

## **Response- European Commission – Digital Finance Strategy**

### **Remarks of introduction**

Eurofinas welcomes the opportunity to respond to the European Commission's consultation on a new digital finance strategy for Europe / FinTech action plan.

Eurofinas is the voice of consumer credit providers at European level. As a Federation, Eurofinas brings together associations throughout Europe that represent finance houses, universal banks, specialised banks and captive finance companies of car or equipment manufacturers. The products sold by Eurofinas members include all forms of consumer credit products such as personal loans, linked credit, credit cards and store cards. Consumer credit facilitates access to assets and services as diverse as cars, furniture, electronic appliances, education etc.

Our membership encompasses both traditional consumer credit providers offering credit in branches, through agents and at the point of sale as well as lenders with dedicated digital activities. In 2018, consumer credit providers that are members of Eurofinas helped support European consumption by making more than 466 billion EUR goods and services available to individuals and households outstandings reaching over €1.1 trillion euros at the end of the year. In addition to the provision of consumer credit, companies represented by Eurofinas distribute a small number of insurances on an optional basis. These are simple types of insurance coverage that are available to consumers when they conclude a credit agreement.

The ever increasing digitalisation of the sector and uptake and enhancement of both new and existing tools form a key priority for the consumer credit industry with a broad focus on all aspects of the industry's activities. The digital transformation has a significant impact on both the market and our industry, affecting new technologies, additional emerging market entrants as well as evolving consumer expectations. For lenders, it is essential to adjust to this new landscape in order to be able to continue offering customers the right products for them, in a safe way meeting expectation with regards to the products offered and customer journey.

Indeed, as witnessed during the still on-going COVID-19 pandemic, digitalisation and the many new tools brought forward can provide solutions to enable the financial services industry to continue to support the real economy, European businesses and consumers alike.

The European Commission's broad set of initiatives, building on the original FinTech action plan and related measures, and the forward-looking agenda of the EU represent the basic building blocks for enabling the Digital Single Market and to foster an even more competitive and innovative European financial sector.

We remain steadfastly committed to supporting the work of the European Commission in this field by ensuring that innovative technologies are applied in order to increase the efficiency of the financial sector and to provide European consumers with improved and new financial services. At the same time, these new services need to meet the highest standards of consumer protection as well as security and personal privacy.

We strongly believe that the work should be guided by a technology-neutral approach in order to allow for future-proof legislation, and the principle of **same activities, same risks, same rules, same supervision**.

We trust that our comments will be taken into account and remain at the disposal of the European Commission should any further questions arise.

## Specific questions

- **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)?**

Financial services providers are facing a number of challenges in the on-going process of the digital transformation, not least relating to the **adaptation of existing systems and operations** to meet the constantly developing demands and expectations from consumers, ensuring the digitalisation and interconnectedness of the comprehensive set of activities (back office and front end), **responding to competition from new market entrants**, capitalizing on the uneven playing field, **ensuring full regulatory compliance** in the uptake of new technologies, and **responding to evolving threats to systems and clients from cybercrime**, in light of the general availability of resources and relevant skills.

Due to the country-specific regulatory variations/applications across the EU, careful assessment and adaptation are required at local level. This provides for longer timeframes or may even act as a fundamental deterrent for further cross-border uptake. Also, this issue is amplified due to varying supervisory approaches on innovative technologies, both between involved national supervisors as well as between counterparts across Europe. A more coherent supervisory approach together with the reduced regulatory fragmentation, not least in relation to Anti-Money Laundering, data protection, Know Your Customer and electronic identification, are key for future success.

In addition, new technologies and evolving customer demands/expectations have created new service concepts, and also new players have joined the market. However, unlike traditional players, which are subject to both comprehensive regulation and supervision, new market entrants have often been able to effectively bypass the regulatory requirements even when carrying out the same activity. A strong focus on the principle of same services, same risk, same rules and same supervision is necessary to ensure the level playing field.

- **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?**

The on-going focus of digitalisation of products and services in financial services are bringing a broad number of benefits for European consumers, not least the possibility of an enhanced customer experience, better and more (relevant) products, improved safety as well as greater financial inclusion. However, the difficulty in achieving a broad and expedient uptake of new technologies due to the regulatory and supervisory fragmentation across the EU limits the possible benefits and/or the swift access for consumers.

At the same, it is crucial to ensure that access to financial services products and services are not jeopardized for non-digital customer groups. Educational measures relating must carry a dual focus on both financial and digital skills due to their increased interconnectedness.

Furthermore, connected challenges of increased digital activities need to be addressed, e.g. in relation to data privacy, cybersecurity and fraud, and an overall understanding by the consumer of processes through the relevant transparency.

In relation to both the key advantages and challenges, the taken or foreseen initiatives of the European Commission in relation to AI, cybersecurity and data as well as on digital and financial literacy forms key aspects to which further dialogue and actions will be required between concerned industries, regulators and supervisors as well as consumer representatives.

Ensuring a level playing field through the adherence to the principle of same services, same risks, same rules and same supervision is also required to ensure that the consumer is confident that the same high level of consumer protection is applicable.

The digital transformation is providing consumers with even greater competition and access to both new solutions and products, but this is only possible with the preserved and reinforced trust of consumers that they are being treated fairly and that their data is used for the right purpose and is safe.

- **Question 3. Do you agree with the choice of these priority areas, why and should there be further priorities?**

Yes,

Eurofinas believe that the priorities, and approach, set out by the European Commission provides for the relevant focus to further the digitalisation of the European economy and ensuring that both businesses and consumers will reap the connected benefits, utilising available data in a better way with safety and confidence from all parties.

As also seen through the Commission's over-arching approach with initiatives spanning over Anti-Money Laundering, prudential issues, access and use data and, for example, horizontal consumer protection legislation, it is necessary to ensure that the fully applicable legislative framework is innovation-friendly and technology-neutral to account for the speed of innovation, and that all concerned stakeholders, industry, regulators and supervisors, are involved in the processes.

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

No, further steps are required to ensure that the the EU framework is technology-neutral and innovation-friendly. We believe it is important to strive for a generally applicable frameworks and not to provide for technology / medium specific measures unless absolutely necessary. We otherwise risk a framework ill-suited to account for both the fast-moving developments of technologies and user habits. -

However, of great importance is also a more coherent approach and application across the EU to allow for the broader uptake of new technologies across as well as from other markets. In this, the current situation with varying approaches taken by relevant national competent authorities forms an important obstacle for the swift application and scaling up of innovative technologies. Greater coherence but also more innovation-friendly approaches are needed for the successful utilisation of new technologies. As provided, we otherwise create risks for lock-in effects and failure in the take up of new technological tools and in the broader application across the EU.

Evaluations and reviews of existing legislation should always carefully consider whether direct or indirect impediments are in place, e.g. allowing for interpretations requiring a physical signature or the provision of information only / primarily on paper, etc. A default digital approach should underpin this work, e.g. setting out for digital provision of information to fulfil relevant disclosure requirements while still allowing consumers to opt for paper documentation if so desired. Such an approach would not only be more in line with the expectations of many consumers today, provide for a greater alignment of the various frameworks but also set out a greater emphasis on sustainability.

- **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 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, we generally believe that the framework is technology neutral and should also be applied to new technologies. For a consistent level of consumer protection, vital to ensure the highest level of consumer confidence, once again, we believe that it is essential to ensure that the principle of same activity, same risks, same supervision and rules applies. Again, specific solutions for individual technologies and mediums

should be avoided whenever possible to ensure technology neutral, and, therefore, more future-proof, frameworks.

**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?**

The current framework carries implications for the level of utilisation of the listed technologies.

AI is a technology under rapid development with already existing user cases as well as other potential once in the pipeline, and stand to bring important benefits to both businesses and consumers, e.g. customer service and fraud detection, etc. It remains crucial to ensure both legal clarity in the application of AI to foster further uptake and innovation, and to ensure that the relevant consumer protection framework is fully applied. Some challenges are pertaining in the interaction between AI applications and the applicable frameworks, e.g. the General Data Protection Regulation. It is crucial to ensure the workability of AI solutions under a comprehensive EU framework, and a levelled approach is sought to allow AI to be a success in the EU.

We welcome the various steps taken by the European Commission through its White Paper and its relevant expert groups on the subject-matter, e.g. the ethical guidelines, and welcome further continuous dialogue on this matter. Please see our further response in relation to the specific section on AI.

Cloud solutions form an important consideration also for financial services providers and is a key element in becoming truly digital and enable the full use and benefits of new technologies such as AI. The work on cloud solutions, and with relevant providers, are still in relatively early stages for the financial sector with a number of challenges at hand relating to data privacy and security as well as concentration and lock-in risks. The migration to cloud requires thorough assessments of numerous aspects relating to operational, legal and compliance requirements. As it currently stands, financial institutions face a number of challenges in extending their use of cloud solutions, including a mismatch between the services provided by global players and the wide array of local and varying regulatory requirements found across the EU, leading to the need for unnecessarily expensive ad-hoc solutions which effectively prevents financial services providers from more fully benefiting from cloud solutions to the detriment of their customers.

To advance the phase of adaptation of cloud solutions, the continuous dialogue between all concerned stakeholders, i.e. the financial services industry, cloud providers and the array of concerned national supervisors, is required, and we welcome the European Commission's, the European Central Bank's and the European Supervisory Authorities' commitment to ensure a consistent approach on this.

- **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, in our view, issues in this context relates mainly to the activities of BigTech actors with immense market power in a number of relevant digital services markets, including to asymmetries arising from the PSD2 framework, as weaknesses in the existing e-Commerce Directive which provides for a number of shortcomings affecting the consistent and comprehensive enforcement of relevant rules across the EU single Market.

Several non-European players are building on their positions on the European market through strong digital platforms and the utilisation of new technologies. This brings a number of clear benefits to both European consumers and businesses. However, it also raises, as recognised by the Commission in its on-going work on the Digital Services Act, questions in relation to new challenges and risks brought forward by the developments relating to both competition and data protection and personal privacy.

Said companies are accumulating vast amount of non-traditional data, which they exercise a disproportionate control over in questionable respect of the relevant European data protection legislation. When entering new markets, such as financial services, they can often combine data obtainable from financial services providers with their own data held.

Also, in light of the European ambition to further its role in the global data driven economy as well as to further empower consumers, we believe that it is important to ensure that the framework provides European business, including financial services providers, with the tools and abilities, e.g. the access to platforms and relevant interfaces or the use and proliferation of data.

To ensure this and a level playing field in the data economy, a broader focus beyond access to data (sharing) in financial services is needed and we welcome the work already carried out by the Commission in this field. In addition, we remain committed to further the dialogue in connection to the numerous initiatives of the European Commission in this wider policy agenda, bringing together not least the work on digital services, data, AI and the Digital Finance Strategy.

**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)?**

We want to reiterate our strong belief that relevant work and policy discussion should be guided by the principle of same business, same risk, same rules and supervision, and a technology-neutral approach.

We support the European Commission's work in developing an EU data strategy, a key building block for the digital transformation on the European Economy, which can help to steer clear off national regulatory fragmentation. The foreseen Data Act in 2021 could possibly provide for a consolidation of the relevant rules on the use of data found in the various sector-specific frameworks beyond the General Data Protection, e.g. in the Database Directive and the PSD2.

A broad discussion and approach would be beneficial to allow the use of not only financial data, but also data from other sectors, including utilities and the public sector, etc., based on a clear framework setting our fair rules on data usage, access and sharing. This would ultimately serve both European consumers and businesses, and help to ensure a level playing field and the desired high level of consumer protection across the board.

**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)?**

Initially, a harmonised general Digital Identity scheme should be implemented at Member State level. Only then can financial institutions assess which further steps are required. As for general utilisation and recognition across the EU, this would be an appropriate model sought if the system would be funded by public means. However, if it would take the form of a privately funded and maintained system, such a decision should rest with the business owners.

Further consideration is required on the possible data which could form part of a Digital Financial Identity. The various tasks, e.g. relating to KYC and creditworthiness assessments, require different types of data. KYC processes are normally fulfilled with the use of static data, e.g. name, identification number and/or data of birth, while creditworthiness assessments rely on data subject to much more frequent changes.

**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?**

Both innovation hubs and regulatory sandboxes can play a supportive role in facilitation and uptake of new technologies, ultimately enabling new services and further competition. This is not least due to the ensuing closer dialogue with supervisors. This can provide for greater clarity on the interplay between new technologies and services offered within the relevant frameworks. On both counts, it is important to involve the full width of relevant supervisors as many innovative tools and services need to be assessed from a variety of perspectives. In the same notion, in order to support a more coherent approach across Member States, and to avoid forum shopping, we believe it is beneficial to support common measures through the European Banking Authority.

Finally, to ensure a level playing field, the scope of such measures should be broad and not only made available to new market entrants but also to more traditional institutions. The focus should be on the new technologies or phenomena no matter the provider.

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

**Please specify how else could the relevant EU authorities enhance coordination among different schemes in the EU.**

As outlined above, we believe it is important to ensure a consistent and coherent approach across the Member States in order to ensure the broader and swifter uptake of new technologies but also to avoid forum shopping where services will be moved based on the more lenient approach and/or interpretation of relevant frameworks.

**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?**

Yes, the possibility to rely upon passporting in further areas may contribute to further EU-wide competition and provision of financial services products.

**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?**

We believe that the consumers' willingness to share their data would be dependent on their trust in the providers, their confidence in that their data is safe and only being shared with their consent, clarity on the specific usage as well as benefits of the sharing of the data, e.g. for enhanced customer experience, better fraud protection and relevance if interaction, as well as convenience and simplicity in doing so with control on how and what data is shared.

**Question 32. In your opinion, what safeguards would be necessary to mitigate the risks connected with an open finance policy in the EU (privacy issues, financial exclusion, poor consumer outcomes, misuse of consumers' financial data, business confidentiality issues, increased cyber risks, lack of level playing field?)**

As set out in our answers, we believe that the existing situation on access and use of data creates a number of questions affecting the level playing field between BigTechs, established market actors as well as other smaller new market entrants. The principle of same business, same risk, same rules and supervision should form the basis for the relevant frameworks in in the processes to possibly adapt them in light of the digital transformation, and in the practical application. Moreover, the access to personal data should rely on the explicit consent of the consumer and sharing of data created based on further processing and enhancement should be subject to individual agreements to protect the value created.

A broad discussion and approach would be beneficial to allow the use of not only financial data, but also data from other sectors, including utilities and the public sector, etc., based on a clear framework setting our fair rules on data usage, access and sharing. This would ultimately serve both European consumers and businesses, and help to ensure a level playing field and the desired high level of consumer protection across the board.

**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?**

In this context, going beyond the current remit of the PSD2, we believe the most relevant and useable data could relate to both traditional data as well as structured non-traditional data also from other industries as well as data from public authorities, e.g. tax or social security.

Data relevant, but not held by financial services providers can help to better understand customers' situation and needs, allowing for both better services and products, and to provide relevant tools for core activities, e.g. verification of information, assessment of an applicant borrower's creditworthiness or for fraud control / protection.

However, we strongly believe that the choice of data used should fully be under the control of the financial services provider and in strict alignment with the requirements of the General Data Protection Regulation.

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

Consumer credit providers are continuously exploring the possibilities offered by AI through investments and partnerships to further improve their offerings to consumers, through a better customer journey, improved products and services and further reinforced safety against fraud and for cybersecurity. It is already used in a variety of processes related to activities such as e.g. chatbots, complaints handling (classification, record-keeping, etc.), credit scoring and fraud protection tools.

**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?**

As a constantly developing technology, the application of AI raises a number of questions as to the interaction with the applicable frameworks. We welcome the findings of work already carried out by the European Commission in the area, the work of its high-level expert groups, and the on-going work on the Commission's White paper on AI and through other related measures.

As with many evolving technologies, the continuous dialogue between all concerned stakeholders, regulators and supervisors forms a necessity for the successful uptake, together with supporting measures, e.g. on cloud adoption and the data economy.

While many relevant frameworks have been amended or adopted in recent years, a focus on AI was generally lacking. We therefore encourage that the relevant fitness check of the relevant frameworks is carried to remove obstacles, address legal uncertainties as well as potential shortcomings, including a focus on, not least, consumer protection, data privacy, intellectual property rights and potential liability issues. As previously stated, we believe that a technology-neutral approach should guide any work relating to the applicable frameworks and potential adaptations to new technologies.

For example, further consideration is needed in order ensure alignment between the GDPR's data minimisation principle and the need for vast amount of data required to ensure the development of accurate analytics based on AI. In addition, large samples of data are an effective remedy to minimise the issue of potential bias. Other issues connected to the GDPR concerns the possibility to rely upon the controller's legitimate interest for AI training, which is not clear at this stage, and to ensure a workable right to explanation and clarity, coupled with further measures to ensure the fairness in application.

**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?**

As previously states, consumer credit providers are continuously exploring the possibilities offered by AI in their activities and through relevant partnerships. The opportunities relate both to benefits for their consumers as to enhance internal operations. For the consumer, key benefits relate to a further improved customer experience through greater personalisation, enhanced customer journeys, improved and more objective assessments of an applicant borrower, e.g. of his/her creditworthiness, also allowing to serve previously underserved individuals/segments, early detection of payment difficulties, tools to allow for better understanding of credit and its impact, as well as better protection against fraud and other crimes. For the lending industry, AI offers enhanced tools to further improve internal operations, risk management and to face off cyber threats.