BF BETTER FINANCE

The European Federation of Investors and Financial Services Users
Fédération Européenne des Épargnants et Usagers des Services Financiers

Ref; Expert consultation: Digital Finance and Crypto-Assets – request for contribution

Link to the Draft Report: https://www.europarl.europa.eu/doceo/document/ECON-PR-650539_EN.pdf

BETTER FINANCE Position Paper on Digital Finance Strategy

in regard to request of contribution from the Committee on Economic and Monetary Affairs in the European Parliament on a "legislative own-initiative report on Digital Finance

Executive Summary

Introduction	BETTER FINANCE welcomes the ECON's legislative own-initiative report on Digital Finance to assessing the regulatory and supervisory challenges on the digital financial market in order to guarantee a resilient digital financial system. BETTER FINANCE believes that the EC should attempt to better coordinate the parallel consultations (Mifid II, Digital Finance Strategy, Sustainable finance Strategy) – as they concern the same domain – and provide uniform solutions, thus avoiding the "silo" approach infamous for EU financial regulation.
Human centric Artificial Intelligence (AI)	To regain the trust of consumers and financial service users the Commission should: • To propose a legislative framework for AI-powered automated decision making (ADM) to ensure that they are fair, transparent and accountable to consumers and do not harm EU citizens' fundamental rights.[1] • To undertake an in-depth fitness check of all relevant EU legislation in the insurance and financial sector in order to propose legislative updates where necessary. In our research on Robo-advice, the analysis of algorithms uncovered important divergences between the advertised expected returns and the equity allocation provided by the different platforms
Data Access	BETTER FINANCE believes that the EU should complete the regulatory framework for a competitive data economy. Data portability should be at the core of this regulatory framework in which individuals and business should have the possibility to access data but also to provide better protection to individuals on the data that they generate. Therefore, non-discriminatory access to data and interoperability among market players should be considered int the legislative framework.

[1] Better finance is a contributor of the Human-Centric Digital Manifesto for Europe, How the digital transformation can serve the public interest (September 2019): https://www.beuc.eu/publications/beuc-x-2019-053-a-human-centric-digital-manifesto-for-europe.pdf

Crypto-assets	BETTER FINANCE recommends to take the following steps on crypto-assets: • To ensure that the European Supervisory Authorities are endowed with the necessary resources and supervisory powers as to dedicate particular attention to this field. • The European Commission should consider naming one competent authority at European level, in order to ensure a uniform supervisory approach. • The bespoke regime must not be of absolute novelty. Regulatory classification should be focused on identifying those crypto assets which can fit within existing regulatory frameworks. • To adopt the so-called "white papers" and to standardize the format and content of white papers through a Regulation so as to provide legal certainty, clarity for investors, and ensure a level-playing field for all issuers across the Single Market.
EU initiatives for EU Financial service user	To address market inefficiencies, the EU Commission should consider the following initiatives for EU financial service users. • Establishing **independent savings products data bases which imply standardized Key Information on actual costs, performances and risk**s (*"garbage in garbage out"*). • **Development of independent web comparative tools** that would allow and facilitate the comparison of – and choice between different investment products. • **Rethinking mandatory disclosure documents like KIID for online/ smart phone** adaptation, for example using drawdowns for more detailed information. • **Enabling individual shareholder engagement within the EU by voting or giving power to a proxy with one's smartphone**. • EU regulatory framework for retail financial products should be also applied to new technologies in order to ensure protection for individual investors and financial service users.
Principles of digital finance	In order to deliver key advantages for EU citizens as the main provider of capital to the real economy, several key principles should be observed: A. **Proper data protection** B. **Security** C. **Promote simplicity** D. **Regulatory sandboxes** E. **Proper supervision**: F. **Technology neutrality**

Key features for consumers	**Key features for consumers.** At the same time, financial literacy and financial inclusion can also be addressed through the disruptive power of FinTechs. The applications of digitalisation are varied, but in essence they would fulfil a couple of functions: 1) **Fair clear and not misleading information**: most important and least enforced requirement of MIFID. 2) <u>**Nudging**</u>: due to complex financial products, the user's attention should be drawn to prominent elements (either warnings or other type of information) in order to ensure that, at least, these are not overseen. It should also fight "monetary illusion" by disclosing always real long-term performances to show the negative impact of inflation over time on purchasing power. 3) <u>**Explanations**</u> or <u>**FYI**</u> pop-up boxes: the use of these tools have the advantage of reducing the amount of text visible, which can be at times demotivating for consumers to read, and still relay some essential info on jargon or other features presented if the end-user clicks, hovers etc.; 4) <u>**Engagement**</u>: digitalisation can make finance more intelligible, attractive, and can determine savers to engage and monitor, be proactive and aware of their financial wellbeing, and at the same time better understand and browse the market; 5) <u>**Better advice**</u>:, BETTER FINANCE's 4-year research on *robo-advisors* shows that the market is growing, is disrupting the biased, conflicted distribution models that constitute the rule in the EU and can provided added value for money for individual saver.

Purpose of this position paper: This position paper is meant to provide suggestions and recommendations in line with the request for contribution of the Committee on Economic and Monetary affairs in the European Parliament to the *legislative own-initiative report* on Digital Finance. The document focuses on 3 main aspects that BETTER FINANCE considers crucial in order to establish a resilient digital financial system and ensure individual investor and financial service users protection.

About BETTER FINANCE

BETTER FINANCE, the European Federation of Investors and Financial Services Users, is the public interest non-governmental organisation advocating and defending the interests of European citizens as financial services users at the European level to lawmakers and the public in order to promote research, information and training on investments, savings and personal finances. It is the one and only European-level organisation solely dedicated to the representation of individual investors, savers and other financial services users.

BETTER FINANCE acts as an independent financial expertise and advocacy centre to the direct benefit of European financial services users. Since the BETTER FINANCE constituency includes individual and small shareholders, fund and retail investors, savers, pension fund participants, life insurance policy holders, borrowers, and other stakeholders who are independent from the financial industry, it has the best interests of all European citizens at heart. As such its activities are supported by the European Union since 2012.

Introduction

BETTER FINANCE welcomes the ECON's legislative own-initiative report on Digital Finance to assessing the regulatory and supervisory challenges on the digital financial market in order to guarantee a resilient digital financial system.

Digitalising finance and enabling new technologies to enhance the provision of financial services would benefit both individual investors and the EU economy. However, the positive disruptive potential of these new technologies cannot be fully harnessed if there is no legal certainty for providers and users of these services. Moreover, the risks identified by the European Commission and the European Supervisory Authorities (ESAs) cannot be prevented or addressed in absence of an adequate supervisory and regulatory mechanism.

We believe that there is the need to extend the regulatory arm to this new business ecosystem. In this respect, scholars noted that "regulation and uniformisation of practices are the best way to protect the economic and financial order, in addition to opening new choices to the market". Regulation is needed in order to offer investor protection, preserve the benefits of the emerging instrument and its underlying market, remove legal uncertainty, and create the necessary resolution mechanisms in case of a crisis. In particular, we are aligned with *the Draft Report recommendations* regarding the necessity to deploy proportionate cross-sectorial and holistic approach to the Commission work on FinTech. [2]

BETTER FINANCE believes that the EC should attempt to better coordinate the parallel consultations (Mifid II, Digital Finance Strategy, Sustainable finance Strategy) – as they concern the same domain – and provide uniform solutions, thus avoiding the "silo" approach infamous for EU financial regulation. However, FinTechs – understood as new market entrants enabling innovative solutions – must be ensured a level playing field with incumbents in order to tap on their disruptive potential of traditional market practices. In addition, the EU Commission should complete the regulatory framework for a competitive data economy. Data portability should be at the core of this regulatory framework in which individuals and businesses should have the possibility to access data but also to provide better protection to individuals on the data that they generate. Therefore, non-discriminatory access to data and interoperability among market players should be considered in the legislative framework

Human centric Artificial Intelligence (AI)

If on the one hand, the use of algorithm and Artificial Intelligence (AI) and automated decision-making (ADM) produce several advantages as increased accuracy, speed and reduced costs, on the other hand the risk associated to these new technologies can create financial and non-financial damages to consumers. The use of these technologies in finance without meaningful human control and oversight can trigger significant loss of transparency, accountability and arbitrary discrimination (as in the use of AI and ADM in the insurance). These risks could further undermine EU citizens low trust in the financial system and financial services. The element of trust is also underlined in the general comments of the *the Draft Report with recommendations to*

[2] Draft Report with recommendations to the Commission on Digital Finance: emerging risks in crypto-assets - regulatory and supervisory challenges in the area of financial services, institutions and markets (2020/2034(INL) https://www.europarl.europa.eu/doceo/document/ECON-PR-650539_EN.pdf

*the Commission on Digital Financ*e in the context of ensuring that operators, consumers and supervisors are able to have confidence in digital finance;

In order to regain the trust of consumers and financial service users the Commission should :

- To propose a legislative framework for AI-powered automated decision making (ADM) to ensure that they are fair, transparent and accountable to consumers and do not harm EU citizens' fundamental rights.[3]
- To undertake an in-depth fitness check of all relevant EU legislation in the insurance and financial sector in order to propose legislative updates where necessary.

In relation to application of algorithms, BETTER FINANCE tested the suitability and reliability of the Robo-advice platforms. We believe that Robo advice could go a long way towards attracting retail investors back into capital markets. Our research on Robo advisors illustrate that these automated financial advice services (all duly registered as financial advisers, and in many cases also as investment firms) are considerably less expensive than their traditional counterparts and can offer individual investors much better value for money. Such reduced fees are possible thanks to the fact that most platforms covered by our research are fee-only and use mostly Index Exchange Traded Funds (ETFs) unlike their traditional mostly commissioned-based or fee-based counterparts, who rarely if ever promote these low fee investment products[4]. And, since BETTER FINANCE's 2019 research on the Correlation between Costs and Performance of EU Retail Equity Funds confirmed a negative correlation between fund returns and costs (with costs being nearly single-handedly to blame for the disappointing returns of many actively managed funds), investing in low-cost ETFs is all the more a valuable investment option.

However, the analysis of algorithms uncovered important divergences between the advertised expected returns and the equity allocation provided by the different platforms. These divergences have significantly increased compared to the previous year research (2018):

- very different future potential returns for the same profiles
- very dispersed proposed equity allocations for the same client and same expressed objectives
- the proposed equity allocation did not always seem to take the risk profile into account, nor did it seem highly correlated with the expected returns
- the mandatory prominent warning on future performance information is often missing or inadequate.

These alarming findings put again the reliability of the algorithms used into question and jeopardize the suitability of the investment advice provided. This serious issue of the reliability of algorithms is of course not specific to robo advisors, but to any other intermediary using them.

[3] Better finance is a contributor of the Human-Centric Digital Manifesto for Europe, How the digital transformation can serve the public interest (September 2019): https://www.beuc.eu/publications/beuc-x-2019-053-a-human-centric-digital-manifesto-for-europe.pdf

[4] The 2018 EC *Study on the distribution systems of retail investment products*" confirmed that financial institutions almost exclusively offer in-house products to retail investors and it was almost exclusively thanks to robo-advisors that investors could get access to simpler and cheaper products like ETFs https://ec.europa.eu/info/publications/180425-retail-investment-products-distribution-systems_en

They also once again question the validity of using future performance forecasts instead of the far more robust and less misleading long-term past performance relative to the providers' objectives (benchmarks).

Another important debate to ensure the human centric and fair application of Artificial Intelligence is the creation of an appropriate in **institutional framework on AI governance.** Ethical codes should be developed and implemented for the development and the application of Algorithm and Artificial Intelligence. Ethical codes and principles should be at the basis for fair, non-discriminatory and non-harmful use of AI.

Specific rules should be also developed to address the **pricing problem** in the insurance sector. The use of algorithm may generate substantial risks to consumer as discrimination or unfair practices. Some group of customers may be directly excluded by the algorithm being determined as too risky (too costly). Application of a segmentation of customers could result in strong differences of pricing for group of customers thus going against the fundamental rights of citizens that should be treated equally. Therefore, a code of conduct and AI governance framework should be implemented in order to prevent unfair and discriminatory practices. The EU Commission should consider developing an AI governance framework for AI.

Data Access

Digitalization is characterized by business models that use data aggregation and analytics, thus becoming the core of innovation. The huge amount of data generated by consumers is a key for these business models to develop products and services. However, the concentration of data in few big market players could be in violation of EU data protection, privacy, consumer law restraining innovation and competition that could be useful for citizens.

The draft report "Points out that the Union is the global standard setter as regards personal data protection; highlights that the transfer and use of personal and non-personal data in the financial services sector should meet all relevant standards while allowing for the flow of data needed to scale up innovative finance initiatives".[5] These standards need to developed to protect individuals individual allowing them to detain the ownership of the data they generate.

Therefore, BETTER FINANCE believes that the EU should complete the regulatory framework for a competitive data economy. Data portability should be at the core of this regulatory framework in which individuals and business should have the possibility to access data but also **to provide better protection to individuals on the data that they generate.** Therefore, non-discriminatory access to data and interoperability among market players should be considered int the legislative framework. [6]

BETTER FINANCE sees the main risks of uncertainty in terms of provider liability, mis-selling due to faults by design and data protection concerns, including cyber-security risks.
It must be made clear that the platform manager or owner is responsible for the information

[5] Draft Report with recommendations to the Commission on Digital Finance: emerging risks in crypto-assets - regulatory and supervisory challenges in the area of financial services, institutions and markets (2020/2034(INL) https://www.europarl.europa.eu/doceo/document/ECON-PR-650539_EN.pdf
[6] Ibid.

provided therein, including the algorithms to calculate and display results based on user input. Although automated investment platforms bring many advantages and cost efficiency gains, this should not be seen as a limitation of liability of investment advice – whether independent or non-independent – so as providers must be obliged to maintain a degree of control. At the same time, digitalization involves the mass processing of user data, which brings both advantages and risks. On one side, more data can improve the distribution and execution processes, but must not be used against or without the consent of the consumer.

It is important to note, in context of the Open Finance recommendations of the Final Report of the High Level Forum on the Future of the CMU that the collection of user information must respect certain principles: first, to be compliant with the EU GDPR and not extend further than **financial data** and, second, it must ensure that the consent of the data subject is not extorted. On many instances, the provision of certain services is conditioned on the data subject expressing consent (which is a different legitimate basis for processing than what is necessary for the provision of a service or a contract); if the data subject disagrees with the procession of his or her data, in many instances the service will not be accessible, albeit the data is not an essential or central element to the provision of the service. Therefore, digital finance regulation must ensure a clear distinction between data processing that is essential or part to the provision of the online financial service and what is needed to enhance outcomes or customer experience, which is based on the prior express consent of the data subject. In such latter cases, the provision of the services should not be dependent on the consent of the data subject. Last, there is the concern of cyber attacks, in particular when more and more information is shared and stored in electronic mediums.

Crypto-assets

Crypto-assets or related tokens are usually referred to as 'cryptocurrencies',[7] implying the nature of a currency and comparisons to legal tenders, but they are neither.[8] The argument concerning the latter is simple: national law – for non-Eurozone Member States – and the Treaty on the Functioning of the European Union – for Eurozone Member States – clearly indicate the unique legal tender.[9]

With regard to their status as a currency, two arguments support the contrary: (i) that they do not fulfil the characteristics of a currency and (ii) that they do not serve the functions of a currency (at the moment). In BETTER FINANCE's opinion bitcoin, altcoins or tokens are incorrectly referred to as *cryptocurrencies*, since they neither fit the definition, criteria or functions of money or that of e-money or fiat currency.

[7] Just to name a few: Max Kubát, ''Virtual currency bitcoin in the scope of money definition and store of value' (n 19) 410; European Central Bank, 'Virtual Currency Schemes' (2015) 30 Procedia Economics and Finance 409-416; Michal Polasik, Anna Piotrowska, Tomasz Piotr Wisniewski, Radosław Kotkowski, Geoff Lightfoot, 'Price Fluctuations and the Use of Bitcoin: An Empirical Inquiry' (2015) 20(1) International Journal of Electronic Commerce 9, 18; Dumitrescu, 'AnX-Ray of BitCoin Cryptocurrency' (n 23) 86; Dibrova, 'Virtual currency: new step in monetary development' (n 3); Sean McLeod, 'Bitcoin: The Utopia or Nightmare of Regulation' (2017) 9(2) Elon Law Review 553, 560; James Gatto, Elsa S. Broeker, 'Bitcoin and Beyond: Current and Future Regulation of Virtual Currencies' (2015) 9(2) Ohio State Entreprenurial Business Law Journal 429.

[8] Dibrova was right to observe that digital currencies do not 'comfortably fit any existing classification or legal definition', as they neither represent a fiat currency, nor a 'traditional commodity' or 'simply a payments method' – see Dibrova, 'Virtual currency: new step in monetary development' (n 3) 44.

[9] In the case of the Eurozone, Article 128(1) TFEU.

Risks associated

However appealing and advantageous crypto-assets may seem, they carry a serious amount of risk both to the individual and to the entire economy. Below, we highlight a couple of the risks, but the list is not exhaustive.

First, the quantitative proportions of digital tokens are enough to create a financial crisis in case of a default, posing serious risks to financial stability in the EU.[10] This is because coins are, by essence, a highly speculative instrument whose assigned value does not reflect the real value of the underlying asset.[11] In addition, with a relatively low daily volume of transactions,[12] their volatility stands out as a serious risk factor.[13] Moreover, unlike fixed-income securities markets, there is no 'lender of last resort' to bail-out coin issuers, nor any protection system for investments or deposits.[14]

Second, coins have the potential to hinder price stability and sound monetary policy,[15] since the trend is to become more used as an electronic replacement for legal tenders,[16] thus reducing the demand of fiat currency on the market and creating deflationary pressure.

Third, there is the hacking risk.[17] Following the DAO attack, $50mln worth of ether were stolen from users' wallets. Unlike traditional credit or financial institutions, token issuers do not have collateral or reinsurance schemes to protect customers in case of an attack of this sort, nor are they subject to data security requirements. The result is that, when an attack takes place, it leads to a violent market correction of a coin's value.

[10] According to a study of the European Central Bank, in 2012 blockchains did not raise risks to price or financial stability considering the 'limited connection with the real economy, their low volume traded and a lack of wide user acceptance' (European Central Bank, 'Virtual Currency Schemes', October 2012, p. 6). However, the situation has changed dramatically, which leads us to consider the *per a contrario* conclusion of the aforementioned study.

[11] Doles Silva mentions that 'that value of the cryptocurrency variates in accordance with its acceptance in the market, which means that it can skyrocket of spiral down rapidly', citing Ulrich which claimed that coins have no 'intrinsic value' – Doles Silva, 'Cryptocurrencies and International Regulations', United Nations Commission on International Trade Law Congress 'Modernizing International Trade Law to Support Innovation and Sustainable Development', 4-6 July 2017 Vienna, p. 7, available at www.uncitral.org/pdf/english/congress/Papers_for_Congress/29-DOLES_SILVA-Cryptocurrencies_and_International_Regulation.pdf; See also Fernando Ulrich, 'Bitcoin: A Moeda na Era Digital' 2012 Instituto Ludwig von Mises Brasil, available at www.mises.cc/files/literature/MisesBrasil_BITCOIN_BROCHURA.pdf.

[12] For instance, at the London Stock Exchange, only trading in derivatives based on equity and commodities daily average amounted to the equivalent of €3.4bln (or $4.04bln) - whereas the highest trading volume in cryptocurrencies (that is, for BTC) recorded a value of €2.31bln ($2.74bln) on BitMEX. See LSEG, 'Electronic Order Book Trading' available www.londonstockexchange.com/statistics/monthly-market-report/lseg-monthly-market-report-october-2017.pdf and Coinmarketcap.com, '24 Hour Volume Rankings (Exchange)', www.coinmarketcap.com/exchanges/volume/24-hour/all/.

[13] Mandjee quoted Colville saying that BitCoin dropped more than a third from $880 in February 2014, and in May it recorded a 12% growth in only 48 hours – see Tara Mandjee, 'BitCoin, Its Legal Classification and Regulatory Framework' (2015) 15(2) Journal of Business & Security Law 157, 175; in addition, the authors remarked on November 29th, 2017, the day started off at $10091 (midnight), by noon it reached $11363 (13.63% growth in 14h) and then, five hours later - at 19:39, it dropped to $9731 (decrease, -14.37%).

[14] For example, in the United States there is the Federal Investor Protection Corporation or the Federal Deposit Insurance Corporation, for bank deposits. Analogously, in the E.U., at national level there are the National Deposit Guarantee Schemes, as per Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes, O.J. L 173/49; at the Community level, the proposal for the European Deposit Insurance Scheme (EDIS) is currently debated in the legislative procedure in the European Parliament (Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 806/2014 in order to establish a European Deposit Insurance Scheme - COM/2015/0586 final).

[15] European Central Bank, 'Virtual Currency Schemes' (n 45) 33.

[16] Countries like Japan, Germany or France have legalised cryptocurrency, in particular Bitcoin, as a legal tender for tax purposes.

[17] Hileman and Rauchs underline that, among the operational risk factors that cryptocurrency exchanges (i.e. organized trading venues) face, the first and foremost is the 'IT security/hacking' risk, ranking as a high risk factor in their study. Consequently, 'regulation' ranks the third as an operational risk for exchanges, with a 3.08 grade on a scale from 1 to 5 – see Hileman, Rauchs, 'Global Cryptocurrency Benchmark Study' (n 39) 36.

Last, cryptocurrencies may be prohibited since many argue that the coin itself is a form of a fraud[18] or may be used to raise money via ICO campaigns that scam investors. Fraudulent activities are based on the anonymity of users and on the mining activities performed in the ledger, in conjunction with the fact that transfers do not pass any state authority's filter

How to ensure a crypto-assets regime

By essence, the DLT and digital tokens/ coins were put forward as an alternative to avoid regulation, deemed unjust and biased towards large owners of capital, subdued to specific interests, and to avoid supervision and intermediation of traditional financial institutions. The Bitcoin white paper was launched right after the worldwide shock of the 2008 financial crisis as a response to users feeling that the finance industry was the one to blame due to certain elements describing the DLT:

- Deregulation;
- Decentralisation;
- User anonymisation; and
- Operational transparency

The European Commission should adopt a staggered approach by avoiding overregulation of this field and enabling it to develop, however in a secure environment. Since the field is novel, we believe it is not possible at this stage to foresee all challenges.

Therefore, BETTER FINANCE recommends to take the following steps:

- The first step is to ensure that the European Supervisory Authorities are endowed with the necessary resources and supervisory powers as to dedicate particular attention to this field. These supervisory attributes of the ESAs should go further than merely "coordination roles" of national competent authorities and should allow direct supervision and intervention powers.

- The European Commission should consider naming one competent authority at European level, in order to ensure a uniform supervisory approach. In this regard, the designated ESA should establish a stakeholder group, balanced between consumers and industry representatives, to provide guidance.

- In accordance with the Draft Report,[19] the bespoke regime must not be of absolute novelty. The European Commission must not reinvent EU financial regulation but replicate the existing in a form that enables cost efficiency gains (compliance costs) and allows the field to take off. Regulatory classification should be focused on identifying those crypto assets which can fit within existing regulatory frameworks. For example, we support the idea of replicating – in a more adapted and simplified manner – the Prospectus for transferable

[18] There are several countries where cryptocurrency is already prohibited as such, respectively China, Bangladesh, Ecuador, Iceland or Thailand, according to 'Legality of BitCoin & Cryptocurrency', BitConnect, available www.bitconnect.co/bitcoin-information/8/legality-of-bitcoin-cryptocurrency; see also Dumitrescu, 'An X-Ray of BitCoin Cryptocurrency' (n 23) 94; Jerry Brito, Houman D. Shadab, Andrea Castillo O'Sullivan, 'Bitcoin Financial Regulation: Securities, Derivatives, Prediction Markets and Gambling' (2014) XVI Columbia Science and Technology Law 144-221 152.

[19] https://www.europarl.europa.eu/doceo/document/ECON-PR-650539_EN.pdf

securities to crypto-assets that have a speculative nature and more volatile value – investment and utility tokens.

- To adjust for the simpler and innovative nature of crypto-assets, issuers could adopt the so-called "white papers"; however, the European Commission should consider standardising the format and content of the white papers through a Regulation so as to provide legal certainty, clarity for investors, and ensure a level-playing field for all issuers across the Single Market.

The EC should take into account the four main consumer risks of engaging in crypto-assets identified by the EBA and listed in its 2014 opinion[20]. Overall, there are four main risks:

1. Becoming victims of scams (e.g. fake ICOs or fake exchange platforms)
2. Losing a part or the whole investment in crypto-assets;
3. Having the crypto-assets stolen or losing the credentials (private key) which amounts to losing the underlying crypto-assets;
4. Being involved (knowingly or unknowingly) in either illegal blockchain projects or projects outside of the scope of current regulation, leaving consumers/investors in a legal void.

For additional information please see BETTER FINANCE response to the European Commission's Public consultation on an EU framework for markets in crypto-assets.

Recommendations

Through the disruptive power of FinTech, market inefficiencies can be addressed and more diversification, including alternative providers, can be brought in a quite oligopolistic market.

The EU Commission should consider the following initiatives for EU financial service users:

- Establishing **independent savings products data bases which imply standardized Key Information on actual costs, performances and risks** (*"garbage in garbage out")*.

- These independent data bases (ideally designed and operated by EU and national supervisors) will enable in turn **the development of independent web comparative tools** that would allow and facilitate the comparison of – and choice between different investment products; such as what has been achieved by the Norwegian platform FinansPortalen (now many web comparing tools feed on this Portal).

- **Rethinking mandatory disclosure documents like KIID for online/ smart phone** adaptation, for example using drawdowns for more detailed information.

- **Enabling individual shareholder engagement within the EU by voting or giving power to a proxy with one's smartphone**. At the moment, the voting process is

[20] https://www.eba.europa.eu/documents/10180/657547/EBA-Op-2014-08+Opinion+on+Virtual+Currencies.pdf

monopolized by financial intermediaries. Such a platform would facilitate access and exercising voting rights for individual shareholders. These recommendations have also been discussed at the "HLF CMU" , which released its report on 10 June 2020.

- The alarming finding of our Robo-advice report put again the reliability of the algorithms used into question and jeopardize the suitability of the investment advice provided. This serious issue of the reliability of algorithms is of course not specific to robo-advisors, but to any other intermediary using them. In this sense, ESMA has clarified in its guidelines on suitability that the regime applicable to "human" advisors is the same for robo-advisors. As a first step, the European Commission could add clarity also in MiFID II and specify, for instance in the definition of investment advice of Art. 4(4) of MiFID II".

Principles of digital finance. However, in order to deliver these key advantages for EU citizens as the main provider of capital to the real economy, several key principles should be observed:

G. **Proper data protection**: digitalisation ultimately means that users will expose more and more personal data; digital finance must ensure that, where financial data is not essential for the provision of the service, it *should not be extorted from the consumer*;

H. **Security**: the recent EasyJet hack, coupled with many stories and incidents experienced by large banking groups, show that sensitive personal data is constantly at risk of being stolen; the Commission's plan should emphasise ***security by design*** for digital finance;

I. **Promote simplicity**: FinTech must not repeat the same mistake as in traditional financial services and must promote simplicity;

J. **Regulatory sandboxes**: FinTech should be able to "test" innovation against regulation and ensure that a new business model can develop in a safe & legal environment;

K. **Proper supervision**: this rule should be enforced regardless of digital or traditional financial services;

L. **Technology neutrality**: regulation (at least the main principles) should not be developed in "a silo" and not distinguish between traditional and online services.

Key features for consumers. At the same time, financial literacy and financial inclusion can also be addressed through the disruptive power of FinTechs. The applications of digitalisation are varied, but in essence they would fulfil a couple of functions:

1. **Fair clear and not misleading information**: most important and least enforced requirement of MIFID.

2. **Nudging**: financial services & products have become extremely complex. One of the main regulatory challenges is to simplify and present key information to "retail" investors in a concise manner, whilst relaying to him *prominent warnings* in order to help them make informed investment decisions; Nudging is a digital feature and basically means that the user's attention would be drawn to these prominent elements (either warnings or other type of information) in order to ensure that, at least, these are not overseen. It should also fight "monetary illusion" by disclosing always real long term performances to show the negative impact of inflation over time on purchasing power.

3. **Explanations** or **FYI** pop-up boxes: one of the key problems faced by non-professional savers is the high amount of information delivered to them, which always creates the issue of "*information overload*"; "hover" or "pop-up boxes" have the advantage of reducing the amount of text visible, which can be at times demotivating for consumers to read, and still relay some essential info on jargon or other features presented if the end-user clicks, hovers etc.;

4. **Engagement**: bringing finance at the fingertips of non-professional investors in a user-friendly manner, digitalisation can make finance more intelligible, attractive, and can determine savers to engage and monitor, be proactive and aware of their financial wellbeing, and at the same time better understand and browse the market;

5. **Better advice**: BETTER FINANCE, based also on academic research, finds that investment advice can be provided on a truly independent, verifiable basis by robo-advisors; while there are still inefficiencies that need to be addressed when using artificial intelligence in robo-investing, BETTER FINANCE's 4-year research on *robo-advisors* shows that the market is growing, is disrupting the biased, conflicted distribution models that constitute the rule in the EU and can provided added value for money for individual saver

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