Brussels, 25 June 2020

FINAL

EACB answer to the EC's Consultation on a New Digital Finance Strategy for Europe / Fintech Action Plan

The **European Association of Co-operative Banks** (EACB) represents, promotes and defends the common interests of its 27 member institutions and of cooperative banks, with regard to banking as well as to co-operative legislation. Founded in 1970, today the EACB is a leading professional lobbying association in the European banking industry. Co-operative banks play a major role in the financial and economic system. They contribute widely to stability thanks to their anti-cyclical behaviour, they are driver of local and social growth with 2.800 locally operating banks and 51,500 outlets, they serve 209 million customers, mainly consumers, SMEs and communities. Europe's co-operative banks represent 84 million members and 713,000 employees and have an average market share in Europe of about 20%.

For further details, please visit www.eacb.coop

General questions

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)?

1/ Unlevelled playing field: The banking sector operates with specific requirements which other market players are able to bypass due to their categorization as "no-banking institutions" although they provide the same services. We share the priority recommendation of the ROFIEG expert group to create a regulatory framework built on the principle "same business, same risks, same rules, same regulation".

2/ Regulatory fragmentation: As underlined in the report of the ROFIEG expert Group, regulatory fragmentation (i) either between European regulations or (ii) across Europe is an obstacle to fully reap the opportunities of innovative technologies and for EU competitiveness.

There is a need of harmonization of the European regulatory framework, particularly in the process of electronic identification:

- Indeed, obtaining harmonized standards in Europe on the means of identification and verification of customers' identity at a distance, which are secure and equivalent to face-to-face contact, will facilitate customer due diligence (CDD).
- As mentioned in the Recommendation No. 18 of the ROFIEG report, it would be important to harmonize the documentation required for the verification of identity (e.g. passports, utility bills, municipal records, tax documents) and the format (acceptability of electronic copies in addition to physical copies).

In some cases, regulations should be preferred to directives to avoid differences in Member states' transpositions. But generally, no need for new / additional regulations before a consolidated status would be reached.

3/ Technology neutral: New initiatives and/or consultation such as on artificial intelligence, crypto assets or cloud computing reveal a shift of paradigm from a technology neutral/agnostic regulation towards a technology-centered regulation. However, EACB believes that any regulation is a legal concept and should neither focus on a particular (technological) implementation. Moreover, it is not desirable to regulate too quickly and too precisely the use of technologies that are being perfected every day and for which there is insufficient hindsight.

4/ EU global competitiveness: We share the ROFIEG expert group vision it is important for the EU to follow global developments to ensure the competitiveness of Europe. One example might be the implementation of the GDPR, where restrictive interpretations e.g. of the EDPB are restricting international competitiveness. As neither data protection, nor European competitiveness are independent objectives (and data protection in a world dominated by non-European providers would be illusionary), regulatory requirements for the use of new technologies should be (1) really technology neutral and (ii) proportional concerning global competition. Alternatively, Europe's competitiveness should be measured having in mind the limitations the EU companies have compared to their global counterparts and Europe's position re international initiatives should be focused on enforcing European regulatory standards internationally.

European standards should be aligned and should not be more restrictive than standards and create a distortion of competition mostly vis-à-vis big tech (GAFAM/BATX).

Question 2 (DUD+ CPWG): 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?

Key advantages:

In addition to the benefits listed in the ROFIEG expert group, we see :

- Simplification and fluidity of customers' journey and user experience ;
- Greater autonomy (selfcare) allowing consumers to carry out some operations remotely without having to go to a bank branch or to meet an adviser;
- Accessibility to new players which allows, as mentioned in the ROFIEG report, greater choice but also promotes competition at the benefit of consumers ;
- Easier access to information.

Key challenges:

- risk of alienating less digitally comfortable customers or customers that do not have the digital infrastructure at their disposal (e.g. limited 4G network coverage), creating anxiety and frustration. Cooperative banks are very aware of this possible digital divide as their customer base consist of both digitally comfortable/well equipped customers and customers of the opposite nature. In their respective digital strategies, EACB members are very careful to take an all-encompassing approach, which however, is likely to have a cost base which is different from a digital only approach.. The Commission should focus on 1) ensuring the availability of basic digital infrastructure in all Member States, 2) digital education and training from a young age, 3) be careful of maintaining a level playing field between cooperative banks and digital only providers if it considers imposing any measures in this regard. .
- increase in possibilities for cybercriminals to develop criminal schemes targeted at disruption, data theft or fraud. This should be tackled via trend monitoring and exchange of information for which we believe initiatives are already under way either in national markets, via reporting to EBA, SSM or Interpol.
- the abundance in service providers developing on the back of technology may leave consumers lost as to knowing which ones are the best ones for them in terms of service offer, price, after sale care or, depending on how the EU will go about its digital finance strategy, increased market power by a few big – non European – technology companies. This is best tackled by
- Empowering customers regarding the protection of their data

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:

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

Question 3

Do you agree with the choice of these priority areas?

- ☐ **X: 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:

At area 1) We support the principle that the regulation shall be **technology-neutral** and innovation friendly, but we see current trends to technology-focused regulation (e.g. crypto assets), which disadvantages existing market participants such as co-operative banks.

At area 2) we should however be realistic as to what can be achieved and take into consideration that there are some natural differences in cultures and practices unique to each country which may limits. Financial use cases are still strongly linked to national practices and habits. Products and services are also highly influenced by national regulations, including tax regulations, land registry and notary rules. A trans-border offering only seems possible on the condition of tax harmonization in advance for any product whatsoever. Regulation will not remove all barriers and the language barrier will remain a major obstacle to a true single market in financial services difficult or impossible to overcome at a reasonable and justifiable cost keeping in mind that the EU has 23 official languages and uses three alphabets (Latin, Greek, and Cyrillic).

At area 3)

Promoting a data-driven financial sector is valuable. However, what comes to so-called "data sharing", all **data sharing shall be fair** and financial sector shall not be obliged to provide information without any compensation like in the PSD2 with access-to-accounts for third parties without any business model, without freedom of contract for banks and without a fair "sharing" of costs.

At area 4: We welcomes the initiative of the European Commission to bring forward legislative proposals for fostering the **digital operational resilience framework** for financial services with a view to harmonize rules across the EU. New rules should follow a risk-based approach. This would ensure that the framework is future-proof and will provide entities the flexibility required to adapt based on the continuously evolving nature of cyber and technology risks.

Those priorities should be developed with the global perspective in mind: the defense of European actors is crucial to achieve an EU global leadership.

Question 4

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

- Yes
- **X: No**
- Don't know / no opinion / not relevant

Question 4.1
If not, please provide specific examples of provisions and requirements that are not technologically neutral or hinder innovation:

While broadly speaking regulation so far may well be technologically neutral and we subscribe to the ROFIEG expert group in this respect, things could be different with respect to innovation. For example, whilst cooperative banks fully respect the principles of the GDPR, it has to be realized that compared to companies in other parts of the world, EU companies, as a result of a strict interpretation of the DGPR may not be able to take the same advantages of customer generated information and use it to train AI.

We see that, current initiatives - such as for artificial intelligence or crypto assets - risk per definition not being technology neutral/agnostic if dedicated regulatory frameworks would be developed.

Question 5 (DUD+CPWG).
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 (OP, BPCE)
- No (BVR)
- **X: 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:

This question 5 is a two-sided question in one, which cannot be answered with a single tick, but requires more consideration:

In general, regulations has to be technology neutral and e.g. consumer protection for retail financial products and services has to be based on the risk-potential of these retail financial products and services, but not on any specific technology.

The principle of "same business, same risks, same rules, same regulation" is crucial to avoid that the financial sector with its consumer protection is bypassed by "non-banking institutions". Consequently, the usage of some new technologies does not justify any adaption to features or distribution models linked to this specific technology (or retail financial products and services based on this technology).

We believe that horizontal and sufficiently flexible technology-neutral legislation is key to ensure sound consumer protection in a continuously evolving digital market.

However, there are some issues with existing regulation being biased towards paper-based processes, e.g. disclosure of information to retail customers, which could be provided by digital tools incl. e-mail to avoid non-sustainable usage of paper.

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?

	1: irrelevant	2: not relevant	3: neutral	4: relevant	5: fully relevant	n/a
Distributed Ledger		x				
Technology (except cryptoassets)		x				
Cloud computing				x		
Artificial Intelligence/Machine learning				x		
Internet Of Things (IoT)						x
Biometrics			x			
Quantum computing	x					
Other						

If you see other technologies whose use would be limited in the financial services due to obstacles stemming from the EU financial services legislative framework, please specify and explain:

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:

Cloud Computing: Financial regulation is somehow obstacle, or at least slowing down the usage of cloud computing. According to the regulation cloud computing is deemed as outsourcing. Most of the service providers do not accept or understand that. In this context, we strongly support and regularly contribute to the work, launched by the European Commission in 2019 to encourage and facilitate the development of standard contractual clauses for cloud outsourcing by financial institutions. However, we think that self-regulation will not be sufficient to impose these contractual clauses.

Even if we understand that the European Commission will not have the power to make the use of the finalized standard contractual clauses mandatory, we believe that any incentive to use them should be considered.

For example, in its Communication "A European strategy for data", the Commission mentions the intention to facilitate the set-up of a cloud services marketplace for EU users from the private and public sector and that the participation in the marketplace for service providers will be made conditional on the use of transparent and fair contract condition. We would see here an opportunity to make clear reference to the use of standard contractual clauses (for the financial sector).

AI: There are certain restrictions in the GDPR which prevents innovation. Considering the competitiveness of European companies, it is crucial to be able to use all the data sets that are generated from firms' own business. In this context, we see too strict interpretations in the current data privacy legislation. At present, companies may not be able to fully take advantage of customer-generated information and use it to teach AI. We refer in particular to Article 9 of the GDPR.

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?

	1: irrelevant	2: not relevant	3: neutral	4: relevant	5: fully relevant	n/a
Setting up dedicated observatories to monitor technological and market trends (e.g. EU Blockchain Observatory & Forum; Platform Observatory)				**x**		
Funding experimentation on certain applications of new technologies in finance (e.g blockchain use cases)				**x**		
Promoting supervisory innovation hubs and sandboxes				**X**		
Supporting industry codes of conduct on certain applications of new technologies in finance			**x**			
Enhancing legal clarity through guidance at EU level for specific technologies and/or use cases				**x**		
Creating bespoke EU regimes adapted to nascent markets, possibly on a temporary basis		**x**				
Other			**x**			

Please specify what are the other ways the EU could support the uptake of nascent technologies and business models relying on them while also mitigating the risks they may pose:

Funding experimentation on certain applications of new technologies in finance at European level should encourage the emergence EU-wide businesses that would be able to compete with comparably sized peers globally. However, in a market economy all such innovations have to be competitive and to convince customers to be used and paid for.

In that way, EU should to favor and strengthen certain European initiatives like the European Institute of Innovation and Technology partner network that helps business and entrepreneurs to be at the frontier of digital innovation by providing them with technology, talent, and growth support.

Cross-border coordination within the EU is fundamental to promote the scale-up of technological innovation and to prevent the creation of an unlevel playing field and regulatory arbitrage. A harmonization of the different national approaches on "sandboxes" and/or innovation hubs would be recommended together with an openness of these sandboxes for all market participants willing to contribute (different to today's sometimes very opaque selection of few "new" players to be admitted to sandboxes).

Political support for truly European initiatives that seek to innovate and overcome fragmentation based on more traditional technologies but need a clear business case - such as those based on Instant Payments - would also be important.

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?

	1: irrelevant	2: not relevant	3: neutral	4: relevant	5: fully relevant	n/a

Intra-European retail payments				x		
Intra-European wholesale payments				x		
Consumer credit provision to households with risk taking				x		
Consumer credit distribution to households with partner institution(s)				x		
Mortgage credit provision to households with risk taking			x			
Mortgage credit distribution to households with partner institution (s)			x			
Credit provision to SMEs with risk taking			X			
Credit distribution to SMEs with partner institution(s)				X		
Credit provision to large corporates with risk taking	x					
Syndicated lending services with risk taking	x					
Risk-taking activities in Life insurance products	x					
Risk-taking activities in Non-life insurance products	X					
Risk-taking activities in pension products	x					
Intermediation / Distribution of life insurance products			x			
Intermediation / Distribution of nonlife insurance products			x			
Intermediation / Distribution of pension products			x			
Other insurance related activities, e.g. claims management			x			
Re-insurance services			X			
Investment products distribution			X			
Asset management			x			
Other						

Please specify in which other financial services you expect technology companies to gain significant market share in the EU in the five upcoming years:

As financial services are a business shaped by digitalization, all data-driven financial services will provide entry points for technology companies.

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:

As underlined in previous answer, BigTechs will gain significant market share in the various financial services markets thanks to their business around data (especially in payments) and based on the platform model (e.g. for mortgages and consumer finance).

The PSD2 with "access-to-account" (XS2A) opened the market and current ideas about mandatory "data sharing" are strengthening BigTech players - with a clear disadvantage of existing players in Europe such as co-operative banks.

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?

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

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

1/ Supervision of the service providers acting on base of the passporting has not been optimal. We have experienced cases where the SP is breaching the local interpretations, but the home FSA is reluctant to take any position since they might e.g. disagree with the interpretation in the other state.

2/ Another area is crypto assets and the fight against money laundering and terrorist financing (AML/CFT). We consider that all crypto-asset service providers could become 'obliged entities' under the EU AML/CFT framework. Guidelines/standard procedures including details on their practical implementation should be issued at European level ideally at international level (FATF). These procedures shall be adapted to the crypto-assets eco-system. Regulators at a national level should then be able to provide crypto-asset service providers with adapted guidelines that would match their own requirements

3/ Concerning current initiatives such as for artificial intelligence or crypto assets, any "technology focused" regulation is per definition not technology neutral/agnostic are therefore violation a level playing field.

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?

	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)			x			
Liquidity risk for particular credit institutions			x			
Liquidity risk for asset management companies			x			
Credit risk: household lending				x		
Credit risk: SME lending				x		
Credit risk: corporate lending				x		
Pro-cyclical credit provision						
Concentration risk for funds collected and invested (e.g. lack of diversification)				x		
Concentration risk for holders of funds (e.g. large deposits or investments held in a bank or fund)				x		
Undertaken insurance risk in life insurance						
Undertaken insurance risk in non-life insurance						
Operational risks for technology companies and platforms		X				
Operational risk for incumbent financial service providers		X				
Systemic risks (e.g. technology companies and platforms become too big, too interconnected to fail)				X		
Money-laundering and terrorism financing risk				X		
Other						

Please specify which other prudential and conduct risk(s) you expect to change with technology companies gaining significant market share in financial services in the EU in the five upcoming years:

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:

The banking sector operates with specific requirements which other market players are able to bypass due to their categorization as "not banking institutions" although they provide the same services. This makes the principle of "*same busines, same risks, same rules, same regulation*" crucial.

We want to refer to the ROFIEG report, which mentions [quote]:

The fact that financial services are increasingly enabled by technology may increase or diminish these traditional risks:

- Consumers and businesses are subject to intermediary, settlement or custody risk, exposing them to the possibility of losing assets in case of, for example, operational failure, insolvency or malpractice on the side of the custodians that keep their assets;
- Consumers and businesses are exposed to principal-agent risk, i.e. the risk that their agent provides suboptimal advice or services (investment decisions, order execution);
- The market as a whole is vulnerable to systemic risk, i.e. a chain reaction of adverse market developments, such as liquidity shortages or flash crashes, that might threaten the proper functioning of the market;
- The financial market, like other areas, creates the potential for activities that contravene market integrity (e.g. market manipulation), or for criminal abuse (money laundering, tax evasion, purchase of illegal goods or services, etc.).

However, the use of FinTech may also create entirely new risks, for instance, where:

- Decisions are taken, or functions are performed by AI-powered 'black box' algorithms without human intervention or which are not comprehensible to customers or supervisors;
- Distributed record keeping or transaction processing blurs regulatory and legal responsibilities that were traditionally based on bilateral principal-agent relationships.

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?

	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					x	
Liquidity risk				X		
Misselling of insurance products			x			
Misselling of credit products			x			
Misselling of investment products			x			
Misselling of pension products			x			
Inadequate provision of information			x			
Inadequate complaint and redress process and management			x			
Use/abuse of personal data for financial commercial purposes					x	
Discrimination e.g. based on profiles			x			
Operational risk e.g. interrupted service, loss of data					X	
Other						

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:

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:

The banking sector operates with specific requirements which other market players are able to bypass due to their categorization as "not banking institutions" although they provide the same services. This makes the principle of "*same business, same risks, same rules, same regulation*" crucial.

In the case of unauthorized financial transactions and data breaches, manipulation and abuse of personal data could become more common. There could be more opportunities for fraudsters to target consumers - more intermediaries in the financial supply chain, more points of entry, greater complexity and confusion for scammers and fraudsters to exploit.

The PSD2 may be an example, as consumers have not been informed by the public authorities about the impact of the new regulation, that Third Party Providers can - with the consent of the consumers - access consumers' bank account without having any contractual relationship with these banks.

The publicity surrounding Open Banking/ PSD2 could help fraudsters as consumers will be primed to be approached by genuine third party intermediaries. Not enough has been done to warn consumers about the risks, or establish robust consumer protection measure.

Technology failure: The heavy reliance on technology infrastructure is also a vulnerability as technology failure can mean customers are unable to access services.

Cyber event: Fintech companies are prime targets for cybercriminals (network security, data breaches…).

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)?

- **X: 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:

Banking remains an activity that has always been subject to supervision and control. As it is a structurally regulated activity, it is the responsibility of regulators to ensure that any new player wishing to engage in this same type of activity is subject to the same rules, as it may lead to the same risks.

As acknowledged in the report of the ROFIEG expert group as the existing EU financial regulation is largely technology-neutral, regulating how FinTech is being employed often involves minor adjustments to the existing regulatory framework in order to ensure that it continues to be both suitable and relevant to innovations and changes in market practices.

We support the ROFIEG expert group vision that if new regulatory measures need to be introduced for new business model enabled by digital technologies the guiding principle of regulation should remain unchanged : find the correct balance between innovations that enable market efficiency, on the one hand, and the prevention or mitigation of risks, both individual and systemic, on the other.

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?

n/a

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

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:

Regulation and supervision of digital finance requires more coordination between authorities in charge of regulating and supervising finance, personal data, consumer protection, AML/CFT and competition-related issues.

Authorities alone do not have enough use cases to construe a comprehensive supervisory framework for innovative/ digital players in finance. This is the example of the one-fits-all digital identity. Thus, it is important that the rules for supervising such players be created and further developed in close public private partnerships.

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

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?

As already stressed answering to Q3 regulatory fragmentation is not the only obstacle to a single market for financial services. Indeed, harmonization has limits in reason of the fundamental differences in cultures and practices unique to each country. Bank usages are still strongly linked to national practices and habits. Products and services are also highly influenced by national regulations, including tax regulations. A trans-border offering only seems possible on the condition of tax harmonization in advance for any product whatsoever.

Regulation will not remove all barriers and the language barrier will remain a major obstacle to a true single market in financial services difficult or impossible to overcome at a reasonable and justifiable cost keeping in mind that the EU has 23 official languages and uses three alphabets (Latin, Greek, and Cyrillic).

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 crossborder solutions for digital on-boarding?

	1: irrelevant	2: not relevant	3: neutral	4: relevant	5: fully relevant	n/a
Harmonise rules governing customer due diligence requirements in the Anti-Money Laundering legislation					**x**	
Harmonise rules governing the acceptable use of remote identification technologies and services in the Anti-Money Laundering legislation					**x**	

Broaden access for obliged entities to publicly held information (public databases and registers) to enable verification of customer identities					x	
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)					x	
Facilitate the development of digital on-boarding processes, which build on the e-IDAS Regulation				x		
Facilitate cooperation between public authorities and private sector digital identity solution providers				x		
Integrate KYC attributes into e-IDAS in order to enable onboarding through trusted digital identities					x	
Other			x			

Please specify what else should be done at EU level to facilitate interoperable cross-border solutions for digital on-boarding:

As Member States have adopted different approaches to customer due diligence (CDD) we fully the recommendation 18 of the ROFIEG expert group report suggesting action to achieve convergence in the use and acceptance of innovative technologies for remote customer onboarding. It would be important to harmonize the documentation required for identity verification (e.g. passports, utilities bills, civic registrations, tax documentation) and format (acceptability of electronic copies vs physical copies).

As underlined in the ROFIEG expert group report, the big challenge, from an EU perspective, therefore remains for digital CDD solutions to be compatible across borders. Until this fragmented national approach to CDD is addressed, technological innovation will be unable to release its full beneficial potential, as variations in national law can hinder firms from extending their services cross-border due to the complexities in navigating different national requirements and in reason of digital identities considered unreliable/doubtful issued by some States.

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?

	1: irrelevant	2: not relevant	3: neutral	4: relevant	5: fully relevant	n/a
Make the rules on third party reliance in the Anti-Money Laundering legislation more specific				x		
Provide further guidance relating to reliance on third parties for carrying out identification and verification through digital means, including on issues relating to liability				x		
Promote re-use of digital identities collected for customer due diligence purposes in accordance with data protection rules				x		
Promote a universally accepted public electronic identity				x		
Define the provision of digital identities as a new private sector trust service under the supervisory regime of the eIDAS Regulation				x		
Other			x			

Please specify what else 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:

> Tight control would be needed on how the identification process underlying the digital means is built and controlled.

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 recognized 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.

We see no need to develop a completely new and - up to now - undefined "Digital Financial Identity". First, the potential benefits of eIDAS have to materialize - and more support by the public authorities is needed for this target.

For the financial sector, no specific and/or additional identification scheme is required, as any industry-specific e-ID-scheme would cause more fragmentation in the e-ID market.

Additionally, for any digital identities "going beyond customer identification" compliance to GDPR and strong consumer protection would be required, which is an open issue if customer data should be "shared" with unknown participants. The extreme granularity of screening that financial market participants would be encouraged to put in place based on such financial identities could lead to on the one side extreme competition to attract low risk customer profiles and on the other driving potentially high risk customers in specific segments of the market which could subsequently develop systemic risk.

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?

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

If yes, in which framework(s) is there the biggest potential for efficiency gains?

The Legal Entity Identifier (LEI) would be rather beneficial to facilitate onboarding/KYC processes, but - unfortunately - this global approach by the GLEIF is not mandatory in other jurisdictions and for other industries.

The Unique Transaction Identifier (UTI) and Unique Product Identifier (UPI) are specific for securities and financial derivative, but are no blueprint for other processes (with independent unique identifiers such as the IBAN) or other industries.

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?

Cross-border coordination within the EU is fundamental to promote the scale-up of technological innovation and to prevent the creation of an unlevel playing field and regulatory arbitrage. A harmonization of the different national approaches on "sandboxes" and/or innovation hubs would be recommended together with an openness of these sandboxes for all market participants willing to contribute (different to today's sometimes very opaque selection of few "new" players to be admitted to sandboxes).

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

	1: irrelevant	2: not relevant	3: neutral	4: relevant	5: fully relevant	n/a

Promote convergence among national authorities in setting up innovation hubs and sandboxes, through additional best practices or guidelines					**x**	
Facilitate the possibility for firms to test new products and activities for marketing in several Member States ("cross border testing")					**x**	
Raise awareness among industry stakeholders					**x**	
Ensure closer coordination with authorities beyond the financial sector (e.g. data and consumer protection authorities)					**x**	
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)			**X**			
Other						

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

There is a need of harmonization of the large variety of innovation facilitation mechanisms which have been established by national supervisors in Europe (sandbox, innovation hub etc).

In our view any regulatory sandbox should meet the absolute prerequisite of "same business, same risk, same rules, same regulation". Competition between national supervisors on the basis of regulatory arbitrage should be avoided. Sandboxes shouldn't become an economic tool to attract new entrants on each one national market: the attraction ability of a sandbox has been highlighted in the FCA lessons learned report mentioning that applicants came also from outside UK (Singapore, Canada and the US).

In fact we both need:

- A discussion space with the regulator to obtain a formal opinion on the use of any technological innovation that is not subject to a regulatory framework and therefore that can't be subject to an internal approval from the legal or compliance side.
- A space to test innovations commonly with FinTech start-ups with which we cooperate. Our need could be for example to obtain a provisional agreement for a start-up to test a new service.

In that way, we welcomed the work of the EBA to, further to the European Commission's action plan and as a first step, identify and promote best practices in the design and the operation of sandboxes.

In our view, the European Forum of Innovation Facilitators (EFIF), launched on 2 April following the ESAs report published on 7 January 2019 on "innovation facilitators" in Europe, and intended to promote greater coordination and cooperation between innovation facilitators (sandbox and innovation hub) established by financial sector national supervisors will not be sufficient. This sharing of good practices will not promote a harmonization of practices in Europe (where equal access of all actors is not respected) and therefore will not allow to avoid any competition between national supervisors on the basis of regulatory arbitrage (in the name of economic attractiveness).

Proposals to enhance supervisory consistency in the operation of regulatory sandboxes including, where appropriate, EBA guidelines could contribute to a convergence in domestic innovation policies across the EU, thereby facilitating the emergence of a single market for financial services.

Of course this does not solve possible level playing field issues vis a vis, non European and global initiatives. EU financial entities should have the possibility to be part of any trials across multiple jurisdictions globally.

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?

We are not against extending passporting rights, but this depends on a harmonized legal framework across Europe before any new measure. Especially,

- there are some challenges in the supervision of the services providers acting based on passporting. Home FSA will not submit notification in case the PSP is breaching local interpretations. Host FSA is not mandated to submit notification. The host FSA should have more rights.
- extending passporting rights could only have a limited effect on the uptake of digital finance in EU as each approved entity can work in another member state via the passport system under the condition to comply with the national rules. EU regulation is not the only key for the uptake of digital finance in the EU as many obstacles will remain (differences in languages, cultures, alphabet…).

Bank usages are also strongly linked to national practices and habits. Products and services are highly influenced by national regulations, including tax regulations, enforcement of mortgage guarantee et cetera.

For lending activities for example the following brakes limit cross border credit:

- Complex to establish and enforce a mortgage guarantee in another EU Member State ;
- Difficult to monitor the flow of funds (no knowledge of notaries ...);
- Difficulty for the advisors in branches to read the supporting documents provided (language, format, currency ...).,
- Difficulty to use some borrower’s insurances (incapacity for work).
- Complexity in the conduct of consumer due diligence (KYC) and AML (source of funds difficult to identify).

- Currency risk if the currency to pay the property transaction is different from the loan's currency

- We consider the existing EU licenses passporting rights for lending respond to the need with the freedom of establishment and freedom to provide services by credit intermediaries under Article 32 and the admission and supervision of non-credit institutions under article 35 of MCD

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:

n/a

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

	1: irrelevant	2: not relevant	3: neutral	4: relevant	5: fully relevant	n/a
Ensure more affordable access at EU level to financial data for consumers and retail investors			**x**			
Encourage supervisors to set up hubs focussed on guiding consumers in the digital world				**x**		
Organise pan-European campaigns and advisory hubs focusing on digitalisation to raise awareness among consumers				**x**		
Collect best practices				**x**		
Promote digital financial services to address financial inclusion				**x**		
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		**x**				
Other			**x**			

Please specify what else should be done at EU level to achieve improved financial education and literacy in the digital context:

Financial education is a basic requirement for any client. Without a basic level of understanding of personal finance citizens are not able to make the right decisions that affect their long-term prosperity. Banks and the financial services sector note that a lack of understanding finances on the side of consumers/clients can ultimately pose a threat to financial stability.

Considering cyber risks and frauds, it is important that customers understands the digital threats that might affect financial institutions and ultimately to financial stability. Banks are already educating and constantly warning their customers to detect suspicious activities, but banks cannot be left alone to deal with these issues. There are people who need guidance in digital context and services generally. Usually the bank is their first contact to digital services and therefore the banks are asked for guidance also in general, not only in digital financial services.

Effective actions require a collective effort from a broad array of stakeholders. This means that policymakers need to encourage cooperation between supervisors and private sector representatives and representatives of consumers.

Regarding household indebtedness there are good examples of financial products that can let consumers better manage their own money. This should also be considered by policy makers. Digital financial solutions can significantly help customers to balance their finances.

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?

In addition to the activities of banks, which are already making considerable efforts to educate consumers about both the benefits and the risks (e.g. cybercrime, fraud) associated with digital financial services and to encourage vigilance, the education system has to teach digital competences. It is important to promote financial competency at schools, colleges and universities.

Cybersecurity is a critical aspect of digital finance. We recommend that cybersecurity initiative such as those led by ENISA also are expanded to create room for discussion on personal finance aspects of the digital economy.

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 data driven financial sector in the EU and to further develop a common European data space for finance?

Promoting a data-driven financial sector is valuable. However, at this stage of the development of the data economy, the existing regulatory framework is fit for purpose and it is too early for horizontal legislation on data sharing in business-to-business relations. More in general, what comes to data sharing in B2B, in the future **all data sharing shall be fair** and financial sector shall not be obliged to provide information without any compensation (like PSD2) and without any ability to control who is handling that data. We support the efforts towards fair data sharing, i.e. "data sharing" should be based on a mutually agree business model and fair compensations.

Given the great variety of data involved in the digital economy, it is essential to define a data taxonomy to make any data-sharing framework efficient and usable in practice. The financial sector should be associated to any EU categorisation of financial data.

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?

	1: irrelevant	2: not relevant	3: neutral	4: relevant	5: fully relevant	n/a
Financial reporting data from listed companies				x		
Non-financial reporting data from listed companies					x	
SME data				x		
Prudential disclosure stemming from financial services legislation				x		
Securities market disclosure				x		
Disclosure regarding retail investment products				x		
Other			x			

Please specify in which other area(s) you would see the need to facilitate integrated access to these data in the EU:

The creation of a **centralized EU electronic register for Environmental, Social and Governance (ESG) data** in the EU that would increase the availability of high quality and comparable ESG data should be regarded as an EU strategic infrastructure project and as a priority to enable the other measures of the sustainable finance action plan.

The availability of ESG data is currently rather limited, insufficient to comply with the envisaged legislative and regulatory requirements and expectations, and when available, data are often difficult to compare and raise reliability questions. Moreover, third party data are very expensive, often unaffordable for smaller financial market players, researchers or academia. With the increased demand for ESG information induced by regulation but also market; this may lead to unlevelled playing field and competition concerns.

For this reason, we call the EU to build or support, based on existing solutions, a central European ESG data register that would collect with the help of new reading technologies existing ESG data of companies that publish non-financial statements under the NFRD. These data should be made available digitally to users of non-financial information, not only investors, but also lenders, academia, researchers, authorities and other users in order to ensure that data are widely accessible across member States in an open source format. Data should be also provided to users for free or at a reasonably affordable cost.

The European register should primarily focus on collecting the EU Taxonomy based information as a first building block, starting with climate change adaptation and mitigation for which technical screening standards will be developed in 2020 and be made available afterwards. As another building block the register should include relevant ESG information already collected by European and national institutions such as governments, central banks, statistical bodies, etc.

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

	1: irrelevant	2: not relevant	3: neutral	4: relevant	5: fully relevant	n/a
Standardised (e.g. XML) and machine-readable format			**x**			
Further development of the European Financial Transparency Gateway, federating existing public databases with a Single EU access point				**x**		
Application Programming Interfaces to access databases				**x**		
Public EU databases				**x**		
Other						

Please specify what else would be needed to make these data easily usable across the EU:

n/a

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 cuttingedge 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?

Based on studies in France[1] and the Netherlands[2], trust seems to be a key factor for consumers to decide whether or not to share their data for financial services.

If there is added value for the consumer (better offers, easier handling), the consumer is likeky to agree to the exchange of relevant data. However, the consumer may in that case not always be aware of any change this could bring in the way his data are used. A high level of transparency of data exchange for the consumer must therefore be ensured. In addition, the intended use and the location of data storage must be made comprehensible and transparent for the consumer.

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

	1: irrelevant	2: not relevant	3: neutral	4: relevant	5: fully relevant	n/a
More innovative and convenient services for consumers/investors, e.g. aggregators, comparison, switching tools			**x**			
Cheaper traditional services for consumers/investors			**x**			
Efficiencies for the industry by making processes more			**x**			

[1] DELOITTE study "The French and the new financial services" (Feb 2020)
[2] https://www.dnb.nl/en/news/news-and-archive/DNBulletin2019/dnb385796.jsp

automated (e.g. suitability test for investment services)						
Business opportunities for new entrants in the financial industry			x			
New opportunities for incumbent financial services firms, including through partnerships with innovative start-ups			x			
Easier access to bigger sets of data, hence facilitating development of data dependent services			x			
Enhanced access to European capital markets for retail investors						x
Enhanced access to credit for small businesses			x			
Other			x			

If you see other benefits of implementing an open finance policy in the EU, please specify and explain:

With regard to the suggested benefits in the above table, we consider that many of these benefits can be realised/are being realised already – without open finance - through the use of technology and the development of partnershps between financial services companies and tech providers. Examples are banks facilitating crowdfunding, the use of AI to create efficiencies in analysis of client needs/fraud patterns, exploring DLT to make back offices processes in securities settlement cheaper etc.

Question 31. In your opinion, what could be the main risks of implementing an open finance policy in the EU?

	1: irrelevant	2: not relevant	3: neutral	4: relevant	5: fully relevant	n/a
Privacy issues / security of personal data					x	
Financial exclusion				x		
Poor consumer outcomes (e.g. unfair pricing strategies)			x			
Misuse of consumers' financial data					x	
Business confidentiality issues					x	
Increased cyber risks					x	

Lack of level playing field in terms of access to data across financial sector activities					x	
Other			x			

If you see other risks of implementing an open finance policy in the EU, please specify and explain:

We believe that the introduction of additional data access rights in law such as those already introduced on a sectoral basis are likely to create significant competitive imbalances to the detriment of European players. PSD2 has created a more demanding regime and created a competitive disadvantage for banks obliged to give a free access to payment data to non-bank players, which do not have similar requirements on their own core customer data.

We see more risks than benefits to implement an regulated open finance policy. Again the priority areas to spur the development of digital finance in the EU identified by the Commission should be developed with the global perspective in mind: the defence of European actors is crucial to achieve an EU global leadership.

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

As previously expressed to Q26 at this stage of the development of the data economy, the existing regulatory framework is fit for purpose and it is too early for horizontal legislation on data sharing in business-to-business relations. The starting point should be to ensure that data markets have the best possible conditions to develop on their own, with freedom of contract as a cornerstone. The general principle of facilitating the voluntary sharing supported by the European Commission is the right one.

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

	1: irrelevant	2: not relevant	3: neutral	4: relevant	5: fully relevant	n/a
Savings accounts	x					
Consumer credit	x					
SME credit	x					
Mortgages	x					
Retail investment products (e.g. securities accounts)	x					
Non-life insurance products (e.g. motor, home…)	x					
Life insurance products	x					
Pension products	x					
Other			x			

If you see other financial products that would benefit of an open finance policy, please specify and explain:

We believe that the introduction of additional data access rights in law such as those already introduce on a sectoral basis are likely to create significant competitive imbalances to the detriment of Europea players.

As previously expressed to Q26, before considering any regulatory initiative the following elements should be considered: Data taxonomy, value of data, data's right.

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

n/a

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:

As acknowledged in a recent IIF and Deloitte paper "Realizing the Digital Promise" if financial institution have access to a great amount of customer and transaction data most still have much to fix and lear from internal data before expanding insights from external data. Despite the amount of data, many organizations find that they have not been capturing the right data attributes for developing insightfu analysis. Many participants stated that further work is required on improving the quality of data collecte and integrating the mapping of data requirements earlier in the process.

Most of use cases requesting external data are linked to technical and operational processes that can help us to meet regulatory obligations (KYC, eligibility, etc.) or correspond to the use of data of general interest (climate data, legal data, etc.).

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

	1: irrelevant	2: not relevant	3: neutral	4: relevant	5: fully relevant	n/a
Standardisation of data, data formats			**x**			
Clarity on the entities covered, including potential thresholds					**x**	
Clarity on the way data can be technically accessed including whether data is shared in realtime (e.g. standardised APIs)					**x**	

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					**x**	
Clarity on the terms and conditions under which data can be shared between financial services providers (e. g. fees)					**x**	
Interoperability across sectors				**x**		
Clarity on the way data shared will be used					**x**	
Introduction of mandatory data sharing beyond PSD2 in the framework of EU regulatory regime	**x**					
If mandatory data sharing is considered, making data available free of cost for the recipient	**x**					
Other						

Please specify what other element(s) should be considered to implement an open finance policy:

Dispute resolution between sharing entities and for the client in case of technical incidents, data breaches, fraud. More generally, we see no need for regulation and we wish to keep the freedom of contracts as a cornerstone. Data sharing is a complex issue that has to be balanced against a number of other important concerns: If any data sharing framework important elements should be first considered (see our answer to Q26)

Competitive imbalances: We believe that the introduction of additional data access rights in law such as those already introduced on a sectoral basis are likely to create significant competitive imbalances to the detriment of European players. PSD2 has created a more demanding regime and created a competitive disadvantage for payment institutions obliged to give a free access to payment data to nonbank players, which do not have similar requirements on their own core customer data.

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?

- **X: Yes**
- No
- Don't know / no opinion / not relevant

Question 36.1 If you/your firm do/does already deploy AI based services in aproduction environment in the EU, please specify for which applications?

Yes, but differnt for the co-operative banks across Europe.

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?

Different AI applications continue to evolve at a rapid pace and has the potential to change the way the financial sector operates. Yet, there are different areas where regulatory requirements could limit the use of AI in the provision of financial services. For example, questions arise regarding the development of AI and the General Data Protection Regulation (GDPR). The strict interpretation of GDPR is some area limits what EU companies can do with AI technology compared to companies in other parts of the world. If the EU want to become a viable player in the field of AI, there needs to be review of the GDPR rules in some specific areas

In our view, current regulation is sufficient and any additional regulation could hinder the development of AI in the banking sector. AI is in a phase of appropriation and exploration by the banking sector. In addition, the use of human expertise (data scientist, compliance and legal officer, client managers, etc.) remains essential to guarantee the quality and security of AI-related processing. If a regulatory framework would be considered it should be thought out globally at the level of European and international bodies, and on a cross-sectoral basis.

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?

AI applications have huge potential in financial sector and customers are getting the benefits from that. Financial sector can serve customers in new ways, in better ways and more quickly. Applications are developed for example

- for better fraud detection - risk management:
    - Enhancing fraud prevention in providing great assistance in the detection of suspicious activities that are linked to financial crime generally. Having a more secure system means increasing trust in the bank for both clients and financers;
    - Increasing cybersecurity in automatically analyzing massive amounts of data traffic to detect anomalies, which may be threats. With AI, banks can constantly improve their security posture.
    - Improving risk management in contributing widely to an improved monitoring of compliance. AI can also help in AML/CFT efforts by helping to report entities to monitor transactions by sorting through the enormous number of "alerts" and selecting only the critical ones. Machine learning will allow algorithms to identify patterns in criminal activity and update accordingly the screening filters of the tools in an agile manner.
- For Improved customer experience through innovative products and services stemming from the technology: Indeed, AI-supported automated services will bring a wide range of choice in terms of services offered and customization capabilities driven by better use of data through advanced analytics, for example:
    - Offering contextualised, personalised products and experiences ;
    - Providing better financial advice ;
    - Better financial inclusion.
- This can have positive effects on over indebtedness's and better financial understanding. The whole society will benefit from fraud prevention done by banks as well as anti-money laundering tools, which are supported by AI innovations.

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?

1. Financial industry

	1: irrelevant	2: not relevant	3: neutral	4: relevant	5: fully relevant	n/a
Lack of legal clarity on certain horizontal EU rules		x				
Lack of legal clarity on certain sector-specific EU rules		x				
Lack of skills to develop such models		x				
Lack of understanding from and oversight by the supervisory authoritie				x		
Concentration risks			x			
Other			x			

Please specify what other main challenge(s) or risk(s) the increased use of AIbased models is likely to raise for the financial industry:

In our view, supervisory authorities should improve their understanding of the challenges or risks that the increased use of AI based models is likely to raise by a close collaboration with the banking industry.

2. Consumers/investors

	1: irrelevant	2: not relevant	3: neutral	4: relevant	5: fully relevant	n/a
Lack of awareness on the use of an algorithm			x			
Lack of transparency on how the outcome has been produced			x			
Lack of understanding on how the outcome has been produced			x			
Difficult to challenge a specific outcome			x			
Biases and/or exploitative profiling			x			
Financial exclusion			x			
Algorithm-based behavioural manipulation (e.g. collusion and other coordinated firm behaviour)			x			
Loss of privacy			x			
Other						

Please specify what other main challenge(s) or risk(s) the increased use of AI based models is likely to raise for customers/investors:

n/a

3. Supervisory authorities

	1: irrelevant	2: not relevant	3: neutral	4: relevant	5: fully relevant	n/a
Lack of expertise in understanding more complex AI-based models used by the supervised entities				x		
Lack of clarity in explainability requirements, which may lead to reject these models				x		

Lack of adequate coordination with other authorities (e.g. data protection)				x		
Biases						
Other						

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

	1: irrelevant	2: not relevant	3: neutral	4: relevant	5: fully relevant	n/a
New EU rules on AI at horizontal level	x					
New EU rules on AI for the financial sector	x					
Guidance at EU level for the financial sector				x		
Experimentation on specific AI applications under the control of competent authorities				x		
Certification of AI systems			x			
Auditing of AI systems			x			
Registration with and access to AI systems for relevant supervisory authorities			x			
Other			x			

Please specify what other way(s) could be best to address these new issues:

As recalled in the European Commission’s White Paper, AI can relate to a wide variety of risks. In our perception, these risks were pre-existing at the adoption of AI and are more often directly related to the service as such than to AI itself.

As the banking industry is an extremely supervised sector at European and national and level, with a permanent risk control governance, in our view, it doesn’t require being subject to new additional European rules at horizontal level (specifically the new adjustment legal frame on EU product safety and liability legislations as considered by the EC in the White Paper) or at sectoral level.

An additional regulation could hinder the development of AI in the banking sector. AI is in a phase of appropriation and exploration by the banking sector. In addition, the use of human expertise (data scientist, compliance and legal officer, client managers, etc.) remains essential to guarantee the quality and security of AI-related processing.

However, we would see as a real support the cooperation between authorities and the banking sectors. In this perspective we support the experimentation on specific AI applications under the control of competent authoritiesbecause it creates a helpful dialogue between authorities and the banking sectors. It could help authorities understand better the advantages of AI applications for companies and consumers, how to mitigate potential risks and reduce uncertainty to foster innovation.

We would recommend the Commission to pay particular attention to new market participants that are not yet adequately covered by the current regulatory framework and respect the principle of "same business, same risks, same rules and same regulation".

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 dataintensive 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?

Providers of RegTech solutions:

	1: irrelevant	2: not relevant	3: neutral	4: relevant	5: fully relevant	n/a
Lack of harmonisation of EU rules				**x**		
Lack of clarity regarding the interpretation of regulatory requirements (e.g. reporting) Lack of standards				**x**		
Lack of real time access to data from regulated institutions				**x**		
Lack of interactions between RegTech firms, regulated financial institutions and authorities				**x**		
Lack of supervisory one stop shop for RegTech within the EU				**x**		

Frequent changes in the applicable rules				x		
Other			x			

Please specify what are the other main barrier(s) for new providers of RegTech solutions to scale up in the Single Market:

> The main barrier is that national laws and practices differ. Maximum harmonization and EU wide regulations are the best way to help scaling up the RegTech services. This is especially true in regulatory reporting where maximum harmonization is desirable, but unfortunately not always the practice.

Financial service providers:

	1: irrelevant	2: not relevant	3: neutral	4: relevant	5: fully relevant	n/a
Lack of harmonisation of EU rules				x		
Lack of trust in newly developed solutions			x			
Lack of harmonised approach to RegTech within the EU				x		
Other						

Please specify what are the other main barrier(s) for new Financial service providers solutions to scale up in the Single Market:

n/a

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?

- **X: 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:

n/a

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:

n/a

Question 44.(DUD + BRWG)

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:

The Commission initiative on standardizing the definitions of financial reporting (Financial data standardization project) seems as a positive initiative in general and there are potential efficiency gains to be reached. However, the project has been going on already for some years and we are not yet sure what the outcomes are. There could have been more transparency along the way and the participation of the financial industry could have been deeper.

There is also an initiative towards integration of regulatory reporting obligations of credit institutions (based on CRR article 430a). We fully support the initiative and see a lot of potential benefits if properly implemented.

Question 45. (DUD + BRWG)
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?

Please explain your reasoning and provide examples if needed:

We are not sure if we fully understand the question. Does it mean to say that our supervisor (ECB) would use for example a banks twitter of facebook account as a basis for supervision?

Supervisors already have huge amounts of data of its supervised entities. Regulatory reports sent by banks goes much deeper than any publicly available information. In addition, on-site inspections and supervisory dialogue gives the supervisor confidential and sensitive information which hardly can be shared publicly. Therefore, supervision will always be based, at least partly, on sensitive information. It doesn´t prevent supervisors to look at other available data, but we are not sure if this would make supervision more effective.

The use of social media data should only be subject to supervisory/regulatory control in very exceptional cases. Furthermore the sense and purpose of combination and the evaluability of such data sets is questioned.

IV. Broader issues

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?

WE assume the question to read "how can financial sector contribute to financing…" and have answered with this question in mind.

Regulators need to recognize the crucial role banks have in financing the real economy and innovations in the EU. This can only be done if banks have reasonable prudential rules and capital requirements are not tightened. There are elements in the forthcoming prudential regulation which will increase the capital levels for European banks notably from current levels, which are already significantly higher than before financial crisis.

We would encourage the Commission to fully use the year granted by the BCBS decision to defer the implementation date of Basel IV and to postpone the legislative proposal at EU level until market conditions and financial stability concerns have eased. Moreover, it would also be essential to evaluate the relevance of the Basel measures in light of the new COVID situation.

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

Question 47.

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

In many legislations for example in MiFID regulations there are obstacles that prevent financial sector to transform from printed papers fully to digital. We fully support the idea presented by commission in MiFID II review (there question 35.1.) about the transformation to digital environment.

One example is Article 3 (Commission Delegated Regulation 2017/565): This article 3 means in practice that service providers are asking large amounts of clients do they want to use web-based digital documents but if an answer from a customer is not received, papers still need to be printed and mailed. Most of the clients are using only digital documents nowadays but there are still clients who have not answered to this question. We need a push from regulator also to these clients and a change. Digital information should be the default from regulation. At least all the clients who are using web-based services should be using digital documents only by default. However, service providers should be able to agree separately if some of the clients still need and want paper documents. Digital services are the future and digital documents are also more sustainable way to provide information to clients. These documents can be stored e.g. to client's web-banking solution and should be regarded as durable medium in many regulations.

We support a push from the regulator and a short phase-out period towards full digitalization without printing and sending these documents. Some legislation still requires documents in paper format, if client do not want a digital way. In all EACB banks serving 209 million customers, the amount of printed and regularly mailed documents to clients is still too big. If all the people would use only digital banking solutions also the documents after physical meetings in a bank could be sent electronically in the future.