EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL MARKETS UNION

Horizontal policies
Digital Finance

Summary

Consultation on a new Digital Finance strategy

This document provides a factual overview of the contributions to the consultation on a new digital finance strategy for Europe / FinTech action plan. The content should not be regarded as reflecting the position of the Commission.

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1. INTRODUCTION

On 3 April 2020, the European Commission launched a public consultation entitled "Consultation on a new Digital Finance strategy". The consultation closed on 26 June 2020. In line with Better Regulation principles, the consultation was designed to gather stakeholders' views on policies to support digital finance.

Building on the work carried out in the context of the FinTech Action Plan, the work of the European Supervisory Authorities and the report issued in December 2019 by the Regulatory Obstacles to Financial Innovation Expert Group[1],and taking into account the contribution digital finance can make to deal with the COVID-19 emergency and its consequences, the Commission has identified the following four priority areas to spur the development of digital finance in the EU:

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

This consultation has therefore been structured in three sections corresponding to the priorities areas 1, 2 and 3 presented above.

The Commission received 186 responses to the consultation and would like to thank respondents for their contributions. This feedback statement provides a factual overview of the contributions received. Any positions expressed in this feedback statement reflect the contributions received. They do not necessarily reflect the position of the European Commission and its services.

2. WHO RESPONDED?

The majority of responses came from the industry (125), mainly from firms and industry organisations. Mainly incumbents and organisations representing them contributed including banks, investment firms, trading venues, insurance, payments and market infrastructures. From the side of start-ups, some Fintech organisations responded as well as a couple of firms. Contributions were also received from technology companies, cloud service providers and consumer or investor organisations and trade unions. 26 public authorities responded to the consultation, including the three European Supervisory Authorities. A limited number of private individuals contributed.

Replying as	
Academic/research institution	5
Business association	59
Company/business organisation	66

[1] ROFIEG report https://ec.europa.eu/info/publications/191113-report-expert-group-regulatory-obstacles-financial-innovation_en

Consumer organisation	2
EU citizen	5
Non-governmental organisation (NGO)	12
Public authority	26
Trade union	5
Other	6

Respondents were from 24 Member States, with around half based in three countries, namely Belgium (32), France (19), and Germany (19). Four respondents were based outside the European Union.

Scope	
International	6
National	20
No answer	*160*
Country of origin	
Austria	4
Belgium	32
Bulgaria	4
Croatia	2
Cyprus	2
Czechia	1
Denmark	5
Finland	4
France	19
Germany	19
Greece	1
Hungary	3
Ireland	11
Italy	10
Liechtenstein	1
Lithuania	1
Luxembourg	2
Malta	1
Netherlands	5
Poland	2
Portugal	3
Romania	3
Slovakia	1
Spain	11
Sweden	6
Switzerland	6
United Kingdom	18
United States	9

Organisation size	
Micro (1 to 9 employees)	39
Small (10 to 49 employees)	33
Medium (50 to 249 employees)	25
Large (250 or more)	84
No answer	*5*
Field of activity or sector of respondents	
Accounting	7
Auditing	6
Banking	59
Credit rating agencies	4
Insurance	28
Pension provision	17
Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)	23
Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)	19
Technology companies	41
Organisation representing European consumers' interests	8
Organisation representing European retail investors' interests	7
National supervisory authority	17
European supervisory authority	4
Other	61

3. SUMMARY OF RESPONSES

3.1. General questions

A large share of the respondents to the consultation answered the first two general questions. Concerning obstacles to reaping the opportunities of innovative technologies, the responses demonstrate a broad support for the ROFIEG analysis and recommendations. Respondents underlined a lack of clarity and the particular role of regulation in that respect, for two reasons. It either is due to no rules being in place, rules being unclear or not suited to particular technologies, or rules being implemented differently across the Union. Respondents underlined advantages such as an increased choice in terms of a broader range of products & services, financial inclusion, and improved user experiences (i.e. speed, simplicity, flexibility, continuity of access etc.). Frequent challenges raised by respondents include more risks in terms of cybersecurity, difficulty to understand new products that may be more complex both individually and concerning responsibility for a particular service in a broader value chain, risks in terms of data protection and privacy, as well as challenges to ensure user consent of sharing data is informed. The vast majority responded that they agree with the priority areas set out in the consultation.

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

The majority of respondents considered that the existing European Union financial services regulatory framework is not technology neutral and innovation friendly. Just above half of the public authorities considered the regulatory framework to be sufficiently technology neutral but underlined that it should be monitored regularly along with any associated risks. A majority of business associations and companies did not consider that the regulatory framework is sufficiently technology neutral. Some pointed towards a complexity in implementing European Union rules and called for a systematic review of legislation. They underlined the uneven playing field with other emerging technology and financial technology actors. Consumer organisations all considered that the existing European Union financial services regulatory framework is technology neutral and innovation friendly but called for updating existing rules, in particular the Distance Marketing of Financial Services Directive (DMFSD) and the Anti-Money Laundering Directive (AMLD). Most respondents considered that the current level of consumer protection for retail financial products and services established by the European Union regulatory framework is technology neutral and should be also applied to innovative ones using new technologies.

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

Most respondents underlined that the use of certain new technologies is limited due to regulatory obstacles stemming from European Union legislation on the following technologies: distributed ledger technology, cloud computing and artificial intelligence (AI), and biometrics. On the other hand, respondents do not see major impediment, or maybe do not have yet experience with Internet of Things (IoT) or quantum computing. According to them, the most relevant ways to support the uptake of nascent technologies and business models for the European Union are enhancing legal clarity through European Union guidance, setting up regulatory sandboxes, supporting industry codes of conduct on certain applications, setting up observatories to monitor trends, and funding experimentation on specific use cases. On bespoke regimes, views are rather divided, with only half of respondents considering this could be rather or very relevant.

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

Almost all respondents expect that, in the upcoming five years, technology companies will significantly increase their market shares in almost all financial service markets, dominate the intra-European retail payment markets, and first acquire significant market shares in distributing various financial products. Most respondents expect that tech companies will reach significant or very significant market share in distributing consumer credit, non-life insurance products, credit to small and medium enterprises (SMEs) and investment products. A majority of respondents considered that the "same activity creating the same risks should be regulated in the same way" is not respected in the European Union. Most respondents expect that prudential and conduct risks will increase if the technology companies gain significant market shares in the EU's financial services markets, focusing on systemic risks, anti-money laundering and countering the financing of terrorism (AML/CFT) risks, and operational risks for technology companies and online platforms. Most respondents expect that consumers will be exposed to more risks when technology companies gain significant market share in financial services in the European Union, particularly on the use and abuse of (personal) data, for example via non-transparent commercialisation and discrimination. Overall, most respondents, including public authorities, considered that the European Union's regulatory approach needs to be adjusted as a response to the changing prudential, conduct and consumer risks as technology companies are gaining market share in financial services.

Enhance multi-disciplinary cooperation between authorities

Taking into consideration the technology and innovation pace, the national and European authorities first underlined the need to ensure that supervisors have the right skills and that these skills are maintained through regular training programmes. Most associations highlighted the pace of evolution of new technologies, the lack of necessary skills and the increasing complexity of value chains. Consumer organisations or non-governmental organisations (NGOs) representing the retail investors agreed with this need for multi-disciplinary supervision. On the Fintech side, a few respondents highlighted the following elements: in addition to establishing dedicated innovation hubs and regular dialogue between supervisors and Fintechs, authorities should consider establishing dedicated supervision teams for larger Fintechs.

3.3. Removing fragmentation in the Single Market for digital financial services

Reducing national regulatory and supervisory discrepancies

Respondents reported mainly issues relating to lack of consistency in the transposition, interpretation and application of EU financial legislation and divergent regulatory and supervisory attitudes towards digital innovation. The transposition of Directives with minimum harmonisation leads to national discrepancies and gold-plating, impeding scaling up and creating regulatory arbitrage. The success of digital platforms is based on the ability to scale the business across a large number of customers within a single regulatory framework. Multiple respondents are calling for maximum harmonisation via Regulations instead of Directives, while some prefer opt-in 28th frameworks. The main barriers to operating truly cross-border and calling for further harmonisation are duplication in Anti-Money Laundering requirements across Member States, diverging Know-Your-Customer applications, discrepancies in PSD2 transpositions, as well as differences in national consumer protection, consumer credit, and insolvency rules, and tax rules for cross-border services. Several respondents raised the problem of IBAN discrimination in several Member States, calling for EU infringement procedures. Respondents also raised the lack of EU-wide supervision and enforcement for cross-border provision of services. Closer cooperation among supervisors is requested, with coherent application of guidelines and alignment in practices. Finally, the EU should develop international agreements with other non-EU major jurisdictions to adequately regulate cross border access and activities.

Facilitate the use of digital financial identities throughout the EU

The vast majority of respondents supported interoperable digital onboarding solutions, focusing on harmonising Customer Due Diligence (CDD) in the AML Directive, harmonising the approach towards acceptable use of remote identification technologies, developing standards/ guidance to support CDD, access to public databases to facilitate checking of identities, and enhancing the link between AMLD and the eIDAS Regulation. Respondents broadly supported the idea of having a digital financial identity (DFI) that is usable and recognised throughout the European Union. Most respondents agreed that a key benefit would be a single point of access to specific data attributes and only to share what is required for the service/purchase. Some respondents highlighted Legal Entity Identifiers (LEI) as a building block for creating a digital identity. On legal identifiers, most respondents are in favour of a further increased mandatory use of identifiers. On the other hand, a few respondents also explained that the Commission should be aware that the scale of adoption differs significantly across jurisdictions.

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

Overall, almost all respondents are in favour of the use of innovation hubs (IH). For regulatory sandboxes (RS) there is also a majority that believes they should be used, but here, more risks are highlighted (i.e. regulatory arbitrage) compared to IHs. Most respondents describe the increased dialogue that happens between supervisors and industry participants as one of the main benefits of innovation facilitators (IF). A considerable number of supervisors point out that they allow them insights on industry trends and establish a close proximity with the industry. Supervisors may become aware of new opportunities and risks presented by innovations and how and if they fit within the regulatory framework, if they need to build up supervisory expertise in certain areas and inform updates of regulatory and supervisory practices to mitigate risks and potential barriers to innovation or technological neutrality. Supervisors also explain that it provides industry with a dedicated contact point, which can be particularly useful for firms when trying to navigate the licencing/wider regulatory framework. Many supervisors also point out the limitations of IFs in enabling the scaling up of financial innovation if the barriers stem from variations in national regulatory requirements.

Evening out licensing and passporting practices

The lack of supervisory convergence leads to difficulties as supervisory authorities in different countries follow divergent practices as regards authorisation and licensing. This includes uncertainty as regards to the allocation of responsibilities between home/host authorities. Similarly, the communication to a host regulator by the home regulator is not sufficient in practise and requires the provision of additional information or the fulfilment of additional requisites to comply with local rules. The creation of an EU central repository of information to facilitate the necessary information sharing that supervisory authorities require for authorisation and supervision processes was suggested. Jurisdiction shopping was raised as a key challenge, asking for supervisors to enforce all EU regulation with the same level of intensity, as market participants use their European passport to circumvent more stringent national rules or requirements. Respondents call for further guidance is needed to support a consistent approach to regulation or supervision of activities for which passport rights exist, particularly with regards to digital services. Respondents support the further extending the regulatory perimeter to confer passporting rights for new services where appropriate to facilitate cross-border activity whilst effectively and consistently mitigating risks, such as EU passporting for non-banking financial institutions to support cross-border credit provision whilst ensuring high standards of consumer protection.

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

(It should be noted that this topic is also included, from the payment perspective, in the Retail Payments consultation)

Respondents highlighted several types of financial services and technical infrastructures where a European Union level initiatives would be relevant and helpful. On cloud computing, respondents underlined that there are only European Banking Authority (EBA) Guidelines and certain national rules, which may make it difficult to use private/social cloud within an European Union financial group. Some highlighted that local practices prevent the full realisation of the single euro payments area (SEPA). Many respondents support the development of single shared application programming interfaces (APIs) that would assist in the integration of third-party services into the existing financial services infrastructure. Others underlined that data localisation rules that oblige firms operating within a country to store data in that country put additional costs onto market entrants and indirectly discriminate in favour of national enterprises. It was suggested that, within the EU, there should be no national data localisation rules. Many respondents supported to ensure non-discriminatory access to technical infrastructure. Some respondents saw the need to improve European competition law, especially in the payments area. Others highlighted the use of regulated markets as Trusted Third Parties (TTP) in the digitised world especially in the distributed ledger technology (DLT) environment. Respondents advocated for a cross-sectoral recognition of identification methods and a harmonization of know-your-customer (KYC), e-identity and on-boarding requirements between different (regulated) industry sectors (such as finance, health, mobility, telecommunication) and the public sector.

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

Most respondents fully support for improving financial education and literacy in the digital context. Given the limited Union competence regarding education, some respondents suggest the Commission should combine its actions for more efficiency in a collective effort with a broad array of stakeholders. Several respondents stress that the uptake of digital financial products and services should start with a change of attitude towards new technologies; when consumers see advantages in using new technologies, they are more willing to adapt. The majority of respondents highlight that the Commission should support Member States efforts to promote financial education in the school curriculum and in life-long learning; some propose the use of interactive tools to reach out to consumers in their learning experience.

3.4. Promoting a well-regulated data-driven financial sector

Respondents either suggested specific measures to be considered at European Union level or simply highlighted certain aspects that should be carefully taken into consideration while undertaking the envisaged measures listed in this section. A few national and European authorities suggested that essential prerequisites for a well-regulated data-driven financial sector include standardisation, information technology (IT) security and legal certainty on the use of data. Consumer organisations and NGOs acknowledged the benefits that an Open Finance policy could bring for consumers, provided consumers remain in full control over their data. The financial industry overall expressed strong support vis-à-vis the Commission's belief that a unified single market for data will support an innovative and competitive digital finance industry. Respondents strongly supported the need to enhance access to public data, that could bring huge benefits for European SMEs. The potential benefits such data space could bring with respect to AML/KYC monitoring. Another respondent suggested to start launching Proof of Concepts on small scale pilots before setting up any data space.

Facilitate the access to publicly available data in finance

Considering the potential uses of publicly available data, most respondent underlined financial reporting data, non-financial reporting data, and SME data. Still relevant, but to a lesser extent, respondents identified securities market disclosure and product disclosure and finally prudential disclosure. Some respondents provided then additional elements to support their choices, including the need to enhance access to public disclosure from all entities, listed or not, consolidated red tape, and the benefits enhanced access to data could have in areas such as AML transactions, cyber incident-reporting or environmental, social, and governance (ESG) data. Concerning the conditions to make data easily usable, a majority of respondents underlined accessing data in a standardised and machine-readable format and using APIs. Still relevant, but to a lesser extent, further developments of the European Financial Transparency Gateway (EFTG) and Public databases. One NGO representing the interests of retail investors underlined data/information stemming from non-financial reporting. Businesses and business associations underlined access to ESG data and vis-à-vis SMEs. One respondent welcomed the focus on the Open Data Directive on making available data on companies and company ownership. Several respondents referred to the future Green deal data space and even described the main features such a common data space should have. This includes for example collecting information and data under the non-financial reporting Directive (NFRD) but also from other sources, linking between databases at national and European Union level, and collecting data from environmental reporting.

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

Stakeholders were asked under what conditions consumers would favour sharing their data relevant to financial services with other financial services providers to get better offers for financial products and services. Most respondents underlined the necessity to have customer consent, control and awareness of how their data is being shared. On the potential benefits of an Open Finance policy, the majority of respondents underlined more innovative tools and convenient services for consumers/investors (e.g. aggregators, comparison, and switching tools). Most respondents also highlighted easier access to bigger data sets, hence facilitating the development of data dependent services. On the potential risks of an Open Finance policy, most respondents underlined privacy issues / security of personal data, misuse of consumers' financial data, increased cyber risks, and lack of level playing field in terms of access to data across financial sector activities. On the safeguards to mitigate those risks, respondents underlined common standards to access data, high security requirements (including resilience of systems), clear insights into the involved parties handling the data, and an application of data protection rules. On the benefits and opportunities for specific financial products, most respondents underlined consumer credit, retail investment products (e.g. securities accounts) and non-life insurance products. On the relevant data (personal and non-personal) underpinning, Open Finance services based on customer consent, a majority of respondents underlined personal data, including financial data such as savings, mortgages, consumer credit, investments, pensions, and insurance. Respondents also mentioned non-financial data from online platforms (e.g. social media, e-commerce and streaming), from public entities (e.g. tax and social security), utilities (e.g. water and energy), telecommunications, retail purchases, mobility (e.g. ticket purchases), cyber incident data, environmental data, and IoT data. Non-personal data included business registries and high value data sets to be shared under the Open Data Directive. On the potential elements to be considered under an Open Finance policy, most respondents underlined 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. They also underlined elements on clarity on the way data shared will be used, clarity on the way data can be technically accessed including whether data is shared in real-time (e.g. standardised APIs).

Support the uptake of Artificial Intelligence in finance

Respondents reported that AI applications are at early stages of development, such as planning, proof of concept and pilot stages, with substantial growth expected in the next five to ten years. However, there is many applications in production already, namely in compliance and fraud detection, risk management, data analysis, trading, sales and marketing, financial advice, customer relationship management, process automation, and supervision. Concerning policy and regulatory issues, on the positive side it was noted that so far regulation does not inhibit the use of AI, but problems may be encountered in case of outsourcing such services due to the high measures and requirements that have to be complied with when using external service providers for such activities. On the negative side, the AML regulations are overburdening technical teams, particularly in the areas of data protection and banking secrecy. AML/KYC requirements have sometimes been interpreted as being in conflict with the requirements of the GDPR. Such uncertainties can impinge on the development of effective AI solutions. Respondents underlined that AI applications provide opportunities to enhance customer interaction and experience, improve cybersecurity and consumer protection, strengthen risk management and enhance the efficiency of in-house processes. They can also provide new or enhanced approaches to certain financial services through tailored and personalised products, including via automated recommendation systems and advice to clients through chatbots, and virtual assistants. Other areas include pricing of investments, support for portfolio managers, risk assessment, customer relationship management, cash-flow management and automated wealth-management solutions. AI could be applied to almost every area of operations in the banking sector. Respondents highlighted three main challenges, namely a lack of understanding and oversight by supervisory authorities, as well as lack of legal clarity on horizontal and sectoral rules, and a lack of skills. The majority of respondents underlined several elements to address these challenges, namely guidance at European Union level for the financial sector, experimentation under authorities' control, as well as auditing and certification of AI. The number of respondents favouring new European Union rules was equivalent on cross-sectoral rules and rules specific to the financial sector.

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

Generally, respondents felt that translation to machine-executable form would benefit those provisions of legislation that carry the largest compliance costs for the financial services sector overall and have the highest degree of complexity. Respondents views on the initiatives that the Commission should undertake to move towards a fully digitalised supervisory approach were quite diverse, with many suggestions being raised by only one or two respondents. Concerning standardisation, respondents called not only for the standardisation of reporting obligations in terms of scope and content, but also harmonisation of terminology, data formats, templates, methodologies, and for developing standards for the technologies to be used in reporting. Overall, the main benefits identified by respondents include better/more effective supervision, better efficiency of supervision with more timely decisions by supervisors, additional insights and a broader perspective for supervisors, and a more predictive/proactive supervision

More collaboration and uniformization for the development, certification and adoption of regtech solutions

The majority of respondents stated that the strongest barrier is regulatory fragmentation and lack of harmonisation, with differences in implementation of EU rules, such as MiFiD, and specific national rules, creating a complex regulatory environment and preventing the rolling out of regtech solutions across borders. Obvious impediments are existing domestic restrictions to remote customer on-boarding and to the outsourcing of certain AML-related tasks. They call for maximum harmonisation with an European common reporting framework, ensuring consistency of reporting requirements across Member States countries through uniform definitions, such as same rules for the use of qualified signatures, and standardisation of registers and data, specifically with regards to data definition, quality and governance. Another barrier is the lack of a unified approach between NCAs when dealing with regtech providers, as systems that are approved in one country are not seen as non-compliant in another. More sharing of best practices and the creation of a sandbox to test and experiment regtech solutions at EU level would be beneficial. Putting in place a certification of regtech solutions and liability rules in case of errors would increase certainty and comfort customers. Overall, more collaboration between regtech providers, financial players and regulators would foster more innovation. Regtech companies need to be able to discuss their solutions with national regulators and ESAs to ensure that they understand and comply with the relevant requirements. More proactive announcement of rule changes, transparent implementation standards and outsourcing requirements would be helpful. Several respondents called for the diffusion of machine-readable rules which would contribute greatly to the rapid and unambiguous uptake of regtech.

Funding and incentivising the digital finance transformation

The majority of respondents call for tax, funding, capital and prudential incentives to promote innovations in the financial sector, such as for example an innovation levy in proportion to digital transformation spending, taking into account the nature, scale, complexity and impact of the firm. More targeted funding is needed through EU programs with grants and equity support for fintech start-ups and scale-up with simple application procedures. EU-wide competitions, hackathons, incubators and accelerators would also promote further the development of digital solutions. The EU can support further the digitalisation of the industry by investing in the EUs digital infrastructure, such as high speed broadband, increasing the reach and quality of digital services, such as through the Digital Europe program, investing in the development of technologically qualified workforce, through appropriate training of new hires and reskilling of current employees, and subsidize research in new technological solutions, such as done under the Horizon 2020 program. Several respondents called for the Capital Markets Union to be completed, including the adoption of security tokens. A few respondent warned that the financial sector should not be forced into digitalisation by legislation, particularly given the current crisis, instead digital transition should be market-driven. Finally, creating more legal certainty for innovative business models will lead to a higher probability of successful funding by established investor.

Ensuring a sustainable digital finance transformation

It is generally accepted that digital transformation leads to improvements in the financial sector’s sustainability such as more inclusion, transparency, reduction in travel and paperless processes. Several respondents asked for EU legislation to be digital-by-default, removing regulatory obstacles to digitalisation, such as the use of prints or face-to-face meetings. Some respondents asked to raise consciousness about the environmental impact of digital transformation, by subjecting new projects to a carbon footprint analysis and ecolabelling of digital finance products and services. Incentives to accelerate digital transformation could be conditioned to a positive contribution to sustainability goals. The sharing of best practices would encourage financial actors to rely on environmentally friendly and energy-efficient processes and technologies, such as the promotion of cloud services vs. dedicated IT infrastructure, energy-efficient distributed ledger technologies, sustainable procurement of hardware. Moreover, respondents believe sustainable fintechs should be supported by the EU and national authorities with dedicated research and grant programmes, as well as innovation hubs or sandboxes with a specific focus on sustainable finance. New forms of participatory financing empowering EU citizens to take an active part in their communities and assessing sustainable projects, would help channel European savings towards a sustainable transition. Finally, an EU platform of corporate non-financial reports and ESG data would improve transparency and decision making.