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

Link to consultation: https://ec.europa.eu/info/consultations/finance-2020-digital-finance-strategy_en

BETTER FINANCE Response

Executive Summary

General recommendations	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 feed upon such reliable data bases , and would allow and facilitate the comparison of – and choice between different investment products. • **Rethinking mandatory disclosure documents for investment products like KIID/KID 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**. • **Ensure a much better quality of the robo advice algorithms** • 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.
Ensuring a technology-neutral and innovation friendly EU financial services regulatory framework	We believe that there is the need to extend the regulatory arm to this new business ecosystem. In this respect, scholars[1] 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. Deployment of ICT may require rethinking of oversight framework both at EU and national level.
Enhance multi-disciplinary cooperation between authorities	It is necessary for authorities to have a sound understanding of these technologies and their potential application in the financial sector in order to regulate and supervise effectively. Authorities such as ESAs and ESMA should develop appropriate internal understanding of the use of these technologies in financial services regarding risks and opportunities. In addition, the Commission should enhance cooperation with ESAs to develop a cyber resilient testing framework for the financial sector. The need is for horizontal tech layer that serves all the ESAS in their present composition. Also, some of the managerial techniques from IT companies should be adopted by the ESAs, especially for that parts that deal with Fintech.

[1] https://www.uncitral.org/pdf/english/congress/Papers_for_Congress/29-DOLES_SILVA-Cryptocurrencies_and_International_Regulation.pdf

To address fragmentation of the single market digital financial services	Recommendations to address the fragmentation of the financial markets: • Provide better access to simple and transparent products • Ensure the consistency of all EU financial user protection rules • Make the European capital markets more attractive for EU citizens as savers and investors: • Improve the competitiveness of European capital markets for SMEs • Ensure access to comparable, fair, clear and not misleading information
Technology pilots and scale up across the Single Market	An EU framework for innovation hubs should be created in order to connect national schemes promoting dialogue between start-up and regulators on innovation issues. In addition the systems of regulatory sandboxes needs to be harmonized at EU level in order to guarantee the same level playing field and reinforce transparency across member states.
Digital financial literacy	Financial literacy is fundamental to empower EU citizens to make informed financial decisions. Moreover, it is crucial to: • Provide basic financial math and investment education already at school. • Require the distributors of retail investment products to improve the financial education of their staff members, especially with respect to equities, bonds and ETFs, and minimize their conflicts of interests with regard to more indirect, more complex and more commission-laden investment products. • Financial education efforts from the industry should be monitored and supervised by independent bodies • Introduce an investors' license as an important tool for investing.
Well-regulated data driven financial sector	BETTER FINANCE believes that the EC should attempt to better coordinate the parallel consultations (MiFID II, PRIIPs, Fintech Strategy, Sustainable finance Strategy) – as they regard the same domain – so that they provide uniform solutions and avoid the "silo" approach characteristic of 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 business should have the possibility to access data but also **to provide better protection to individuals on the data that they generate and should clearly own.** Therefore, non-discriminatory access to data and interoperability among market players should be considered in the legislative framework
Access to publicly available data in finance	The Commission should consider developing an online tools and review requirements for online platforms: • Creation of an independent web comparative tool that would allow and facilitate individual investors to compare different financial products. Such as the Norwegian platfrom FinansPortalen.[2] • To rethink mandatory disclosure documents like KIID for online/ smart phone adaptation using drawdowns for more detailed information. • Individual shareholders' Voting platform accessible from smartphones within the EU.

[2] https://www.finansportalen.no/

Consent-based access to personal data and data Sharing in the financial sector	On one side, more data can improve the distribution and execution processes, but personal data belong to the consumer and must not be used against or without his consent. 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. In 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.
Support the uptake of Artificial intelligence in finance	**Key features for consumers.** At the same time, financial literacy and financial inclusion can also be addressed through the disruptive power of innovative 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 sustainability (ESG) impact, 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.

Contents

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.

Instructions on how to read this paper: this document contains the response of BETTER FINANCE to the European Commission's online survey (public consultation) concerning the **new digital finance strategy for Europe / FinTech action plan** but this is not the actual response form submitted and the document contains only the questions answered by BETTER FINANCE. The non-answered questions are deleted from the document. For each section summaries and explanations (*in italic*) are reported exactly as in the EC consultation document.[3]

Introduction

Digitalization is rapidly transforming the way how the financial sector is operating thus providing new opportunities and advantages for financial services users but also risks involved in the use of new technologies. The financial ecosystem is continuously evolving with technologies evolving (for example blockchain, internet of things, Artificial Intelligence (AI) and Automated Decision making (ADM) and new market players entering in the market. The expert group on Regulatory Obstacles to Financial Innovation, established under the 2018 FinTech Action Plan, highlighted several challenges in its report published in

[3] https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/2020-digital-finance-strategy-consultation-document_en.pdf

December 2019.[4] The EU commission with this consultation to gather information and recommendations from stakeholders in order to propose a new Digital Finance Strategy for the Q3 2020 setting a number of priorities and measures for the next 5 years.

At the moment the Commission has identified the following priorities for the Digital Finance in the EU :

- ensuring that the EU financial services regulatory framework is fit for the digital age; [5]
- enabling consumers and firms to reap the opportunities offered by the EU-wide Single Market for digital financial services;[6]
- promoting a data-driven financial sector for the benefit of EU consumers and firms; [7]
- and enhancing the digital operational resilience of the EU financial system.[8]

Consultation questions

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)? Please also take into account the analysis of the expert group on Regulatory Obstacles to Financial Innovation[9] in that respect

[4] https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/2020-digital-finance-strategy-consultation-document_en.pdf
[5] https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/2020-digital-finance-strategy-consultation-document_en.pdf
[6] Ibid.
[7] Ibid.
[8] Ibid.
[9] Expert group on regulatory obstacles to financial innovation: https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/191113-report-expert-group-regulatory-obstacles-financial-innovation_en.pdf

1. **Lack of legal certainty**: Digitalising finance and enabling new technologies 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 a supervisory and regulatory mechanism. (As for example in the case of crypto currency).

2. **Regulatory fragmentation**: fintech products such as payments, robo-advisors, wealth management can provide benefits to consumers such as lower costs and accessibility. However, these fintech products may pose other risks for consumers (as privacy concerns and data security) which are not always addressed by existing regulations and laws. In addition, divergences in the regulatory framework could produce regulatory gaps, reducing the level playing field.

3. **Lack of EU regulatory "sandboxes":** only 5 competent authorities in member states have developed regulatory sandboxes and 5 more are under development[10]. The lack of common EU framework and different regulations among member states have impact on the level playing field and the supervision in the field of innovative technologies. -----

4. **Data access**: due the strong presence of network effects in the digital framework, which is strongly data-driven based, consumers business and especially SMEs are locked in in ecosystem that are controlled by few market players. therefore, there is an entry barrier for data access and restricted competition. Besides PSD2 no other regulation for opening the systems of incumbents e.g. in insurance

5000 character(s) maximum

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

Question 2. What are the key advantages and challenges consumers are facing with the increasing digitalisation of the financial sector (please mention no more than 4)? For each of them, what if any are the initiatives that should be taken at EU level?

1. **Cost efficiencies and access to simpler and cheaper products** When choosing to invest, EU citizens are in large part relying on traditional providers of financial advice who are charging high fees for the services provided and thereby eat into the returns on the initial investment. In addition, investors relying on traditional (non-independent) financial advisors frequently consider that the product they are going to purchase is free of charges and are unaware of incentive schemes and potential conflicts of interests. Consumers very often complain about the high fees charged for the investment product due to the fact that these fees are actually higher than those explained during the advice process. New fintech platforms as Robo-advisors, operate as an alternative to more traditional financial advisors, with comparatively lower fees and offering access to simpler and cheaper products such as ETFs[11]. However, the use of algorithm and Artificial Intelligence (AI) may cause risks to consumers concerning the level of

[10] https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/191113-report-expert-group-regulatory-obstacles-financial-innovation_en.pdf

[11] As confirmed by the 2018 EC *Study on the distribution systems of retail investment products* "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.

suitability of the investment advice. For additional information see [our report on Robo-advisors][12]. In this case, the already existing legislative framework should be applied for these disruptive technologies. Robo-advisors should follow the same rules under the MiFID II legislative framework[13] as traditional advisors.

2. 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). The EU Commission should propose a **legislative framework for AI-powered automated decision making** (ADM) to ensure that they are fair, transparent and accountable to consumers and they do not harm their fundamental rights. [14]

3. **Non-discriminatory access to data and interoperability.** 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 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 business should have the possibility to access data but also **to provide better protection to individuals on the data that they generate and should clearly own.** Therefore, non-discriminatory access to data and interoperability among market players should be considered int the legislative framework. [15] The only way to transfer the benefit of using someone's data on the generator of data is to introduce payment for that data. This will stifle the misuse since users of data will have to internalize the costs of data into the product's pricing. This will level the market and cure distortions due to size – if you want to use more people's data it will be costlier for you, not like now when VW or FB pay much smaller amounts per item due to their huge datapools as compared to let say small data aggregator.

5000 character(s) maximum

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

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:

---

[12] Robo advice report, A look under the hood 2.0 https://betterfinance.eu/wp-content/uploads/Robo-Advice-Report-2019-FINAL.pdf

[13] Directive 2014/65/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast), OJ L 173/ 349.

[14] 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

[15] Ibid.

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

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

- ✓ **<u>Yes</u>**
- 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:

The Commission should ensure explainability, interoperability, governance and operational resilience of Artificial Intelligence AI and Automated Decision Making (ADM) by providing guidance measures and surveillance on the use of innovative technologies in Finance.

The Commission should take the necessary steps to guarantee a level playing field by ensuring that the regulation of the financial sector follows common principles of fairness and create a regulatory sandbox framework at EU level.

Regulatory fragmentation needs to be addressed in order to harness the full potential of the single financial market. Addressing divergent regulatory requirements include also the issue referred to the different understanding of shareholder definition. **The absence of an EU definition of "shareholder" in EU rules is extremely damaging to long term shareholder engagement.** SRD II failed again to adopt an EU definition of "shareholder", allowing still a lot of "agency owners" (nominee accounts in the UK in particular, global custodians for equity held outside of the investee companies' domiciles) to hold and exercise the voting rights instead of the real shareholders.

The Commission should ensure the operational resilience of the financial sector by improving surveillance at EU level and encouraging ESAs and ESMA to develop specialised area of intervention facilitating the identification of potential risks associated to the use of AI and ADM in the financial services.

<u>The EU Commission should consider the following initiatives for EU financial service users:</u>

- Establishing **independent savings products data bases which imply <u>standardized Key Information on actual costs, performances and risks</u>** ("*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 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.

- 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. 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".

5000 character(s) maximum

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

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

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

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

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

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

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 a 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 [16]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 ensure 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. [17] Deployment of ICT may require rethinking of oversight framework both at EU and national level.

5000 character(s) maximum

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

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

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

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

5000 character(s) maximum

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

We believe that the 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.

As showed in our Robo-advice report, since all providers in this research are duly registered as financial advisors in their jurisdictions or have contractual relationship with a registered investment company, they must follow the the same MiFID II rules as traditional advisors.

Article 24(3) of MiFID II[18] enshrines the overarching principle of 'fair, clear, and not misleading information that is to be provided to investors by investment firms, regardless of whether the communication has a marketing or mandatory disclosure nature'. The Directive[19] requires the

[16] https://www.uncitral.org/pdf/english/congress/Papers_for_Congress/29-DOLES_SILVA-Cryptocurrencies_and_International_Regulation.pdf

[17] https://betterfinance.eu/publication/better-finance-response-to-the-european-commissions-public-consultation-on-an-eu-framework-for-markets-in-crypto-assets/

[18] Directive 2014/65/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast), OJ L 173/ 349.

[19] Article 24 (5) MIFID II

information presented to retail investors to be comprehensible, so that investors can reasonably be expected to understand the nature and risks of the investment service and financial instrument.

On the contrary, the findings of our report show that **several platforms fail to provide personal and suitable investment advice, thus not complying with the EU law in terms of equity allocation, portfolio allocation and portfolio diversification.** In addition, strong discrepancy in terms of investment gains and high dispersion of asset allocation for the same investor profile is concerning. In addition, , since there is lack of consistency as regards terminology BETTER FINANCE would like again to invite regulators and other interested stakeholders to agree on a standardised terminology, in particular on how to define concepts such as "investment advice", "personal recommendations", "product selling", "guidance", "planning", "fee-only","fee-based" and "commission-based".

BETTER FINANCE welcomed[20] the European Securities and Markets Authority's (ESMA) final guidelines on suitability[21] (applying to all firms offering the service of investment advice and portfolio management, irrespective of the format used for the provision of these services as the assessment of suitability is one of the most important requirements for investor protection in the MiFID framework and a cornerstone of this study. The Guidelines take into consideration technological developments of the advisory market and the increasing use of automated or semi-automated systems for the provision of investment advice or portfolio management (Robo-advice). BETTER FINANCE supports the Guidelines' definition of Robo-advice as "the provision of investment advice or portfolio management services, in whole or in part, through automated or semi-automated system". In particular, BETTER FINANCE welcomes ESMA recommendation for Robo-advice firms to provide clients, in addition to other required information, with a clear explanation that the answers provided by the clients will have a direct impact in determining the suitability of the investment decisions recommended or undertaken on their behalf. We agree that this would help address potential gaps in clients' understanding of the services provided through Robo-advice.

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

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

[20] Please see BETTER FINANCE's response to the consultation on the ESMA's Guidelines on certain aspects of the MiFID II Suitability Requirements
http://betterfinance.eu/fileadmin/user_upload/documents/Position_Papers/Securities_Market/en/BETTER_FINANCE_s_answer-_Consultation_Paper_on_MiFID_II_Suitability_requirements_FINAL.pdf
[21] 9 ESMA's Guidelines on certain aspects of the MiFID II Suitability Requirements https://www.esma.europa.eu/press-news/esma-news/esma-publishes-final-guidelines-mifid-ii-suitabilityrequirements.

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

Please rate each proposal from 1 to 5:

	1 (irrelevant)	**2 (rather not relevant)**	**3 (Neutral)**	**4 (rather relevant)**	**5 (fully relevant)**	**N.A**
Distributed Ledger Technology (except crypto- assets)		X				
Cloud computing						X
Artificial Intelligence/Machine learning		X				
Internet Of Things (IoT)		X				
Biometrics						X
Quantum computing						X
Other						

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:

5000 character(s) maximum

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

Distributed ledger technology: we do not believe that the applications of the distributed ledger technology (DLT) and tokens can bring the advantage of "Issuance of utility tokens as a cheaper, more efficient capital raising tool than IPOs". Also for financial inclusion, the claims are exaggerated - in Europe, financial inclusion has to first and foremost come from access to existing financial services.

As BETTER FINANCE pointed out in several research studies and in the Key Priorities for the Next 5 years, the disconnect between SMEs, capital markets and individual investors relies in the lack of financial literacy and awareness, high compliance costs for issuers, underdevelopment of local markets and lack of trust in and transparency of the process.

We are still sceptical of whether the DLT technology can challenge traditional, already existing payment instruments or systems without being embedded in them. To give an example, a certain payment services provider offers the possibility to load the user's account with fiat currency, exchange it in any other currency, and make transfers to other users inside the system for free and instant. We argue that the technical capabilities of DLT – at the moment – do not allow the system to be as operationally efficient as fiat currency. Moreover, there is the issue of price stability and acceptance by users, institutions and merchants as a payment instrument.

However, DLT are based on the principle of cryptography and anonymisation, this would bring an important benefit to concerns regarding use and processing of personal data. Therefore, a significant efficiency gain would stem from fewer challenges or issues deriving from security and safekeeping of investors' personal information

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

Please rate each proposal from 1 to 5:

	1 (irrelevant)	**2 (rather not relevant)**	**3 (Neutral)**	**4 (rather relevant)**	**5 (fully relevant)**	**N.A**
Setting up dedicated observatories to monitor technological and market trends (e.g. EU Blockchain Observatory & Forum; Platform Observatory)				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:

5000 character(s) maximum

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

It is important to promote supervisory innovation hubs and sandboxes (as well as creating the relevant EU legal framework). However, it cannot come at the expense of consumer or investor protection. The good governance of the Observatories must be ensured and involve the user -side.

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

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

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

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

Please rate each proposal from 1 to 5:

	1 (irrelevant)	2 (rather not relevant)	3 (Neutral)	4 (rather 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	
Mortgage credit provision to households with risk taking					X	
Mortgage credit distribution to households					X	

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 non- life 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		

Others						

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

5000 character(s) maximum

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

This issue is heightened by the fact that the major non-financial tech companies are not European.

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:

5000 character(s) maximum

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

Technology giants are penetrating the financial market increasingly in the last years. Their competitive advantage derives from the use of big data, disruptive technologies and economies of scales that would facilitate and reinforce their presence into the financial market. The use of big data is a strong competitive advantage to develop products and services that are addressed to consumers, individual investors, savers and SMEs. Therefore, we believe that in the next 5 years we would see tech companies to grow in this segment of the market.

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

- ✓ **Yes**
- No
- Don’t know / no opinion / not relevant

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

5000 character(s) maximum

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

Regulation should not artificially favour or put at disadvantage any particular areas or types of providers of financial services —the same risks should be regulated in the same way. This is particularly acute in retail banking services where regulatory constraints are often much higher for European banks than for their non-bank non-EU competitors. Other things being equal, EU consumers will be better served by providers who have deep roots within the EU rather than in another continents, in particular in case of complaints.

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

Please rate each proposal from 1 to 5:

	1 (significant reduction in risks)	2 (reduction in risks)	3 (neutral)	4 (increase in risks)	5 (significant increase in risks	N.A.
Default risk for funds held in non-banks and not protected by Deposit Guarantee Scheme			X			
Liquidity risk			X			
Misselling of insurance products			X			
Misselling of investment products			X			
Misselling of credit products			X			
Misselling of pension products			X			
Inadequate provision of information				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:

5000 character(s) maximum

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

BETTER FINANCE believes 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. 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 uncovers **concerning 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 in particular:

- 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. 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).

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:

5000 character(s) maximum

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

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.

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

- ✓ **Yes**
- No
- Don’t know / no opinion / not relevant

Enhance multi-disciplinary cooperation between authorities

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

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

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

5000 character(s) maximum

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

One of the main challenges the Authorities are facing is the lack of a complete understanding of AI ADM and algorithm mechanisms. Due to the use of extremely complex algorithm and automated decision making, most of the time is it completely impossible to review and challenge the automated decision. This also true for consumers that do not receive sufficient explanations of the results that the automated decision has provided them thus preventing the possibility to challenge this decision. This increasing complexity reduces the transparency of these technologies preventing an adequate supervision from the authorities.

The recent scandal involving the star of the German fintech industry – Wirecard – constitutes a good example of the risks posed by the alleged failings in the multidisciplinary cooperation between authorities. Germany's top financial regulator – Bafin - gave a scathing assessment of the failings that led to the scandal at payments processor Wirecard AG and he admitted to errors in control of the fintech company, in particular how his own institution handled allegations of irregularities at the payments provider[22].

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:

5000 character(s) maximum

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

It is necessary for authorities to have a sound understanding of the technologies and their potential application in the financial sector in order to regulate and supervise effectively. Authorities such as ESAs and ESMA should develop appropriate internal understanding of the use of these technologies in financial services regarding risks and opportunities. In addition, the commission should enhance cooperation with ESAs to develop a cyber resilient testing framework for the financial sector. [23] Also, more effective communication and cooperation mechanisms should be put in place. The need is for horizontal tech layer that serves all the ESAS in their present composition. Also, some of the managerial techniques from IT companies should be adopted by the ESAs, especially for that parts that deal with Fintech.

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

[22] https://www.bloomberg.com/news/articles/2020-06-22/wirecard-scandal-a-complete-disaster-says-german-regulator

[23] https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/191113-report-expert-group-regulatory-obstacles-financial-innovation_en.pdf

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?

5000 character(s) maximum

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

In addition to the issues addressed in the previous questions, BETTER FINANCE would like to stress other aspects that are currently affecting the single financial market and that have impact on the digital financial services.

The Single Market is still overly reliant on the banking sector, which not only makes it more vulnerable to financial crises, but also slows down economic growth. EU businesses (SMEs and large companies) mainly use retained earnings (and internal funds) for financing, and as far as external sources of funding are concerned, bank loans are still (statistically and subjectively) far more preferred over capital market instruments. From 2003 to 2018, secondary SME markets have lost 56% of their size, and the IPO trend (and market cap) does not compensate for this contraction. Concerning **EU citizens**, the **financial balance sheets** have remained virtually unchanged since 2003 and are **significantly skewed towards banking products and "mandatory savings" (insurances and pensions).** The direct participation rate of EU households in capital markets remains very low at 11% of total savings for the last quarter of 2018, and **on average 59% of savings are held in non-financial assets**. **Investment products remain opaque, complex and poorly performing**, which makes investing in collective investment schemes unattractive for retail savers. The EU Member States have made slow progress with regards to reviving the equity culture and incentivising employee share-plans, and there is still a lot of untapped potential in this area. Last, a functional CMU that works for its citizens rests on proper enforcement mechanisms, which currently are insufficient. The current proposal for a collective redress mechanism, however, does not improve the situation as it would discriminate against direct investors in favour of indirect ones.[24]

[24] CMU Assessment report, reconnecting EU households to the real economy and the Capital Markets Union 2015-2019: https://betterfinance.eu/wp-content/uploads/CMU-Assessment-Report-2019.pdf

Action to be taken in order to improve the Single Market for (digital) financial services:

Better access to simple and transparent products
- A better alignment of distributors' incentives with clients' returns by minimising conflicts of interests in the distribution…

Ensure the consistency of all EU financial user protection rules
- Eliminate inconsistencies between existing investor and policyholder protection rules (e.g. MiFID II and PRIIPs, IDD and IBIPs) (…) in particular conflicts of interest

Make the European capital markets more attractive for EU citizens as savers and investors:
- ensure proper enforcement of EU rules against mis-selling
- use taxes as an incentive, not as a punishment
- increase the responsibility of institutional investors
- Ensure fair and equal access to redress
- Introduce common rules for collective redress for all EU investors

Improve the competitiveness of European capital markets for SMEs
- Increase the attractiveness of EU stock exchanges for EU SMEs
- Strengthen the IPO market in Continental Europe

Better access to comparable, fair, clear and not misleading information
- urgently review the PRIIPs Regulation"
- Simplify and standardise the key information documents
- create public or at least independent EU-wide web-based comparison tools
- differentiate between inexperienced and experienced investors

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

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

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

5000 character(s) maximum

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

As defined by ESAs joint report FinTech: Regulatory sandboxes and innovation hubs: *"**innovation hub** is defined as a scheme whereby regulated or unregulated entities can engage with competent authorities on FinTech-related issues and seek non-binding guidance on the conformity of innovative financial products, services, business models or delivery mechanisms with licensing, registration and/or regulatory requirements.[25]"* BETTER FINANCE is in favor of creating an EU framework for innovation hubs in order to connect national schemes promoting dialogue between start-up and regulators on innovation issues. The framework would help to identify concretely obstacles and issues for the adoption of EU regulations and supervision. In addition, these would facilitate the coordination among hubs fostering innovation in the EU.

Also according the same ESAs joint report on FinTech[26]: *A **regulatory sandbox** is a scheme set up by a competent authority that provides regulated and unregulated entities with the opportunity to test, pursuant to a testing plan agreed and monitored by a dedicated function of the relevant authority, innovative products or services, business models, or delivery mechanisms, related to the carrying out of financial services.*[27] We believe that the system of regulatory sandboxes needs to be harmonized at EU level in order to guarantee the same level playing field and reinforce transparency across member states. A uniformed and harmonized framework of sandboxes would facilitate access and cross-border business by implementing an harmonized portability test valid also for other EU jurisdictions. The framework should be also based on non-discriminatory principles allowing all market participants to apply irrespective of the size of their market share and degree of innovation. 28 The common EU framework should put safeguards in place in order to ensure that sandboxes are limited in time and effectively monitored throughout their duration in order not to compromise consumer and investor protection.

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

Please rate each proposal from 1 to 5:

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4(rather 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					X	

[25] https://www.esma.europa.eu/sites/default/files/library/jc_2018_74_joint_report_on_regulatory_sandboxes_and_innovation_hubs.pdf
[26] Ibid.
[27] Ibid.
[28] https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/191113-report-expert-group-regulatory-obstacles-financial-innovation_en.pdf

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						

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

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

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

Please rate each proposal from 1 to 5:

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather 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						

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

5000 character(s) maximum

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

OECD surveys on financial literacy show that less than 40% of the adult population is able to understand very basic notions such as compound interest or return. BETTER FINANCE recommends the following measures:

- Provide basic financial math and investment education already at school.
- Require the distributors of retail investment products to improve the financial education of their staff members, especially with respect to equities, bonds and ETFs, and minimize their conflicts of interests with regard to more indirect, more complex and more commission-laden investment products.
- Have financial education efforts from the industry monitored and supervised by independent bodies.
- Introduce an investors' license as an important tool for investing.

In addition:

- Boosting the digital financial skills of people in Europe by updating education and training systems, engaging social partners in the design of training offers (especially when they are EU-funded), and encouraging continuous life-long learning.[29]

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?

5000 character(s) maximum

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

Financial literacy is fundamental to empower EU citizens to make informed financial decisions. In addition to these initiatives, that we consider extremely important, BETTER FINANCE would like to reiterate some recommendations on additional measures required to protect EU financial users.

The various new regulations, e.g. MiFID II, PRIIPs, IDD, Solvency II, IORP II, and rules applicable to banking products (savings accounts, structured notes, etc.) led to **inconsistent standards of disclosure** which create confusion among investors and unnecessarily increase the workload for distributors and manufacturers and by that costs for investors. BETTER FINANCE recommends to:

- Eliminate inconsistencies between existing investor and policyholder protection rules (e.g. between MIFID II and PRIIPs, IDD and IBIPs) as well as between various conduct of business rules, in particular on conflicts of interests ("inducements") and on cross-selling.
- Harmonize all pre-contractual key information documents of substitutable investment, insurance and pension products at the points of sale.

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.

[29] https://www.beuc.eu/publications/beuc-x-2019-053-a-human-centric-digital-manifesto-for-europe.pdf

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

5000 character(s) maximum

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

BETTER FINANCE believes that the EC should attempt to better coordinate the parallel consultations (PRIIPs, Mifid II, Digital Finance/Fintech Strategy, Sustainable Finance Strategy) – as they regard the same domain – and provide uniform solutions, thus avoiding the "silo" approach characteristic 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. The use of FinTech has many advantages, from lower costs, higher transparency to financial inclusion and increased competition in the market. Several EU jurisdictions, as well as third-countries, have already taken steps to ensure that FinTech can flourish. This creates uneven development hubs, which may trigger further fragmentation of the internal market, through gold-plating, regulatory arbitrage or lack of action. Already important steps have been taken to enable a safe environment for individual investors to access the new technologies, such as crowdfunding. However, the approach must be consistent and policy-making must adopt an activity-based regulation of FinTech, which would create a harmonised regime for all start-ups in the internal market.[30]

BETTER FINANCE's four editions of the Robo-advice reports highlight the disruptive potential of automated investment advice for individual investors, especially in terms of cost efficiency gains. In the ongoing environment of low capital market returns, FinTech could make a real difference on the actual quality and performance of financial advice and investment management. The rise of robo-advice holds a lot of promise for individual investors, potentially killing two birds with one stone: enabling EU citizens to invest and hold directly shares and bonds, or low-cost ETFs and reducing distribution costs. However, our research[31] compared the results of the AI investment advice algorithms, based on the same investor profiles, to uncover significant divergences between the expected returns, equity allocations by platforms. Moreover, the mandatory prominent warning on future performance information is often missing or inadequate. These alarming findings put again the reliability of the algorithms used and the suitability of the investment advice provided into question. This serious issue of the reliability of algorithms is of course not specific to roboadvisors, but to any other intermediary using them. Our findings 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). The first challenge is to provide clarity on when the use of automated platforms constitutes investment advice or merely distribution. 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".[32]

Facilitate the access to publicly available data in finance

[30] https://betterfinance.eu/wp-content/uploads/BETTER-FINANCE-Response-stylised-EC-MiFID-2-review.pdf

[31]

[32] ESMA's Guidelines on certain aspects of the MiFID II Suitability Requirements https://www.esma.europa.eu/press-news/esma-news/esma-publishes-final-guidelines-mifid-ii-suitabilityrequirements.

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

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

Please rate each proposal from 1 to 5:

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
Financial reporting data from listed companies					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	
others						

As part of the European Financial Transparency Gateway (EFTG) project, the Commission has been assessing since 2017 the prospects of using Distributed Ledger Technology to federate and provide a single point of access to information relevant to investors in European listed companies.

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

Please rate each proposal from 1 to 5:

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
Standardised (e.g. XML) and machine-readable format				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:

5000 character(s) maximum

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

BETTER FINANCE strongly supports the creation of an EU single access point in which it is possible to gather financial and non-financial information for individual investors. This is also in relation to the digitization of non-financial information: See our response to the consultation on non-financial reporting directive[33]

The Commission should consider developing online tools and review requirements for online platforms:

- Creation of an independent web comparative tool that would allow and facilitate individual investors to compare different financial products. Such as the Norwegian platform FinansPortalen.[34]
- To rethink mandatory disclosure documents like KIID for online/ smart phone adaptation using drawdowns for more detailed information.
- Individual shareholders' Voting platform accessible from smartphones within the EU.

[33] BETTER FINANCE response to the Consultation from the European Commission on the Review of the Non-Financial Reporting Directive (NFRD) https://betterfinance.eu/wp-content/uploads/BF-Feedback-on-the-review-of-the-non-financial-reproting-directive.pdf

[34] https://www.finansportalen.no/

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

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

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

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

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

5000 character(s) maximum

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

Consumers may be interested in sharing their data relevant to financial services with other financial services providers in order to receive better offers. However, whenever consumer data is transferred between, consumers should have the possibility to control data flows through user-friendly and simple mechanisms like user dashboards. Such dashboards can be established by regulatory agencies in co-operation with different stakeholders such as consumer NGOs, academics, technical experts and the financial industry. The European Data Protection Supervisor, in its opinion dating back to 2016 on Personal Information Management Systems (PIMS)[35] underlined the role of technological solutions "to allow third parties to use personal data, for specific purposes, and specific periods of time, subject to terms and conditions identified by the individuals themselves, and all other safeguards provided by applicable data protection law".

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

Please rate each proposal from 1 to 5:

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

[35] European Data Protection Supervisor opinion 9/2016 on Personal Information Management Systems https://edps.europa.eu/sites/edp/files/publication/16-10-20_pims_opinion_en.pdf

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 automated (e.g. suitability test for investment services)			X			
Business opportunities for new entrants in the financial industry 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						

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

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather 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:

5000 character(s) maximum

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

Significant risks for consumers including greater frequency of scams and difficulties with identifying who is the liable party in the case of infringement as well as with exercising rights to redress may materialise, especially as the current analogue regulatory and supervisory system is not fit-for-purpose, i.e. not ready for the challenges stemming from a modern digital finance/ big data world (as the recent scandal with the German fintech proves[36]). Moreover, there will be greater risk of providers and intermediaries exploiting behavioural biases as well as of financial exclusion and discrimination as a result of more precise profiling and segmentation.

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

5000 character(s) maximum

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

To begin with, the general principles of regulating digitalization and the use of AI in financial services must be observed, i.e. legal certainty, technology neutrality**, high standard of consumer and personal data protection.** As such, 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 provided therein, including the algorithms used 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 in case of provided investment advice. 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 it 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[37] that the collection of user information must respect certain principles:

36 Wirecard says €1.9bn of cash is missing https://www.ft.com/content/1e753e2b-f576-4f32-aa19-d240be26e773

- 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 that 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.

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

Please rate each proposal from 1 to 5:

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

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

5000 character(s) maximum

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

In BETTER FINANCE's view, digitalization should improve the distribution and management of all financial services or products, albeit to different extents. One of the main problems experienced by end users is financial exclusion (those who do not have access even to traditional banking services) and lack awareness. Digitalising financial services and products could have the benefit of bringing at the fingertips of EU citizens investments in shares or packaged products, more transparency, increased engagement and the possibility to compare products or services.

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:

5000 character(s) maximum

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

As mentioned above, one of the biggest risks with regulating digital financial services is to give a blank cheque for processing of non-financial data, which can have severe unintended consequences. Financial data is personal as well, but on many occasions, it can be both necessary and useful for the end user (for instance, for mobile applications that centralise the bank accounts' info of a user in one place). However, non-financial data generated by other products or services (as in the example given, energy, retail, transport, social media, e-commerce, etc.) should not be processed or shared. In certain circumstances, the end user could choose to share such data, but in order to avoid the lack of knowledge or awareness relating to data processing and privacy, financial services providers should be banned from asking such information, albeit legitimate under GDPR. Moreover, concerning financial data, to the extent that it is no longer used or processed by the service provider requesting it, it should be a general obligation to anonymise it and never be linked to certain persons.

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

Please rate each proposal from 1 to 5:

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather 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					X	

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

Support the uptake of Artificial intelligence in finance

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

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

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

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

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

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

Question 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?

5000 character(s) maximum

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

As mentioned above, and highlighted in the BETTER FINANCE robo-investing reports, AI can have significant efficiency gains concerning:

- cost efficiency gains,
- more transparency,
- a consequent higher financial inclusion,

- better distribution of financial instruments,
- competition among financial services providers and
- enhanced service quality.

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:

6) **Fair clear and not misleading information**: most important and least enforced requirement of MIFID.
7) **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.
8) **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.;
9) **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. and sustainability (ESG) impact
10) **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

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

Please rate each proposal from 1 to 5:

1. Consumers/investors

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

5000 character(s) maximum

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

In our view, another challenge for consumers can stem from the unclarity on provider liability and applicable law. We have explained in the answers above what the regulatory response should be regarding liability of automated mechanisms and algortihms, including information provided, but another important aspect is the applicable law. One of the most heated debates in *internet regulation* is the applicable law to a service that is provided in a virtual medium. The EC should come with proposals to ensure that services accessed by EU citizens within the territory of the EU fall under EU and national applicable law.

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

Please rate each proposal from 1 to 5

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
New EU rules on AI at horizontal level			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						

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

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

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

Please rate each proposal from 1 to 5:

Providers of RegTech solutions:

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
Lack of harmonisation of EU rules					X	
Lack of clarity regarding the interpretation of regulatory requirements (e.g. reporting)			X			
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						