

## BETTER FINANCE's response to the Discussion paper on the EBA's approach to financial technology (FinTech)

BETTER FINANCE welcomes the opportunity to comment on the EBA's approach to financial technology (FinTech).

### Authorization and registration regimes and sandboxing/ innovation hub approaches

<b>1. Are the issues identified by the EBA and the way forward proposed in section 4.1 relevant and complete? If not, please explain why</b>
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As stated in paragraph 74 page 35 of the discussion paper, the European Banking Authority (EBA) suggests to produce a report that would compare the regulatory treatment of the different activities under EU and national level law. The EBA also proposes to assess the features of sandboxing regimes, innovation hubs and similar regimes.

The EBA also advises to assess the merits of harmonizing the assessment of application for authorization in order to achieve greater consistency in supervisory practices. Harmonizing the legislation and the protection of consumers could prevent forum shopping between the Member States.

BETTER FINANCE agrees with EBA's suggestion to investigate these different regulatory treatments applied to FinTech firms who are offering similar financial services in Europe. It would in fact be interesting to investigate the approaches of the monitoring of the FinTech sector in order to ensure that risks are appropriately identified and addressed.

BETTER FINANCE does not oppose regulatory sandboxes (they can, in fact, help to boost innovation) as long as they are not used to avoid regulation for a certain initiative and as long as the overriding goal is a high level of consumer protection. In particular, toxic products and services must be avoided. Toxic products are products for which there is a high probability for the client to lose money. Any regulation or guideline on sandboxes must highlight this requirement.

FinTech represents a good opportunity for consumers to access financial services and investments advice at a lower cost since those firms reduce the costs charged by intermediaries acting as a link between investors and companies. The products offered are therefore less expensive. However, those new firms should be regulated at the same level as traditional players in order to ensure the same level of consumer protection and prevent any inconsistencies between Fintech improvements and EU Directives MiFID II and IDD) as stated by BETTER FINANCE in its answer to the Public *consultation on*

*FinTech: a more competitive and innovative European financial sector*<sup>1</sup>. Moreover, as we found out in our research on Robo-Investing<sup>2</sup> nearly all providers researched were duly registered as financial advisors in their respective jurisdictions like traditional, non-automated financial advisors are. In addition, many are logically also registered as asset managers or have a contractual relationship with a registered investment company. It follows logically therefore that these newcomers are regulated as such and need to comply with rules governing investments and advice, and in particular MiFID.

BETTER FINANCE, contrary to some critics of “robot” advice, did not really identify a weaker regulatory framework for automated investment services when compared to traditional financial advice. BETTER FINANCE recommends for the European regulators to more precisely define “investment advice”, and more specifically “personal recommendations”. We also noted that the French robo-advisors also registered as insurance brokers. That is because insurance-based investment products are the most popular retail investment products in France, partly due to tax advantages.

### Prudential risks and opportunities for credit institutions

**2. Are the issues identified by the EBA and the way forward proposed in subsection 4.2.1 relevant and complete? If not, please explain why.**

NA

**3. What opportunities and threats arising from FinTech do you foresee for credit institutions?**

NA

### Risks and opportunities for payment institutions and electronic money institutions

**4. Are the issues identified by the EBA and the way forward proposed in subsection 4.2.2 relevant and complete? If not, please explain why.**

NA

**5. What opportunities and threats arising from FinTech do you foresee for payment institutions and electronic money institutions?**

NA

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<sup>1</sup> European Commission Public Consultation

[http://betterfinance.eu/fileadmin/user\\_upload/documents/Position\\_Papers/Consumer\\_Affairs/en/FinTech\\_A\\_more\\_competitive\\_and\\_innovative\\_European\\_financial\\_sector.pdf](http://betterfinance.eu/fileadmin/user_upload/documents/Position_Papers/Consumer_Affairs/en/FinTech_A_more_competitive_and_innovative_European_financial_sector.pdf)

<sup>2</sup> [http://betterfinance.eu/fileadmin/user\\_upload/documents/Research\\_Reports/en/Robo\\_Investing\\_Report\\_070617.pdf](http://betterfinance.eu/fileadmin/user_upload/documents/Research_Reports/en/Robo_Investing_Report_070617.pdf)

### Impact of FinTech on incumbent credit institutions' business models

**6. Are the issues identified by the EBA and the way forward proposed in subsection 4.3.1 relevant and complete? If not, please explain why.**

NA

**7. What are your views on the impact that the use of technology-enabled financial innovation and/or the growth in the number of FinTech providers and the volume of their business may have on the business model of incumbent credit institutions?**

NA

### Impact of FinTech on incumbent payment institutions and electronic money institutions business models

**8. Are the issues identified by the EBA and the way forward proposed in subsection 4.3.2 relevant and complete? If not, please explain why.**

NA

**9. What are your views on the impact that the use of technology-enabled financial innovation and/or the growth in the number of FinTech providers and the volume of their business may have on the business models of incumbent payment or electronic money institutions?**

NA

### Consumer protection and retail conduct of business issues: Unclear consumer rights due to unclear regulatory status

**10. Are the issues identified by the EBA and the way forward proposed in subsection 4.4.1 relevant and complete? If not, please explain why.**

As stated in paragraph 110 page 45, because of the different business models chosen by some FinTech firms, their authorization status remains unclear for consumers which makes it difficult for them to determine who they are dealing with, what is the firm's regulatory status and what are their rights as consumers.

BETTER FINANCE believes that, in order to ensure and enhance consumers' protection, precise guidelines (at least) should be drafted regarding the business model chosen by FinTech firms.

FinTech firms' regulatory regime should be clarified and harmonized. It is quite striking to see that 31% ( Figure 1 page 21 of the Discussion paper) of Fintech firms are not subject to any regulatory status. The divergence in the treatment of FinTech firms in Europe entails risk of decreasing consumer protection and can lead to divergences in the protection of consumers among Member States.

Therefore, BETTER FINANCE agrees with EBA's project to assess the rationale for the different regulatory treatment if any (again we did not spot any for the robo advisers we searched except one) and to identify any regulatory arbitrage or uncovered consumer protection risks.

### Consumer protection and retail conduct of business issues: Unclear consumer rights in the case of cross-border provision

**11. Are the issues identified by the EBA and the way forward proposed in subsection 4.4.2 relevant and complete? If not, please explain why.**

As stated in paragraph 112 page 45, the EBA underlines that not all consumer protection law applicable in the MS is harmonized, and differences exist not only in the legislation but also in the supervision of compliance with the legislation. As raised above, those divergences in the regulation could entail forum shopping: some FinTech firms might choose a Member States as their home state because the regulatory regime is less burdensome.

Since the provision of financial services through digitalization will increase the cross-border activities, EBA is concerned about the lack of clarity on whether or not companies providing financial services over the internet are acting under the freedom to provide services.

It is true, however, that these divergences of regulatory regimes could entail uncertainty particularly in complaints handling.

Therefore, BETTER FINANCE agrees with the EBA' view to assess further the cross-border issues for consumers.

BETTER FINANCE particularly welcomes the initiative of the EBA to assess the merit of setting-up an harmonized and effective framework for cooperation and exchange of information between home and host competent authorities for all banking products and services as well as to establish a more coherent, clear and effective distribution of competences between home and host national authorities. More cooperation between the authorities will contribute to the harmonization of the regulatory status of FinTech firms and to the same level of consumer protection across Europe.

**12. As a FinTech firm, have you experienced any regulatory obstacles from a consumer protection perspective that might prevent you from providing or enabling the provision of financial services cross-border?**

NA

**13. Do you consider that further action is required on the part of the EBA to ensure that EU financial services legislation within the EBA's scope of action is implemented consistently across the EU?**

Considering the impact of this phenomenon on consumer protection, BETTER FINANCE believes that the EBA and the European authorities should collaborate to adapt the current EU legislation in financial services to FinTech firms.

### Unsuitable or non-existent complaints handling procedure

**14: Are the issues identified by the EBA and the way forward proposed in subsection 4.4.4 relevant and complete? If not, please explain why.**

As stated in paragraph 117 page 47, the EBA underlines the lack of common contact points for complaints which affects not only the FinTech firms, in terms of lack of clarity about how they should manage complaints, but also consumers by generating confusion regarding which authority they should contact in case of litigation.

In paragraph 118, the EBA states that in the absence of a fully harmonized legislative initiative taken at European level, the EBA will explore the possibility of issuing Guidelines and/or recommendations for complaints handling.

BETTER FINANCE believes that the regulation of complaints handling should not be regulated by Guidelines or recommendations but by binding legislation. And these rules should be aligned as much as possible to the existing ones for "brick&mortar" institutions.

### Inadequate/ insufficient disclosure to consumers in a digital environment

**15. Are the issues identified by the EBA and the way forward proposed in subsection 4.4.4 relevant and complete? If not, please explain why.**

As stated in paragraph 119, some legal requirements may be outdated as regards the developments in digitalization. There is also the risk that those innovations could lead to insufficient financial literacy

due to a lack of technological accessibility. BETTER FINANCE agrees that digitalization must not occur at the expense of disclosure and transparency requirements or (adequate) information regarding banking products and services provided by FinTech companies.

In fact, BETTER FINANCE finds it crucial that this information must be easily accessible on the website and understandable. We have underlined in our 2017 report on Robo-investing “Cyborgs vs robots: Competing to attract European citizens money”<sup>3</sup> that fair, clear and not misleading information is one of the least enforced investor protection rules in the EU. We have also found there is still room for improvement as regards the transparency, simplicity and clarity of information provided on Robo-investing platforms.

In terms of information through digitalization, again the problem is the fact that Member States apply different requirements: some of them have special requirements whereas others don’t have special legislation for FinTech firms. This situation could result in differences in terms of disclosure between Member States.

BETTER FINANCE supports the idea to conduct an in-depth review of EU legislation requirements that may restrict digitalization.

BETTER FINANCE supports the EBA’s position on the proposal to analyze the consequences of non-face-to-face interaction between consumers and providers and evaluate the need to establish an obligation to provide alternative ways for consumers to easily access human advisors in case they have questions or they need some clarification.

Indeed, in its research paper on Robo-investing, BETTER FINANCE pointed out that Robo-Advisors are becoming more and more “Robo-cyborg”, with some companies reintroducing a human element in case clients have questions, specific needs or express desire for a certain degree of active management.

**16. Are there any specific disclosure or transparency of information requirements in your national legislation that you consider to be an obstacle to digitalization and/or that you believe may prevent FinTech firms from entering the market?**

NA

## Low level of financial literacy

<sup>3</sup>[http://betterfinance.eu/fileadmin/user\\_upload/documents/Research\\_Reports/en/Robo\\_Investing\\_Report\\_070617.pdf](http://betterfinance.eu/fileadmin/user_upload/documents/Research_Reports/en/Robo_Investing_Report_070617.pdf)

**17. Are the issues identified by the EBA and the way forward proposed in subsection 4.4.5 relevant and complete? If not, please explain why. 18. Would you see the merit in having specific financial literacy programmes targeting consumers to enhance trust in digital services?**

Financially literate consumers can take informed, confident and safer decisions and contribute to financial stability. However, and as demonstrated by the OECD<sup>4</sup>, the overall level of financial literacy and consumers awareness remains very low in Europe.

Digital channels, even though favorable for environmental issues, should not create risks for consumers.

BETTER FINANCE believes that digitalization could be a way of strengthening financial literacy (through robo-advisor for instance if the platform provides sufficient and relevant tools to educate and inform the investor) but existing EU regulations on financial education through digitalization should be more enforced in order to ensure consumers' protection. In this perspective, BETTER FINANCE believes that financial education through digitalization should be regulated to ensure that the tools proposed are sufficiently clear for the consumer and are not misleading. As mentioned already, EU regulations on fair, clear and not misleading information are poorly enforced at the present time<sup>5</sup>.

Therefore, BETTER FINANCE supports the EBA's proposal to continue to coordinate and foster national initiatives on financial literacy and to promote the transparency and clarity of pre-contractual information. It would be advisable and beneficial for consumers if national authorities involved independent consumer bodies while developing those national initiatives on financial literacy.

**18. Would you see the merit in having specific financial literacy programmes targeting consumers to enhance trust in digital services?**

Financial literacy programmes targeting consumers to enhance trust in digital services could in fact be a way of strengthening consumers awareness and financial literacy.

BETTER FINANCE believes that these programmes should be extended not only to adult consumers but also to the youngest part of the population and that independent consumer bodies should be involved in developing such programmes.

<sup>4</sup> OECD/INFE survey on financial literacy, 2016

<sup>5</sup> See in particular "A major enforcement issue: the misspelling of financial products", BETTER FINANCE Briefing paper-April 2017

[http://betterfinance.eu/fileadmin/user\\_upload/documents/Research\\_Reports/en/Misselling\\_of\\_Financial\\_Products\\_in\\_the\\_EU\\_-\\_Briefing\\_Paper\\_2017.pdf](http://betterfinance.eu/fileadmin/user_upload/documents/Research_Reports/en/Misselling_of_Financial_Products_in_the_EU_-_Briefing_Paper_2017.pdf)

## Financial exclusion associated with artificial intelligence and data-driven algorithms

**19. Are the issues identified by the EBA and the way forward proposed in subsection 4.4.6 relevant and complete? If not, please explain why.**

In its research paper on Robo-investing<sup>6</sup>, BETTER FINANCE analyses the rise of Robo-investing in Europe, their positive impacts (e.g. access to financial services, financial education, lower prices) and the risks for consumers (e.g. lack of transparency and clarity).

On the topic of Robo-advisors and of big data in financial services, the EBA suggests to determine the potential need for Guidelines or recommendations.

BETTER FINANCE applauds this initiative. Particular attention should be given to some questions such as the transparency and clarity of the information regarding the product, the suitability of the product and of the advice offered to the consumer, the fees and financial education. Data driven algorithms should not generate more exclusion, and therefore FinTechs must be subject to the very same rules on data protection and access for correction, in particular on credit worthiness-related data.

## The impact of Fintech on the resolution of financial firms

**20. Are the issues identified by the EBA and the way forward proposed in section 4.5 relevant and complete? If not, please explain why.**

NA

**21. Do you agree with the issues identified by the EBA and the way forward proposed in section 4.6? Are there any other issues you think the EBA should consider?**

NA

**22. What do you think are the biggest money laundering and terrorist financing risks associated with FinTech firms? Please explain why.**

<sup>6</sup> BETTER FINANCE Research paper on Robo-investing, June 2017  
[http://betterfinance.eu/fileadmin/user\\_upload/documents/Research\\_Reports/en/Robo\\_Investing\\_Report\\_070617.pdf](http://betterfinance.eu/fileadmin/user_upload/documents/Research_Reports/en/Robo_Investing_Report_070617.pdf)

NA

**23. Are there any obstacles present in your national AML/CFT legislation which would prevent (a) FinTech firms from entering the market, and (b) FinTech solutions to be used by obliged entities in their customer due diligence process? Please explain.**

NA