Data Protection Board (EDPB) should issue general "guidance on the application of the GDPR and other relevant legislation in relation to the innovative use of technology in financial services." In the absence of specific secondary legislation that governs fundamental issues related to the use of AI, both generally and in connection with financial services we doubt that such a mandate for the EDPB would be compatible with the strict limits on the delegation of discretionary powers imposed by the ECJ (e.g. Meroni, C559/14, EU:C:2016:349).

As stated previously (see our responses to Q.5.1 and 6.1) Finance Watch believes that the deployment of AI-enabled decision-support systems

We note that the application of GDPR in the field of financial services has been less than satisfactory so far, e.g. in the case of the Payment Services Directive (Directive (EU) 2015/2366, PSD 2) where the opinion provided by the EDPB on the topics of "explicit consent" and the protection of "silent parties" is, at the very least, debatable.

We consider that, as long as personal data collected by companies are not put easily under the control of each citizen, GDPR efficiency will be highly compromised. Citizens are the only one who should be entitled to decide to who and for what purpose he/she will provide an access (precise perimeter /duration /...) to his/her set of personal data (necessary and minimized) as regard any decision to access a financial service.

In the current model, the company - and not the user - owns the personal data. Furthermore, all the data is centrally owned by only a few bigtech companies, which became data monopolists. This is neither beneficial for users of digital services nor for competitors nor society.

The Bank for International Settlement (2019, p. 20) has recognised this problem, albeit from a competition point of view alone, and proposes to assign property rights on private data to customers: "The issue, therefore, is how to promote data-sharing. Currently, data ownership is rarely clearly assigned. For practical purposes, the default outcome is that big techs have de facto ownership of customer data, and customers cannot (easily) grant competitors access to their relevant information. This uneven playing field between customers and service providers can be remedied somewhat by assigning data property rights to the customers. Customers could then decide with which

providers to share or sell data. In effect, this attempts to resolve inefficiencies through the allocation of property rights and the creation of a competitive market for data – the decentralised or “Coasian” solution.”

Assigning property rights over personal data to the individual implies the creation of the individual’s self-determined digital identity. Personal attributes, such as colour of skin, DNA, name, age, fingerprint etc. constitute the digital identity of the individual. If the individual has full control of his or her private data, they become the sovereign of their own data and should decide for themselves when to collect, disclose and share the data with others. Therefore, the human right to privacy is contingent on the right to generate one’s own identity.”

[Please see the document attached to the response for the full answer to the question]

## Facilitate the access to publicly available data in finance

Financial institutions are currently required to make public a wealth of financial information. This information e.g. allows investors to make more informed choices. For example, such data include financial reporting and non-financial reporting, prudential disclosures under the Capital Requirements Directive or Solvency II, securities market disclosures, key information documents for retail investment products, etc. However, this data is not always easy to access and process. The Commission services are reflecting on how to further facilitate access to public disclosures of financial and supervisory data currently mandated by law, for example by promoting the use of common technical standards. This could for instance contribute to achieving other policies of public interest, such as enhancing access to finance for European businesses through more integrated capital markets, improving market transparency and supporting sustainable finance in the EU.

**Question 27. Considering the potential that the use of publicly available data brings in finance, in which areas would you see the need to facilitate integrated access to these data in the EU?**

Please rate each proposal from 1 to 5:

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N · A ·
Financial reporting data from listed companies	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Non-financial reporting data from listed companies	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
SME data	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prudential disclosure stemming from financial services legislation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Securities market disclosure	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Disclosure regarding retail investment products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

As part of the [European Financial Transparency Gateway \(EFTG\) project \(https://europa.eu/!kX66Hf\)](https://europa.eu/!kX66Hf), the Commission has been assessing since 2017 the prospects of using Distributed Ledger Technology to federate and provide a single point of access to information relevant to investors in European listed companies.

**Question 28. In your opinion, what would be needed to make these data easily usable across the EU?**

**Please rate each proposal from 1 to 5:**

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
Standardised (e.g. XML) and machine-readable format	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Further development of the European Financial Transparency Gateway, federating existing public databases with a Single EU access point	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Application Programming Interfaces to access databases	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Public EU databases	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## Consent-based access to personal data and data sharing in the financial sector

The Commission is reflecting how to further enable consumers, investors and businesses to maximise the benefits their data can bring in the financial sector, in full respect of our European standards and values, in particular the European data protection rules, fundamental rights and security.

The revised Payment Services Directive marked an important step towards the sharing and use of customer-permissioned data by banks and third party providers to create new services. However, this new framework is limited to payment data held by payment services providers, and does not cover other types of data relevant to financial services and held by other firms within and outside the financial sector. The Commission is reflecting upon additional steps in the area of financial services inspired by the principle of open finance. Any new initiative in this area would be based on the principle that data subjects must have full control over their data.

Better availability and use of data, leveraging for instance on new technologies such as AI, could contribute to supporting innovative services that could benefit European consumers and firms. At the same time, the use of cutting-edge technologies may give rise to new risks that would need to be kept in check, as equally referred to in section I.

**Question 29. In your opinion, under what conditions would consumers favour sharing their data relevant to financial services with other financial services providers in order to get better offers for financial products and services?**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 30. In your opinion, what could be the main benefits of implementing an open finance policy in the EU?**

Please rate each proposal from 1 to 5:

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N · A ·
More innovative and convenient services for consumers/investors, e.g. aggregators, comparison, switching tools	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cheaper traditional services for consumers/investors	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Efficiencies for the industry by making processes more automated (e.g. suitability test for investment services)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Business opportunities for new entrants in the financial industry	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
New opportunities for incumbent financial services firms, including through partnerships with innovative start-ups	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Easier access to bigger sets of data, hence facilitating development of data dependent services	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Enhanced access to European capital markets for retail investors	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Enhanced access to credit for small businesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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**Question 31. In your opinion, what could be the main risks of implementing an open finance policy in the EU?**

**Please rate each proposal from 1 to 5:**

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
Privacy issues / security of personal data	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Financial exclusion	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Poor consumer outcomes (e.g. unfair pricing strategies)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Misuse of consumers' financial data	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Business confidentiality issues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Increased cyber risks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of level playing field in terms of access to data across financial sector activities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Question 32. In your opinion, what safeguards would be necessary to mitigate these risks?**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 33. In your opinion, for which specific financial products would an open finance policy offer more benefits and opportunities?**

**Please rate each proposal from 1 to 5:**

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Savings accounts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Consumer credit	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
SME credit	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mortgages	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Retail investment products (e.g. securities accounts)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Non-life insurance products (e.g. motor, home...)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Life insurance products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Pension products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Question 33.1 Please explain your answer to question 33 and give examples for each category:**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 34. What specific data (personal and non-personal) would you find most relevant when developing open finance services based on customer consent?**

**To what extent would you also consider relevant data generated by other services or products (energy, retail, transport, social media, e-commerce, etc.) to the extent they are relevant to financial services and customers consent to their use?**

**Please explain your reasoning and provide the example per sector:**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 35. Which elements should be considered to implement an open finance policy?**

**Please rate each proposal from 1 to 5:**

	1 (ir rel ev an t)	2 (rath er not relev ant)	3 (n eu tr al)	4 (rat her rel ev ant )	5 (fu lly rel ev an t)	N . A .
Standardisation of data, data formats	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Clarity on the entities covered, including potential thresholds	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Clarity on the way data can be technically accessed including whether data is shared in real-time (e.g. standardised APIs)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Clarity on how to ensure full compliance with GDPR and e-Privacy Directive requirements and need to ensure that data subjects remain in full control of their personal data	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Clarity on the terms and conditions under which data can be shared between financial services providers (e.g. fees)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Interoperability across sectors	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Clarity on the way data shared will be used	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Introduction of mandatory data sharing beyond PSD2 in the framework of EU regulatory regime	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
If mandatory data sharing is considered, making data available free of cost for the recipient	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## Support the uptake of Artificial intelligence in finance

Artificial intelligence (AI) can bring considerable benefits for EU citizens and businesses alike and the Commission is committed to support its uptake with appropriate frameworks and investment. The White Paper on Artificial intelligence details the Commission's vision on a European approach for AI in Europe.

In the financial sector, AI and machine learning solutions are increasingly applied throughout the entire value chain. This may benefit both firms and consumers. As regards firms, AI applications that enable better predictions can result in immediate cost savings due to improved risk analysis or better client segmentation and product price differentiation. Provided it can be achieved, this could in the medium term lead to better risk management and improved profitability. As an immediate effect, AI allows firms to save on costs, but as prediction technology becomes more accurate and reliable over time, it may also lead to more productive business models and entirely new ways to compete.

On the consumer side, the use of AI applications can result in an improved price-quality relationship of financial services, better personalisation and in some cases even in financial inclusion of previously excluded consumers. At the same time, AI may entail new risks such as opaque decision-making, biases, discrimination or loss of privacy.

The Commission is seeking stakeholders' views regarding the use of AI and machine learning solutions in finance, including the assessment of the overall opportunities and risks it could bring as well as the specificities of each sector, e.g. banking, insurance or investment services.

**Question 36: Do you/does your firm already deploy AI based services in a production environment in the EU?**

- ☐ Yes
- ☐ No
- ☐ Don't know / no opinion / not relevant

**Question 37: Do you encounter any policy or regulatory issues with your use of AI?**

**Have you refrained from putting AI based services in production as a result of regulatory requirements or due to legal uncertainty?**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 38. In your opinion, what are the most promising areas for AI-applications in the financial sector in the medium term and what are the main benefits that these AI-applications can bring in the financial sector to consumers and firms?**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

**Question 39. In your opinion, what are the main challenges or risks that the increased use of AI-based models is likely to raise for the financial industry, for customers/investors, for businesses and for the supervisory authorities?**

**Please rate each proposal from 1 to 5:**

**1. Financial industry**

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N · A ·
1.1. Lack of legal clarity on certain horizontal EU rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
1.2. Lack of legal clarity on certain sector-specific EU rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
1.3. Lack of skills to develop such models	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

1.4. Lack of understanding from and oversight by the supervisory authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
1.5. Concentration risks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
1.6. Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## 2. Consumers/investors

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N · A ·
2.1. Lack of awareness on the use of an algorithm	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2.2. Lack of transparency on how the outcome has been produced	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2.3. Lack of understanding on how the outcome has been produced	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2.4. Difficult to challenge a specific outcome	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2.5. Biases and/or exploitative profiling	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2.6. Financial exclusion	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2.7. Algorithm-based behavioural manipulation (e.g. collusion and other coordinated firm behaviour)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2.8. Loss of privacy	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2.9. Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## 3. Supervisory authorities

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N · A ·

3.1. Lack of expertise in understanding more complex AI-based models used by the supervised entities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3.2. Lack of clarity in explainability requirements, which may lead to reject these models	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3.3. Lack of adequate coordination with other authorities (e.g. data protection)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3.4. Biases	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3.5. Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Question 40. In your opinion, what are the best ways to address these new issues?**

**Please rate each proposal from 1 to 5**

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N · A ·
New EU rules on AI at horizontal level	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
New EU rules on AI for the financial sector	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Guidance at EU level for the financial sector	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Experimentation on specific AI applications under the control of competent authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Certification of AI systems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Auditing of AI systems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Registration with and access to AI systems for relevant supervisory authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Harness the benefits data-driven innovation can bring in compliance and supervision**

RegTech tools that are emerging across Europe can bring significant efficiencies for the financial industry. Besides, national and European supervisory authorities also acknowledge the benefits new technologies can bring in the data-intensive supervision area. Following on the findings of the Fitness Check of EU supervisory reporting, the Commission is already acting to develop a supervisory reporting that is fit for the future. Leveraging on machine learning technology, the Commission is mapping the concepts definitions and reporting obligations across the EU financial services legislation to identify the areas where further standardisation is needed. Standardised concept definitions and reporting obligations are a prerequisite for the use of more automated processes. Moreover, the Commission is assessing through a Proof of Concept the benefits and challenges recent innovation could bring in the reporting area such as machine-readable and machine executable legislation. Looking at these market trends and building on that work, the Commission is reflecting upon the need for additional initiatives at EU level to facilitate the uptake of RegTech and/or SupTech solutions.

**Question 41. In your opinion, what are the main barriers for new RegTech solutions to scale up in the Single Market?**

**Please rate each proposal from 1 to 5:**

**Providers of RegTech solutions:**

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N · A ·
Lack of harmonisation of EU rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of clarity regarding the interpretation of regulatory requirements (e.g. reporting)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of standards	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of real time access to data from regulated institutions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of interactions between RegTech firms, regulated financial institutions and authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of supervisory one stop shop for RegTech within the EU	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Frequent changes in the applicable rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Financial service providers:**

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
Lack of harmonisation of EU rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of trust in newly developed solutions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of harmonised approach to RegTech within the EU	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Question 42. In your opinion, are initiatives needed at EU level to support the deployment of these solutions, ensure convergence among different authorities and enable RegTech to scale up in the Single Market?**

- ☒ Yes  
☐ No  
☐ Don't know / no opinion / not relevant

**Question 42.1 Please explain your answer to question 42 and, if necessary, please explain your reasoning and provide examples:**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The deployment of RegTech (including SupTech) solutions has the potential to materially increase the efficiency and effectiveness of financial sector supervision. The financial crisis of 2008 has highlighted the need for supervisors to have better, more granular access to data, ideally in real time, in order to detect, and respond to emerging crisis situations. At the same time, supervisory authorities are struggling to process the rapidly growing volumes of increasingly complex, and granular financial information produced by the institutions they supervise. The automation of regulatory reporting and supervisory processes, enabled by RegTech tools, could help solve this dilemma. RegTech tools should, in our view, be defined narrowly as software applications and algorithms that use "Big Data" analytics to process data supplied by regulated financial institutions, ideally in real time, apply relevant regulatory rules, identify potential compliance issues, and provide alerts and recommendations to supervisory staff. We believe that RegTech applications have a potentially very useful role to play as decision-support tools but should not be allowed, under any circumstances, to assume, let alone supplant the decision-making powers and responsibilities of a human supervisor or compliance officer.

We do see four significant issues in this respect: firstly, the adoption of RegTech requires considerable investment from both regulated firms and supervisors; secondly, the effectiveness of RegTech and SupTech tools critically depends on the availability and quality of data; thirdly, the adoption of RegTech must not create new dependencies on dominant providers of key technology or undermine the transparency and accountability of compliance and supervisory processes; fourthly, RegTech has to be embedded in a more harmonised supervisory legal framework that does not exist yet and could prove to be very challenging to implement (see also our response to Q.44 below).

The effectiveness of introducing RegTech, too, will be predicated upon the ability and readiness of financial institutions to undertake the necessary internal measures to facilitate the accurate and timely collection and consolidation of relevant data, in particular in the case of large, complex institutions. Only recently the BCBS confirmed, once again, that no global systemically important bank (G-SIB) currently conforms to the BCBS 239 standard on effective risk data aggregation and risk reporting, more than four years after its original implementation deadline (BCBS D 501, 29 April 2020). This lack of progress is, in our view, a matter of financial institutions' priorities rather than technological feasibility: on the one hand, real-time data access for supervisors has already been trialled successfully in some smaller jurisdictions, e.g. the Philippines; on the other hand, large financial institutions appear to be perfectly prepared to invest large amounts into sophisticated IT systems, e.g. for online (retail) banking and trading, but are signally uninterested in spending money on facilitating better supervision. Legislators and regulators must lean more forcefully on financial institutions that are reluctant to invest in updating and consolidating their often fragmented and sometimes outdated IT systems.

On the other end of the spectrum, we see RegTech as a potentially game-changing opportunity to level the playing field in favour of smaller market participants. RegTech-enabled automation of supervision and compliance processes could bring down the fixed cost of regulatory reporting and compliance for smaller market participants without compromising on the quality and effectiveness of regulatory oversight. In this context, Finance Watch would like to reiterate its position regarding the cost of regulatory compliance, and the need for proportionality for smaller and non-complex institutions that took place in connection with 2019 Banking Package, and the cost-benefit analysis requested from EBA in Article 430(8) CRR II: instead of considering sweeping carve-outs for small and non-

complex institutions from certain reporting and other compliance obligations, EU legislators and regulators should aim at facilitating the adoption of RegTech by these institutions as a means of reducing the cost and resource-intensity of regulatory compliance. We believe that the objective of real-time supervision of financial institutions is technologically feasible for many segments of their activity and will, in due course, be financially affordable, even for smaller institutions. Financial stability is a public good and we consider it entirely reasonable to expect the financial sector to contribute its share, by investing in state-of-the-art technology, to facilitate the adequate and timely supervision of its activities.

[Please see the document attached to the response for the full answer to the question]

**Question 43. In your opinion, which parts of financial services legislation would benefit the most from being translated into machine-executable form?**

**Please specify what are the potential benefits and risks associated with machine-executable financial services legislation:**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Finance Watch shares the view that the translation of certain, mostly technical provisions of financial services legislation could be very useful for achieving the objective of real-time financial supervision. We maintain, however, that great care must be taken at all times to ensure that machine-executable legal text remains open and accessible to verification, i.e. by using open-standard, open-source technologies and encouraging constant public monitoring and review of the technical transposition.

We could see the most beneficial applications in provisions that deal with the reporting and processing of financial institution data that are a) large, complex and fast-changing datasets; b) datasets that require significant further processing to produce usable information for supervisors; and c) datasets that are particularly critical for implementing real-time supervision (i.e. data required to compute early-warning indicators).

Some examples include:

Collection of granular credit and credit risk data (AnaCredit) under Regulation (EU) 867/2016.

Reporting of derivatives trading data under Regulation (EU) 648/2012 (EMIR)

Collection of data on securities financing transactions under Regulation (EU) 2365/2015 (SFTR).

**Question 44. The Commission is working on standardising concept definitions and reporting obligations across the whole EU financial services legislation.**

**Do you see additional initiatives that it should take to support a move towards a fully digitalised supervisory approach in the area of financial services?**

**Please explain your reasoning and provide examples if needed:**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We refer to our answer to Question 42.1. We would highlight the need for EU legislators and regulators to maintain control of the standards that are developed for the purposes of automating compliance and supervisory processes and to ensure that these standards remain open and processes transparent and verifiable. The emergence of closed ecosystems, based on proprietary products and de-facto standards promoted by dominant private-sector suppliers must be avoided.

We appreciate that interoperability of RegTech systems should not be limited to the EU as this would impose an additional burden on institutions with international operations outside the EU. We are supportive of EU institutions and authorities engaging with their overseas counterparts and international standard-setting organisations in order to agree on common or, at least, compatible standards. We would argue, however, that the EU should take a proactive approach, with the primary objective of facilitating common standards and cross-border interoperability within the EU as rapidly as possible.

We understand that EBA has been mandated under Article 430c CRR II to report on the development of a consistent and integrated system for collecting statistical data, resolution data and prudential data on EU financial institutions by 28 June 2020. We hope that this report will take account of the potential of RegTech and set out recommendations for the development of common systems and standards that facilitate the deployment of RegTech solutions for EU financial institutions of all sizes.

On a more general note, we believe that the digitalisation of supervisory processes should be viewed as an opportunity to re-evaluate the use of quantitative indicators and thresholds in financial supervision. Firm quantitative criteria, e.g. for Early Intervention Measures under Directive (EU) 2019/878 (CRD V) or Directive (EU) 2019/879 (BRRD II), could reduce the amount of discretionary latitude available to national authorities and improve the harmonised application of EU financial legislation across member states. They would also lend themselves more readily to the creation of EU-wide monitoring systems that could be deployed to detect systemic risks and imbalances. We appreciate, however, that the implementation of such an alignment would require a substantially more harmonised and integrated legal environment.

**Question 45. What are the potential benefits and drawbacks of a stronger use of supervisory data combined with other publicly available data (e.g. social media data) for effective supervision?**

**Should the Please explain your reasoning and provide examples if needed:**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Whereas we understand the potential benefits of augmenting supervisory datasets with additional, publicly available data that may offer additional insights when applying Big Data analytics we would urge regulators to proceed with extreme caution when permitting the use of external data for supervisory purposes.

Financial sector supervision is an exercise of public authority that has to conform to high standards of legality and accountability. This includes a responsibility to ensure that supervisory decisions are informed by, and can be supported with evidence that is obtained in a lawful manner, suitable for the purpose, and likely to withstand up to examination in court. Public data from other official sources, e.g. governmental data obtained from "open data" repositories are likely to fulfil these criteria; circumstantial data obtained from unofficial, unverified sources will most likely not.

In addition, the use by supervisors of data that were published by their owner for other, unrelated purposes, e.g. on social media, may raise issues of data protection and privacy rights. The collection and processing of such data may, for instance, run contrary to the principle of limitation of purpose under Regulation 2016/679 (GDPR). Whereas there may be circumstances where the use of such data may be justifiable, e.g. in the context of a criminal prosecution, we would strongly advise against blurring the lines between legitimate supervisory information and the protected sphere of private data.

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## IV. Broader issues

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**Question 46. How could the financial sector in the EU contribute to funding the digital transition in the EU? Are there any specific barriers preventing the sector from providing such funding?**

**Are there specific measures that should then be taken at EU level in this respect?**

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Based on the information available to us, Finance Watch does not observe a general shortage of investment by the financial sector in facilitating the digital transition. This impression appears to conform with the findings of the ROFIEG (pg. 22), and other external sources quoted in that report. We note, however, that the readiness of financial institutions to invest in digital assets is significantly higher when it comes to revenue-generating (front office) or cost-reducing (back office) activities, but noticeably lower in respect of activities that aim at improving regulatory reporting and compliance or at reducing operational risk (see also our response to Q.42).

We note also that additional incentives to invest in digital assets were provided to financial institutions through the recent amendment of Article 36 CRR, which allows for the deduction of software assets from capital requirements. Finance Watch continues to view this decision very critically: software that has been developed, or procured by a financial institution for its own purposes tends to be highly customised and therefore highly unlikely to be of value to any third-party purchaser in the event of a liquidation of the bank's assets. The actual market, or residual value of these assets is therefore likely to be very low, leading to losses in the event of resolution or insolvency, which should be covered by capital.

We would agree with the assessment, quoted in the ROFIEG report (pg. 22), that investment in digitalisation is concentrated among the very largest financial groups. Finance Watch has for a long time criticised the polarisation among financial institutions and, in particular, the unfair competitive advantage of being deemed "systemically important" or "too big to fail". Some of these large incumbents openly pursue strategies of investing in Fintechs with a view of acquiring them should they prove successful. This, in conjunction with the possibility for incumbents to engage in regulatory arbitrage, e.g. by conducting certain activities through Fintech associates that qualify for particular advantages, such as "regulatory sandboxes", could result in further exacerbating, rather than redressing, the existing imbalances.

#### Question 47. Are there specific measures needed at EU level to ensure that the digital transformation of the European financial sector is environmentally sustainable?

*5,000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

## Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:

**FW\_Digital-Finance-Full-Answers.pdf**

### Useful links

More on this consultation ([https://ec.europa.eu/info/publications/finance-consultations-2020-digital-finance-strategy\\_en](https://ec.europa.eu/info/publications/finance-consultations-2020-digital-finance-strategy_en)) ([https://ec.europa.eu/info/publications/finance-consultations-2020-digital-finance-strategy\\_en](https://ec.europa.eu/info/publications/finance-consultations-2020-digital-finance-strategy_en))

Consultation document ([https://ec.europa.eu/info/files/2020-digital-finance-strategy-consultation-document\\_en](https://ec.europa.eu/info/files/2020-digital-finance-strategy-consultation-document_en)) ([https://ec.europa.eu/info/files/2020-digital-finance-strategy-consultation-document\\_en](https://ec.europa.eu/info/files/2020-digital-finance-strategy-consultation-document_en))

More on digital finance ([https://ec.europa.eu/info/business-economy-euro/banking-and-finance/digital-finance\\_en](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/digital-finance_en)) ([https://ec.europa.eu/info/business-economy-euro/banking-and-finance/digital-finance\\_en](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/digital-finance_en))

Specific privacy statement ([https://ec.europa.eu/info/files/2020-digital-finance-strategy-specific-privacy-statement\\_en](https://ec.europa.eu/info/files/2020-digital-finance-strategy-specific-privacy-statement_en)) ([https://ec.europa.eu/info/files/2020-digital-finance-strategy-specific-privacy-statement\\_en](https://ec.europa.eu/info/files/2020-digital-finance-strategy-specific-privacy-statement_en))

More on the Transparency register (<http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en>) (<http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en>)

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## Contact

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