

EVIA response to the EU DG FISMA Consultation on a new digital finance strategy for Europe & a FinTech action plan

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](#) in that respect.

European Venues and Intermediaries Association ["EVIA"] would make record of the following main obstacles:

- i. Inclusion of crypto-assets and Stable-coin facilitated transactions into the regulated perimeter, either as payments or as financial instruments. Whilst these remain outside the formal regulated and supervised definitions, so institutional participation remains subsidiary and tangential.
- ii. Several innovative technologies require institutional backing, particularly endorsement or adoption by sets of central banks and competent authorities in order to acquire momentum or critical mass. This is especially relevant to post trading requirements such as trade settlement, clearing novation and transaction reporting which directly concern either artificial intelligence ["AI"] and/or digital regulatory reporting ["DRR"]
- iii. Cost and risk to investing in new technologies and protocols is a common reason for industry to maintain long existing systems and infrastructures, especially in a rapidly changing environment where the correct timing and vector for investment in change is not easy to gauge.
- iv. There is still only the beginnings of an ISO and equivalent process standards regime for crypto-assets and digital regulatory reporting with concerns still widespread around KYC and AML risks.

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?

For wholesale financial markets EVIA would stress that the relevant key advantages and challenges are owned by market participants and stakeholders rather than by "consumers" per se. Clearly in this context the advantages lie in cost, speed, resilience, and trust. Efficiencies should enable previously fragmented and intermediated market access to become more liquid and equipped with process standardisations.

Therefore, instantaneous settlements should be cheaper and entail far less chances for settlement fails.

Secondly, the ability to transmit and digest the personae and history of the market participants should garner benefits for trust issues such as KYC, but equally for AML and financial crime prevention.

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

Yes

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:

EVIA would additionally include the inclusion of wholesale activities pertaining to digital finance and crypto-assets as a licensable activity within the regulated perimeter. This is not only a payments and investments matter, but also the record keeping, disclosures and conduct standards, prudential

standards, operational resilience and financial crime aspects all require a set of mandated minimum standards.

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

No.

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

EVIA would cite the MiFID2/ MiFIR technical standards for reference data and transaction reporting to be examples of a fixed mindset of data construction and collection, wherein the prescriptive and very analogue validation rules prevent the deployment of smarter data. The self-same comments apply to the other FS technical schemas such as SFTR, REMIT, MAR and EMIR and we endorse both the DRR pilot work and the Common Domain modelling carried out so far wherein data-points are articulated to become "smart" with respect to the different reporting regimes applicable and the different definitions of terms between legislative acts.

We would highlight in particular the FCA publication of their findings from their consultation with the industry on the development of RegTech [www.fca.org.uk/publications/feedback-statements/fs16-4-feedback-statement-call-input-supporting-development-and].

This includes, "Uses for RegTech" wherein participants saw real potential in technologies for driving a more efficient, flexible and collaborative approach to meeting regulatory obligations. Examples included cloud computing for reducing costs, shared utilities for pooling information such as KYC data, and big data analytics for enabling new insights into unstructured and structured pools of data.

It also sets out the "Barriers to RegTech adoption," which emerged from the feedback statement. These were the legal restrictions and lack of standardisation on both data and regulation in general, and the issues involved with moving away from legacy systems. Some participants mentioned how many of the technologies referred to are still very much in development state, and it was considered a large risk (in a time of low risk appetite) to invest in such a fundamental change to a firm's infrastructure. Other issues included the timing of regulations, whereby uncoordinated deadlines force regulated firms into a reactive state. Even with MiFID II delayed, the sheer plethora of regulations going live before the new 2018 implementation date (GDPR, PRIIPs, Volcker Rule, etc.) hinders any proactive effort to prepare for the long term.

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?

Not Relevant

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

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.

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

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?

- Distributed Ledger Technology (except crypto-assets) fully relevant
- Cloud computing neutral
- Artificial Intelligence/Machine learning neutral
- Internet Of Things (IoT) neutral
- Biometrics fully relevant
- Quantum computing neutral

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:

EVIA assumes that DLT packets will likely evolve to carry both solicitations and the interests to enter transactions as well as relevant collateral or tokens to facilitate trade certainty and indeed the full information concerning chains of completed transactions. Additionally, we anticipate fundamental changes around KYC, client onboarding and the nature of identity, which may be established deploying, amongst other things, biometrics. Therefore, the identity of counterparties and their activity histories may well be part and parcel of the DLT block 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: Assess the need for adapting the existing prudential frameworks to the new financial ecosystem, also to ensure a level playing field

Setting up dedicated observatories to monitor technological and market trends (e.g. EU Blockchain Observatory & Forum; Platform Observatory)	irrelevant
Funding experimentation on certain applications of new technologies in finance (e.g blockchain use cases)	irrelevant
Promoting supervisory innovation hubs and sandboxes	fully relevant
Supporting industry codes of conduct on certain applications of new technologies in finance	fully relevant
Enhancing legal clarity through guidance at EU level for specific technologies and/or use cases	neutral
Creating bespoke EU regimes adapted to nascent markets, possibly on a temporary basis	irrelevant

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:

Intra-European retail payments	N/A
Intra-European wholesale payments	fully relevant
Consumer credit provision to households with risk taking	fully relevant

Consumer credit distribution to households with partner institution(s)	fully relevant
Mortgage credit provision to households with risk taking	N/A
Mortgage credit distribution to households with partner institution(s)	N/A
Credit provision to SMEs with risk taking	N/A
Credit distribution to SMEs with partner institution(s)	N/A
Credit provision to large corporates with risk taking	fully relevant
Syndicated lending services with risk taking	fully relevant
Risk-taking activities in Life insurance products	N/A
Risk-taking activities in Non-life insurance products	N/A
Risk-taking activities in pension products	N/A
Intermediation / Distribution of life insurance products	N/A
Intermediation / Distribution of non-life insurance products	N/A
Intermediation / Distribution of pension products	N/A
Other insurance related activities, e.g. claims management	N/A
Re-insurance services	N/A
Investment products distribution	N/A
Asset management	N/A
Others	N/A

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:

We consider that the deployment of digital tokens, including Stablecoins, will enable immediate and dis-intermediated trade settlement, collateral transfer and pledging. This may facilitate technological enterprises to enter the payments, post-trading and FX businesses.

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

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

EVIA wholeheartedly endorses the principle of “same activity creating the same risks should be regulated in the same way.” This outcomes-based principle needs to remain fundamental to implementation of financial supervision and therefore the legal framework needs to be an enabler for this.

The foremost example that we witness in this regard is the regulated trading venue perimeter, wherein platforms that arrange, bring-about and seek to match trading interests, frequently by advertising consolidated order stacks, exempt themselves from the venue organisation rules. This may be frequently made because the technology provider recasts itself by many of the following: the nature of the instruments admitted, as not being a multilateral system, not having a published rulebook, or not legally concluding transactions. By not holding an authorisation or a licence, the conduct, reporting, supervision and prudential capital savings versus the established competition are very substantial.

Question 10. Which prudential and conduct risks do you expect to change with technology companies gaining significant market share in financial services in the EU in the five upcoming years? Please rate each proposal from 1 to 5:

Liquidity risk in interbank market (e.g. increased volatility)	significant increase in risks
Liquidity risk for particular credit institutions	significant increase in risks
Liquidity risk for asset management companies	significant increase in risks
Credit risk: household lending	neutral
Credit risk: SME lending	neutral
Credit risk: corporate lending	neutral
Pro-cyclical credit provision	significant increase in risks
Concentration risk for funds collected and invested (e.g. lack of diversification)	neutral
Concentration risk for holders of funds (e.g. large deposits or investments held in a bank or fund)	neutral
Undertaken insurance risk in life insurance	N/A
Undertaken insurance risk in non-life insurance	N/A
Operational risks for technology companies and platforms	Significant reduction in risks
Operational risk for incumbent financial service providers	Significant reduction in risks
Systemic risks (e.g. technology companies and platforms become too big, too interconnected to fail)	neutral
Money-laundering and terrorism financing risk	Significant reduction in risks
Other	neutral

Question 10.1 Please explain your answer to question 10 and, 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:

EVIA understands that with regards to wholesale funding markets, increased reliance on technology can lead to an increase in risk and a decrease in the agility of market finance as balance sheet management and utility becomes less flexible and adaptive to the changing external environment. The increased market penetration of non-regulated technology matching platforms stands to increase risks related to money-laundering and financial crime because these entities are not required to perform KYC compliance, hold rule books, perform market surveillance, hold robust systems and controls as well as adequate capital and liquidity to demonstrate minimum levels of resilience, nor to record and report the activity occurring.

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:

Default risk for funds held in non-banks and not protected by Deposit Guarantee Scheme	neutral
Liquidity risk	significant increase in risks
Mis-selling of insurance products	N/A
Mis-selling of investment products	N/A
Mis-selling of credit products	N/A
Mis-selling of pension products	N/A
Inadequate provision of information	N/A
Inadequate complaint and redress process and management	neutral
Use/abuse of personal data for financial commercial purposes	significant increase in risks
Discrimination e.g. based on profiles	neutral
Operational risk e.g. interrupted service, loss of data	Significant reduction in risks
Other	Significant reduction in risks

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:

EVIA considers that the impact on liquidity risk of technology companies gaining significant market share in financial services in the EU is material due to the removal of buffers in the form of the banking system intermediating by dealing as principal and other ways that result in the agility and flexibility being removed from the system, and any remaining intermediaries undergoing substantial concentration.

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

Question 12.1 Please explain your answer to question 12, elaborating on specific areas and providing specific examples:

EVIA wholeheartedly agrees that ongoing technological developments make it appropriate to realign the regulatory approach in the EU and beyond to move to a more activity-based regulation, and also to extend the regulatory perimeter to entities that ostensibly solicit, perform, and achieve the self-same output services.

We refer across to our recent response to the EU Consultation on MiFID2 wherein we set out our proposals for the EU MiFID perimeter for authorised trading venues. These are set out below:

EVIA's response reflects the members' collective experiences that MiFID 2/R has failed to deliver a level playing field with respect to the perimeter of a multilateral system. We consider that there are two dimensions to the problem:

- (1) There are trading platforms operating in the Union which, on a purposive interpretation, should be operated by regulated investment firms or trading venue operators, in the same manner as MTFs or OTFs; but which, because of literal interpretations, have been able to remain just outside of the perimeter of MiFID 2/R. The result is that a two-tier system has been created:
 - a. regulated trading venues, which contribute trade data and transaction reporting to the overall system and which are subject to defined governance and operating requirements in accordance with the MiFID II regime; and
 - b. unregulated trading systems or platforms, which operate in the dark and are not subject to any governance or operating requirements under the MiFID 2/R regime. The same wholesale market participants make use of both tiers.
- (2) The use of the "multilateral" versus "bilateral" concepts has not been applied consistently, so that firms bringing together trading interests using the same methods and models have been subject to different requirements, depending on the Member State they are based in and the scale of their business operations. This has also resulted in a two-tier system:
 - a. larger firms based in certain Member States have been required to reorganise their activity as a trading venue, while
 - b. smaller firms in the same Member State, or firms in other Member States, have not.

The solution to the first problem is to clarify that bringing together trading interests related to financial instruments as an intermediary, whether using personnel or electronic trading systems, is a

MiFID 2/R activity/investment service. The supply of electronic trading systems fits within the perimeter when it is for the purpose of bringing together trading interests involving multiple users of the same trading system (as opposed to being a consequence of multiple users independently making use of the same trading technology as part of their own operations).

The principle we would recommend is that: "Providing or making available a service, or operating or making available a system, to arrange, negotiate or match, trading interests in financial instruments constitutes an authorised activity in the Union." The solution to the second problem is to clarify that trading activity is "multilateral" when, taken as a whole and not with respect to a specific trading interest in isolation, there is the possibility for more than one person to engage with a trading interest.

Resolving the first problem will bring more firms clearly within the MiFID 2/R perimeter. Resolving the second issue will require more firms to organise their activity on the basis of being a trading venue. These are both desirable outcomes from the standpoint of harmonisation of the MiFID 2/R rules in the Union, ensuring consistency of regulation for cross-border investors and the appropriate capture of a greater level of information about market activity within the Union.

There are a substantial amount of activity and the number of facilities that carry out the arranging and other venue activities across the EU but outside the MiFID 2/R perimeter. For instance, a media report last week in reference to the wholesale FX markets noted that the price forming volume on primary venues fell by \$350 Bn per day in Spot FX between the BIS Triennial surveys in 2011 and 2020 inclusive. In general, these evasions range from the small firms who choose not to pay the price of financial supervision to the providers of technological systems and protocols who present themselves as "FinTech" or tool suppliers while acting in a way functionally similar to an investment firm or venue operator.

Enhance multi-disciplinary cooperation between authorities

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):

EVIA understands that the main challenges authorities are facing while supervising innovative/digital players in finance is to understand whether the scope and responsibility of the significant activity occurring should be inside the regulated perimeter. We believe that the framework architecture should be one where businesses activities are incentivised to occur within that control, rather than the current establishment wherein it is far more expensive and riskier to enter the regulated segments when compared to activities without.

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:

EVIA would suggest that the development an application of standardised terms, definitions and process segments would encourage the sharing and pooling of best practices and harmonised approaches between EU NCAs.