

**EFPA's Response to European Commission's Consultation Document "Fintech: a more competitive and innovative european financial sector"**

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**1.1. What type of FinTech applications do you use, how often and why? In which area of financial services would you like to see more FinTech solutions and why?**

Some of our national affiliates mentioned the following applications: Holistic Portfolio Management systems (e.g. Navigato), Account/Transfer Management (provided by banks e.g. MyGeorge by Erste Bank in Austria), Financial Planning systems (e.g. OptiPlan), and Risk Profiling (such as Finametrica).

Although some of the mentioned applications are also meant for end clients, such as advisors (e.g. MyGeorge), most of them are targeted to financial services providers.

**1.2. Is there evidence that automated financial advice reaches more consumers, firms, investors in the different areas of financial services (investment services, insurance, etc.) and at what pace? Are these services better adapted to user needs? Please explain.**

FinTech tools enable an easier access to advice, although a very simple one. Moreover, they reach retail market at a staggering pace because they are easy to use and almost fun to experience.

Without prejudice to the positive aspects of Fintech development, this phenomenon entails some risks. In this sense, most FinTech-based advice applications provide answer to direct questions, but they don't deal with complex situations, neither control whether the questions stated are appropriate to address client's needs. To sum up, most of Fintech tools do not offer holistic advice. Therefore, EFPA considers that the way these tools certainly help is using them jointly with traditional financial advice service.

**1.3. Is enhanced oversight of the use of artificial intelligence (and its underpinning algorithmic infrastructure) required? For instance, should a system of initial and ongoing review of the technological architecture, including transparency and reliability of the algorithms, be put in place? What could be effective alternatives to such a system?**

MiFID II establishes product governance requirements on the design of financial products by products' manufacturers. Within Fintech, algorithmic infrastructure design should be subject to similar requirements. Therefore, EFPA considers that putting in

place a review system of the technological architecture, including transparency and reliability of the algorithms, would be a positive supervisory measure to ensure and to enhance consumer protection.

Nevertheless, the above mentioned measure should be taken without prejudice of the existing rights that legally protects algorithms (e.g. trade secret rules).

**1.4. What minimum characteristics and amount of information about the service user and the product portfolio (if any) should be included in algorithms used by the service providers (e.g. as regards risk profile)?**

EFPA considers that Fintech regulation must be guided by the principle of technology neutrality. Therefore, legal and regulatory requirements in place for advisors who provide financial advice in a traditional manner should also apply to FinTech-based provision of advice. That will enable a level playing field.

Consequently, the characteristics and amount of information about the service user and the product portfolio (if any) that should be included in algorithms used by the service providers must be the same as the ones required by advisors who provide financial advice in a traditional manner, to fulfil legal requirements and provide financial service in the best interest of the clients.

Moreover, if Fintech-based advice might need the revision of the legal requirements on characteristics and amount of information about the service user and the product portfolio, the before mentioned revision must reach traditional provision of financial advice.

On a separate note, standardisation of risk profiling characteristics has systemic relevance within Fintech, considering the multiplying effect (or ‘mass effect’) of networking economy. Therefore, it must be ensured that the risk profiling method used is valid and follows best practice.

**1.5. What consumer protection challenges/risks have you identified with regard to artificial intelligence and big data analytics (e.g. robo-advice)? What measures, do you think, should be taken to address these risks/challenges?**

Data Mining and Data Analytics are key topics. While robo-advice undoubtedly constitutes an opportunity, it entails certain risks for customers. End clients need to be informed and to understand the consequences of providing data for robo-advice, which could be misleading due to the fact that often, customers are wrong describing their financial objectives and characteristics. Moreover, data must only be used for the specific purpose requested.

Moreover, as stated above, clients need to realise that the quality of the advice given (usually poor) by robo-advisors depends on the quality of the questions asked and the answers given. For that reason, EFPA considers that the most useful manner of using

robo-advisors is combining the advice given by them with financial advice obtained in a traditional manner.

On a separate note, it must be considered that robo-advice might use cognitive distortions, which will not improve the service but that could lead to recommend unsuitable products to consumers.

**1.6. Are national regulatory regimes for crowdfunding in Europe impacting on the development of crowdfunding? In what way? What are the critical components of those regimes?**

N/A

**1.7. How can the Commission support further development of FinTech solutions in the field of non-bank financing, i.e. peer-to-peer/marketplace lending, crowdfunding, invoice and supply chain finance?**

N/A

**1.8. What minimum level of transparency should be imposed on fund-raisers and platforms? Are self-regulatory initiatives (as promoted by some industry associations and individual platforms) sufficient?**

Considering the above mentioned principle of technology neutrality, MiFID II requirements on disclosure of costs and fees must apply to all Fintech provision of services by adapting their fulfilment to technology. Self-regulatory initiatives, as codes of good practice, are welcome as soon as they respect general rules on costs and fees.

**1.9. Can you give examples of how sensor data analytics and other technologies are changing the provision of insurance and other financial services? What are the challenges to the widespread use of new technologies in insurance services?**

N/A

**1.10. Are there already examples of price discrimination of users through the use of big data? Can you please provide examples of what are the criteria used to discriminate on price (e.g. sensor analytics, requests for information, etc.)?**

N/A

**1.11. Can you please provide further examples of other technological applications that improve access to existing specific financial services or offer new services and of the related challenges? Are there combinations of existing and new technologies that you consider particularly innovative?**

N/A

**2.1. What are the most promising use cases of FinTech to reduce costs and improve processes at your company? Does this involve collaboration with other market players?**

Some of our affiliates believe that the most promising applications are those in the field of: data gathering, risk profiling tools, administrative support and, to some extent, simple investment advice and simple asset management. Portability of data is also a helpful option despite its difficulties regarding data security and data protection.

In general, EFPA considers that Fintech tools enhance the provision of traditional financial services either by integrating them in their processes, or by externalising some services to Fintech providers. Moreover, traditional providers of financial services need nowadays Fintech technology methods, and Fintech providers need traditional providers' knowledge on compliance grounds.

**2.2. What measures (if any) should be taken at EU level to facilitate the development and implementation of the most promising use cases? How can the EU play its role in developing the infrastructure underpinning FinTech innovation for the public good in Europe, be it through cloud computing infrastructure, distributed ledger technology, social media, mobile or security technology?**

N/A

**2.3. What kind of impact on employment do you expect as a result of implementing FinTech solutions? What skills are required to accompany such change?**

As we have stated above, our affiliates expect a cooperation model between physical advisors and FinTech tools. EFPA considers that the Fintech phenomenon will most probably lead to a separation of sales activities and real advice. Clients need personal and human advisors with an understanding of their risk profiles and a holistic approach to solve financial situations and needs.

Therefore, staff members need to be trained to use Fintech tools in the provision of financial services. That will expect advisors to be better trained on certain technological skills.

To sum up, our respondents do not see immediate threat for jobs, but they expect impact on job profiles and a need of re-education of staff.

**2.4. What are the most promising use cases of technologies for compliance purposes (RegTech)? What are the challenges and what (if any) are the measures that could be taken at EU level to facilitate their development and implementation?**

RegTech constitutes a way of reducing compliance costs for advisory SMEs by externalising compliance functions. Therefore, Fintech allows these small entities, which cannot afford those costs to keep in market. The main challenge and the most

urgent measure that could be taken at EU level to facilitate RegTech development and implementation is to clarify the fulfilment of compliance requirements via Fintech tools before regulators.

**2.5. What are the regulatory or supervisory obstacles preventing financial services firms from using cloud computing services? Does this warrant measures at EU level?**

N/A

**2.6. Do commercially available cloud solutions meet the minimum requirements that financial service providers need to comply with? Should commercially available cloud solutions include any specific contractual obligations to this end?**

N/A

**2.7. Which DLT applications are likely to offer practical and readily applicable opportunities to enhance access to finance for enterprises, notably SMEs?**

N/A

**2.8. What are the main challenges for the implementation of DLT solutions (e.g. technological challenges, data standardisation and interoperability of DLT systems)?**

N/A

**2.9. What are the main regulatory or supervisory obstacles (stemming from EU regulation or national laws) to the deployment of DLT solutions (and the use of smart contracts) in the financial sector?**

N/A

**2.10. Is the current regulatory and supervisory framework governing outsourcing an obstacle to taking full advantage of any such opportunities?**

EFPA believes that the current regulatory and supervisory framework governing outsourcing do not constitute an obstacle to taking full advantage of Fintech opportunities. Moreover, the current principle present in most EU financial services legislation, that activities can be outsourced but that accountability remains with the authorised firm, must be kept for maintaining acceptable levels of expertise, integrity and professionalism.

**2.11. Are the existing outsourcing requirements in financial services legislation sufficient? Who is responsible for the activity of external providers and how are they supervised? Please specify, in which areas further action is needed and what such action should be.**

N/A

**2.12. Can you provide further examples of financial innovations that have the potential to reduce operational costs for financial service providers and/or increase their efficiency and of the related challenges?**

N/A

**3.1. Which specific pieces of existing EU and/or Member State financial services legislation or supervisory practices (if any), and how (if at all), need to be adapted to facilitate implementation of FinTech solutions?**

Legislation and supervisory practices must be based on the principle of technology neutrality (“same activity, same rules”). Therefore, supervisory practices should be adapted to electronic ways of compliance, but maintaining the same requirements applicable both to traditional and Fintech provision of services. For instance, there are requirements in IDD and other pieces of EU legislation that require paper-based communication to be sent on demand. This will become increasingly anachronistic as consumers move towards electronic forms of communication. Providers should be able to operate electronic-only methods of communication.

**3.2. What is the most efficient path for FinTech innovation and uptake in the EU? Is active involvement of regulators and/or supervisors desirable to foster competition or collaboration, as appropriate, between different market actors and new entrants. If so, at what level?**

N/A

**3.3. What are the existing regulatory barriers that prevent FinTech firms from scaling up and providing services across Europe? What licensing requirements, if any, are subject to divergence across Member States and what are the consequences? Please provide details.**

The main challenge is that different national regulations require local licenses. Fintech activities have cross-border focus. Therefore, it may be desirable that Fintech providers would have same EU regulation, EU license, and same EU supervisor.

**3.4. Should the EU introduce new licensing categories for FinTech activities with harmonised and proportionate regulatory and supervisory requirements, including passporting of such activities across the EU Single Market? If yes, please specify in which specific areas you think this should happen and what role the ESAs should play in this. For instance, should the ESAs play a role in pan-EU registration and supervision of FinTech firms?**

EFPA considers that the application of principle of technological neutrality is desirable to prevent complexity and regulatory arbitrage.

**3.5. Do you consider that further action is required from the Commission to make the regulatory framework more proportionate so that it can support innovation in financial services within the Single Market? If so, please explain in which areas and how should the Commission intervene.**

EFPA considers that the sound application of MiFID 2 principle of proportionality constitutes the correct way of making the regulatory framework more proportionate for Fintech providers.

**3.6. Are there issues specific to the needs of financial services to be taken into account when implementing free flow of data in the Digital Single Market? To what extent regulations on data localisation or restrictions on data movement constitute an obstacle to cross-border financial transactions?**

N/A

**3.7. Are the three principles of technological neutrality, proportionality and integrity appropriate to guide the regulatory approach to the FinTech activities?**

Yes, those are sound principles to guide the regulatory approach to the FinTech activities.

**3.8. How can the Commission or the European Supervisory Authorities best coordinate, complement or combine the various practices and initiatives taken by national authorities in support of FinTech (e.g. innovation hubs, accelerators or sandboxes) and make the EU as a whole a hub for FinTech innovation? Would there be merits in pooling expertise in the ESAs?**

EFPA considers that the approach based on the establishment of a “soundbox”, consisting on the application of the principles of proportionality and technological neutrality, is a better system of supporting Fintech initiatives than the establishment of “sandboxes”, which entails legal uncertainty.

**3.9. Should the Commission set up or support an "Innovation Academy" gathering industry experts, competent authorities (including data protection and cybersecurity authorities) and consumer organisations to share practices and discuss regulatory and supervisory concerns? If yes, please specify how these programs should be organised?**

EFPA supports setting up an "Innovation Academy" gathering industry experts, competent authorities and consumer organisations to share practices and discuss regulatory and supervisory concerns. This initiative may allow authorities to have insider knowledge of Fintech activities, and Fintech providers to develop compliance culture.

**3.10. Are guidelines or regulation needed at the European level to harmonise regulatory sandbox approaches in the MS? Would you see merits in developing a European regulatory sandbox targeted specifically at FinTechs wanting to operate cross-border? If so, who should run the sandbox and what should be its main objective?**

EFPA considers that a system based on proportionality and technological neutrality (named “soundbox”) constitutes a better approach to regulate Fintech than the establishment of a “sandbox”. Moreover, “sandboxes” generate legal uncertainty and break the principle of technological neutrality.

On the contrary, co-ordination amongst regulators establishing a “college of supervisors” seems to be a sound approach.

**3.11. What other measures could the Commission consider to support innovative firms or their supervisors that are not mentioned above? If yes, please specify which measures and why.**

The Commission could consider adopting measures on financial literacy based on the use of Fintech tools. These applications are intuitive and easy to use, so they can help to better understand products and services, providing that they do not take advantage of cognitive distortions.

**3.12. Is the development of technical standards and interoperability for FinTech in the EU sufficiently addressed as part of the European System of Financial Supervision? Is the current level of data standardisation and interoperability an obstacle to taking full advantage of outsourcing opportunities?**

The EU authorities should be extremely cautious about imposing standardisation through legislation, as it typically takes at least 7-10 years for EU financial services legislation to be drafted, agreed and implemented. Subjecting standards to this kind of regulatory life cycle could seriously impede innovation. Therefore, it might be desirable that Fintech industry establish their proper standards supervised by supervisory authorities so they fulfil regulatory requirements.

**3.13. In which areas could EU or global level standards facilitate the efficiency and interoperability of FinTech solutions? What would be the most effective and competition-friendly approach to develop these standards?**

Given the long timescales involved in creating EU and global standards, the best approach to innovation is to set up forums to monitor developments and share best practice, rather than create legislation that could stifle innovation through the creation of unnecessary path dependencies.

**3.14. Should the EU institutions promote an open source model where libraries of open source solutions are available to developers and innovators to develop new**

**products and services under specific open sources licenses? What other specific measures should be taken at EU level?**

N/A

**3.15. How big is the impact of FinTech on the safety and soundness of incumbent firms? What are the efficiencies that FinTech solutions could bring to incumbents? Please explain.**

N/A

**4.1. How important is the free flow of data for the development of a Digital Single Market in financial services? Should service users (i.e. consumers and businesses generating the data) be entitled to fair compensation when their data is processed by service providers for commercial purposes that go beyond their direct relationship?**

N/A

**4.2. To what extent could DLT solutions provide a reliable tool for financial information storing and sharing? Are there alternative technological solutions?**

N/A

**4.3. Are digital identity frameworks sufficiently developed to be used with DLT or other technological solutions in financial services?**

N/A

**4.4. What are the challenges for using DLT with regard to personal data protection and how could they be overcome?**

N/A

**4.5. How can information systems and technology-based solutions improve the risk profiling of SMEs (including start-up and scale-up companies) and other users?**

N/A

**4.6. How can counterparties that hold credit and financial data on SMEs and other users be incentivised to share information with alternative funding providers? What kind of policy action could enable this interaction? What are the risks, if any, for SMEs?**

N/A

**4.7. What additional (minimum) cybersecurity requirements for financial service providers and market infrastructures should be included as a complement to the**

**existing requirements (if any)? What kind of proportionality should apply to this regime?**

N/A

**4.8. What regulatory barriers or other possible hurdles of different nature impede or prevent cyber threat information sharing among financial services providers and with public authorities? How can they be addressed?**

N/A

**4.9. What cybersecurity penetration and resilience testing in financial services should be implemented? What is the case for coordination at EU level? What specific elements should be addressed (e.g. common minimum requirements, tests, testing scenarios, mutual recognition among regulators across jurisdictions of resilience testing)?**

N/A

**4.10. What other applications of new technologies to financial services, beyond those above mentioned, can improve access to finance, mitigate information barriers and/or improve quality of information channels and sharing? Are there any regulatory requirements impeding them?**

N/A