

FESE response to the Commission consultation on a new digital finance strategy for Europe / FinTech action plan

26th June 2020, Brussels

Q1 - 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 ([here](#)).

As some of the financial markets' regulations are not clear about essential regulatory requirements and the concerns they address, it is sometimes unclear whether it is possible to make use of a new technology (e.g. outsourcing rules use against the background of cloud technology). Therefore, we are in favour of targeted changes to existing regulation as market participants and competent authorities are already familiar with these rules to allow for more clarity on which regulatory requirements have to be taken into account when deciding on the application of new technologies. Until then, guidance is helpful, as long as there is no legislative framework in place as it could allow to use recent technology developments within existing rules and regulations. This would help market participants, as it shortens time to markets for services and products.

Q2 - 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?

N/A

Q3 - Do you agree with the choice of these priority areas?

Yes

No

Don't know / no opinion / not relevant

Q3.1 - Please explain your answer to question 3 and specify if you see other areas that would merit further attention from the Commission:

On a general note, FESE believes that a predictable, consistent and straightforward legal environment should be promoted. Areas which would benefit from review include licensing requirement for FinTech companies, data protection, conflict of laws, outsourcing, settlement finality and proper legal recognition of holding and transferring securities and other types of assets.

It is important to establish key principles upon which the EU can build a role in facilitating the development and implementation of FinTech. These principles include the need for:

- The application of the same rules for the same services and risks (including across different pieces of legislation) based on the principle of technology neutrality;
- A risk-based approach built on proportionality and materiality which allows for flexibility, particularly in respect of innovation with small groups of customers (i.e. sandboxes), while ensuring a level playing field across the EU;
- A balancing of the local (country) risks alongside the benefits of cross-border markets (i.e. scalability, interoperability and passporting of services).
- Strict application of the subsidiarity principle so that EU regulation do not duplicate regulations and requirements already existing at national level. This is particularly important with respect to cybersecurity in order to avoid a surge of costs for the industry without real benefits for users and providers.

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

Q4 - 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

Q4.1 - If not, please provide specific examples of provisions and requirements that are not technologically neutral or hinder innovation:

FESE believes that while the existing EU financial services regulatory framework is technology neutral, we don't believe that it is currently innovation friendly.

Clarifications are needed for the existing technologically neutral frameworks

FESE believes that the existing EU financial services regulatory framework respects the principle technology neutrality. For example, the existing MiFID II framework complies with this principles as it does not require financial market participants to use any particular type of technology for the elaboration of their products or services in the EU. However, there should be clarifications made to the EU financial services regime to accommodate for new and emerging activities, which may need regulatory clarifications in order to effectively comply with the existing legislation and its underlying principles. In so doing, it will be essential for the EU to review the existing EU financial services regulatory framework to find a balance between encouraging the emergence of innovative offerings, while maintaining and safeguarding investor protection and ensure a level playing field in the EU.

While FESE is convinced of the need to support innovation and not build artificial barriers to new technologies, it is at the same time important that technology neutrality is ensured in all situation and that the principle of "same business, same risks, same rules" fully applies to uphold the principles of transparency, fairness, stability, investor protection and market integrity.

For instance, FESE believes that a particular focus should be given to "crypto-assets" that represent the assets with the most immediate potential for Distributed Ledger Technology (DLT) application in financial markets and therefore are in need of regulatory clarification and solutions. FESE proposes to have a definition at EU level on "digital-assets" (i.e. media that is formatted into a binary source) and "crypto-assets" (i.e. digital assets that may depend on cryptography and exists on a distributed ledger) that qualify as financial instruments, for both assets to be subject to already existing financial market rules. This

would increase the speed to market for innovations, as market participants and authorities would act within a well-established legal framework and rules would be appropriate for institutional and retail investors. Such clarification should be provided in alignment with global standard setting bodies like ISO.

There is also a need for one single EU classification that covers the representation of both “digital-assets” and “crypto-assets”. As other categories of digital assets are thinkable, the classification should refer to those services and activities related to these assets. This would introduce a clear distinction between “crypto-assets” that represent the digitalised embodiment of a ‘traditional asset’ or act as financial instruments and “digital-assets” that do not. The classification would include clear and distinct categorisation of security-, payment-, utility- and hybrid “crypto-assets”.

Based on this, it would be determined if a given “digital-asset” would fall under the definition of a “crypto-asset” and be subject to the existing EU regulative framework.

The existing EU regime could be more innovation friendly

Even though we believe that the existing EU financial services regulatory framework is technology neutral, we don’t believe that it is currently innovation friendly. There is little to no flexibility provided at EU level to incentivise the development of new innovations and the uptake of new technologies. New technologies are either de-facto subject to the EU regime, or not, which could then create regulatory uncertainty for innovative players and allow for malpractice in the use of such new technologies.

In order to continue to be able to respond to technology innovation and development, we believe it is critical that the EU develops a harmonised framework for a Sandbox regime, in respect of the emergence and uptake of relevant new technologies, for the technical testing phase. FESE believes this would encourage innovative practices within the EU. The EU can provide for a tailored supervisory framework for a Sandbox regime which would cater to small groups of financial market participants, customers or investors, who are willing to experiment with a new specific technology used. Financial market participants would be selected on the basis of an eligibility criteria defined at EU level.

Ultimately, this Sandbox regime would enable regulators to appropriately evaluate of the existing EU financial regulatory framework and identify provisions that would need reform, in respect of the principles listed above. In parallel, this would safeguard the existing regulatory protections in place for end investors of all financial instruments, whilst fostering a level playing field in the EU.

Q5 - 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

Q5.1 - Please explain your reasoning on your answer to question 5, and where relevant explain the necessary adaptations:

FESE considers 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, with clarifications

made to the existing regime to adapt to the features of these products and distribution models.

For example, as stated in our answer to Q4.1, in regards to the creation of an EU framework for markets in crypto-assets, we believe that the existing MiFID II/MiFIR framework can be complemented with an EU definition of ‘digital assets’ and ‘crypto-assets’, which would allow for an EU classification of ‘crypto-assets’.

Q6 - 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						

If you see other technologies whose use would be limited in the financial services due to obstacles stemming from the EU financial services legislative framework, please specify and explain:

N/A

Q6.1 - 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:

The Distributed Ledger Technology (DLT) used in crypto-assets (i.e. ‘digital assets’ that may depend on cryptography and exists on a distributed ledger) is limited due to the lack

of clarity stemming from the EU financial services regulatory framework, notably in the MiFID II/MiFIR framework.

This can be first addressed by introducing an EU definition of ‘digital assets’ and ‘crypto-assets’ in the existing framework. This would then allow for an EU regulatory classification of the different features and functions of ‘crypto-assets’. Regulators would be able to distinguish their different forms in order to bring significant benefits to both financial market participants and consumers.

Most importantly, from a financial market integrity and investor protection perspective, FESE believes that the Commission’s proposed definition of ‘crypto-assets’ should be strengthened to include a clear differentiation between ‘crypto-assets’ that act as financial instruments and those ‘crypto-assets’ that do not act as a financial instrument. This clarification would help identify which regulations will apply to these different types of products and to the trading platforms where they are available.

FESE proposes that ‘crypto-assets’ that act as financial instrument should be integrated in the MiFID II definitions of financial instruments under Annex I, Section C of MiFID II (1)-(11), as a category under a new point (12).

Q7 - 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 risk 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:

FESE believes that the EU can support the uptake of nascent technologies and business models by creating an EU Sandbox framework. This framework would:

- allow experimentation on certain applications of new technologies in finance
- promote supervisory innovation hubs and sandboxes
- create bespoke EU regimes adapted to nascent markets, possibly on a temporary basis

Providing innovative financial market players with a venue for experimentation would encourage creative thinking, allow them to take additional risks and develop new approaches, through a trial and error process, which would ultimately not penalize the innovative practices of the participants involved (due to the absence of a formal framework/commitment). If the sandbox fails to develop any new innovative practices, it can be dismantled.

FESE believes that these experimental venues should be temporary, which would allow adequate time for financial market participants to learn from their experiments, export their practices and apply their knowledge on their own in a real world setting that is subject to the permanent and existing legislative frameworks in place.

Regulators can benefit from the establishment of temporary sandboxes, by identifying which existing EU financial regulatory framework provisions act as legislative obstacles or administrative burdens to the uptake of new innovative financial products or services. At the end of a sandbox's lifetime, regulators can submit proposals to review the existing regime and make necessary alleviations to allow and incentivise the use of innovative products and services, whilst maintaining principles on investor/consumer protection.

The establishment of EU industry codes of conduct on certain applications should be experimented in the framework of these sandboxes, depending on the technology used.

Therefore, sandboxes are a possible solution in the technical testing phase. However, where services are offered to retail clear rules need to apply. Bespoke regimes create uncertainty, as completely new frameworks take time to create, understand and apply.

Q8 - 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 (very low market share - below 1%)	2 (low market share)	3 (neutral)	4 (significant market share)	5 (very significant market share - above 25%)	N.A.
Intra-European retail payments						
Intra-European wholesale payments						
Consumer credit provision to households with risk taking						
Consumer credit distribution to households with partner institution (s)						
Mortgage credit provision to households with risk taking						
Mortgage credit distribution to households with partner institution (s)						
Credit provision to SMEs with risk taking						
Credit distribution to SMEs with partner institution(s)						
Credit provision to large corporates with risk taking						

Syndicated lending services with risk taking						
Risk-taking activities in Life insurance products						
Risk-taking activities in Non-life insurance products						
Risk-taking activities in pension products						
Intermediation / Distribution of life insurance products						
Intermediation / Distribution of non- life insurance products						
Intermediation / Distribution of pension products						
Other insurance related activities, e.g. claims management						
Re-insurance services						
Investment products distribution						
Asset management						
Others				X		

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

FESE expects technology companies to gain significant market share in the EU by raising funds in public capital markets to support innovative company financing, promote employment, provide citizens with efficient investment opportunities.

Q8.1 - 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:

N/A

Q9 - 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

Q9.1 - Please explain your answer to question 9 and provide examples if needed:

FESE strongly believes that all financial services areas in the current EU financial regulatory framework should respect the principle of “same activity creating the same risks should be regulated in the same way” (unless these services are subject to an EU temporary sandbox framework, in which these activities can be temporarily facilitated as long as these are adequately supervised and involve a selected small number of financial market participants, investors or customers).

At the current stage, crypto-assets trading platforms do not comply with requirements in relation to the organisation of secondary markets. FESE considers that all such platforms should be regulated as Regulated Markets, MTFs or OTFs under MiFID II/R. In other words, these crypto-assets trading platforms should have to follow the same rules applicable to trading venues like, inter alia, transparency requirements, accountability, operational resilience, ICT security, recordkeeping, proper governance arrangements, KYC and AML requirements, etc.

Additionally, we believe that there is a need to maintain the same level of obligations for financial markets participants trading “crypto-assets” that act as financial instruments and those trading traditional financial instruments; otherwise, there could be a risk of introducing regulatory arbitrage based on the technology used.

Q10 - 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:

	1 (significant reduction in risks)	2 (reduction in risks)	3 (neutral)	4 (increase in risks)	5 (significant increase in risks)	N. A.
Liquidity risk in interbank market (e.g. increased volatility)						
Liquidity risk for particular credit institutions						
Liquidity risk for asset management companies						
Credit risk: household lending						

Credit risk: SME lending						
Credit risk: corporate lending						
Pro-cyclical credit provision						
Concentration risk for funds collected and invested (e.g. lack of diversification)						
Concentration risk for holders of funds (e.g. large deposits or investments held in a bank or fund)						
Undertaken insurance risk in life insurance						
Undertaken insurance risk in non-life insurance						
Operational risks for technology companies and platforms						
Operational risk for incumbent financial service providers		X				
Systemic risks (e.g. technology companies and platforms become too big, too interconnected to fail)						
Money-laundering and terrorism financing risk				X		
Other				X		

Please specify which other prudential and conduct risk(s) you expect to change with technology companies gaining significant market share in financial services in the EU in the five upcoming years:

FESE has concerns regard inter alia investor protection (specifically whether investors are aware of the level of risk involved) and firms conducting business without applying EU legislation in the context of crypto assets and ICOs.

FESE is also concerned with regard to data protection issues and their relation to DLT environments, as the immutability of this technology and impossibility to delete data prevent these systems to deal with personal data safely, and therefore do not allow for complying with the requirements laid out in GDPR. Even for permissioned DLT, confidentiality of data can only be guaranteed by keeping satellite records in traditional technologies that ensure personal information can be erasable, which does not contribute

to the overall safety of the information and adds complexity and costs to the maintenance of the system.

We suggest that the referred technology companies / FinTech companies should also be subject to the established financial regulatory requirements, when offering similar services (“same business, same risk, same rules”). They should have to comply with comparable requirements as the financial institutions active in financial markets. In case that these regulatory requirements would not be enforced, the risk from a customer perspective and regarding the stability / security of the affected markets would rise.

Q10.1 - 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:

N/A

Q11 - 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						
Liquidity risk						
Misselling of insurance products						
Misselling of investment products						
Misselling of credit products						
Misselling of pension products						
Inadequate provision of information						

Inadequate complaint and redress process and management						
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:

N/A

Q11.1 - 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:

N/A

Q12 - 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

Q12.1 - Please explain your answer to question 12, elaborating on specific areas and providing specific examples:

We suggest that the referred technology companies / FinTech companies should also be subject to the established financial regulatory requirements, when offering similar services (“same business, same risk, same rules”). They should have to comply with comparable requirements as the financial institutions active in financial markets. In case that these regulatory requirements would not be enforced, the risk from a customer perspective and regarding the stability / security of the affected markets would rise.

As previously mentioned, there is a need to maintain the same level of obligations for financial market participants trading crypto-assets that act as financial instruments and those trading traditional financial instruments. If not, there is a risk of introducing

regulatory arbitrage based on the technology used. It is important to make a classification of “digital assets” and a categorisation of “crypto-assets” at EU level to distinguish between different forms of tokens (as suggested by the Commission in the past crypto-assets consultation), notably to make a clear differentiation between “digital-assets” that act as financial instruments based on the existing MiFID II framework and use cryptology (i.e. “crypto-assets”) and “digital-assets” that do not act as a financial instruments and use cryptology (which could be defined as “crypto-tokens”). If an EU level bespoke regime for “crypto-tokens” (“digital assets” that do not act as financial instruments) could be set up (based on a set of concrete qualifications and criteria and allow for innovation in that field without compromising market integrity and investor protection), for “digital-assets” that act as financial instruments the existing MiFID II/R provisions should fully apply. Moreover, this clarification would allow to identify which existing provisions would have to be amended to clarify the legal framework to encourage the trading of “crypto-assets” that act as financial instruments, whilst preserving the principles of market integrity and investor protection embedded in law.

FESE advocates for incorporating a classification of “other digital-assets” in the existing European financial regulatory framework instead of creating a bespoke regulatory regime. Existing regulation should be supplemented where required to address technology related “new” risks. This would provide for legal certainty for market participants as they ensure high standards of investor protection and market integrity. This approach would create a level playing field for market participants and allow for innovation, while taking investor protection concerns seriously.

Additionally, as mentioned in previous questions, companies offering a crypto-asset trading platform should be subject to the same transparency regime as “traditional” trading venues. Considering ‘investment/security tokens’ as financial instruments implies that the existing regulatory frameworks also apply to crypto-asset trading platforms, allowing for a safe and transparent trading environment for both investors and issuers.

Q13 - 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):

As technologies and use-cases are currently evolving rapidly, it is difficult for any rule-setting authority to act properly, without accurate and up-to-date information about the trends in the markets. From the perspective of market participants, this can lead to uncertainty whether and how the use of any new technology and the corresponding products and services are/will be regulated. In consequence, this uncertainty on both ends can delay investments and prevent economic growth or even lead to an unordered situation, which can be at the expense of the consumers and to the detriment of trust in new technologies.

Experience from FESE Members indicates that the constant dialogue between companies/business associations and regulators/competent authorities is a beneficial solution for this problem. Companies are called to explain their concrete use-cases to authorities, in order not only to make them aware about new trends but also to support the evolvement of the regulatory framework. As a precondition, authorities must have the capacity to be involved effectively in the discussions to process the information and to give proper guidance to companies.

Q14 - 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:

From our point of view, not only the cooperation between market participants and authorities at different levels is important, but also the alignment and cooperation of authorities in different jurisdictions and at different levels as well as sectors is beneficial (horizontal and vertical cooperation).

This is especially relevant regarding the uptake of new technologies, which are getting more and more relevant for industries of different sectors. For example, so called “smart contracts” will be relevant not only for the financial sector, but also for the real-world economy. Therefore, multi-disciplinary cooperation of authorities and the usage of common standards are essential to create a coherent approach.

We think there is a need to tackle the issue of the sector specific use of technologies which have a cross-sector usage. We therefore very much welcome such cross-sectoral cooperation within the Commission e.g. between DG FISMA and DG CONNECT. It is necessary for a closer alignment of legal and technical experts to adapt the legislative frameworks appropriately for the use of new technologies.

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

Q15 - 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?

Cloud markets offer technological solutions in financial markets to innovate and should be supported. While the level of cybersecurity is already high, further advancements are required mainly in the areas of: (i) extending encryption technologies to data being in use/in memory, (ii) include end-to-end encryption wherever possible, (iii) consistent implementation of customer lockbox/consent requirements before data is accessed/shared, (iv) international agreements between the EU and other major jurisdictions (e.g. the US) to sharply regulate cross border access and activities.

Moreover, FESE would like to stress the current asymmetries of power of negotiation between customer and Cloud Services Providers (CSPs), i.e. the extraordinary efforts and time required to agree on regulatory compliant contracts with CSPs in the financial sector. Therefore, we actively support the EU’s work designing “Voluntary Standard Contract Clauses” to facilitate future negotiations. Finally, it is still problematic to procure/adopt new and innovative cloud solutions, as it takes a long time to ensure that these new services are regulatory compliant.

Q16 - What should be done at EU level to facilitate interoperable cross-border solutions for digital on-boarding?

Please rate each proposal from 1 to 5:

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
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Harmonise rules governing customer due diligence requirements in the Anti-Money Laundering legislation					X	
Harmonise rules governing the acceptable use of remote identification technologies and services in the Anti-Money Laundering legislation					X	
Broaden access for obliged entities to publicly held information (public databases and registers) to enable verification of customer identities				X		
Provide further guidance or standards in support of the customer due diligence process (e.g. detailed ID elements, eligible trusted sources; risk assessment of remote identification technologies)					X	
Facilitate the development of digital on-boarding processes, which build on the e-IDAS Regulation					X	
Facilitate cooperation between public authorities and private sector digital identity solution providers					X	
Integrate KYC attributes into e- IDAS in order to enable on- boarding						

through trusted digital identities						
Other						

Please specify what else should be done at EU level to facilitate interoperable cross-border solutions for digital on-boarding:

N/A

Q17 - What should be done at EU level to facilitate reliance by financial institutions on digital identities gathered by third parties (including by other financial institutions) and data re-use/portability?

Please rate each proposal from 1 to 5:

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
Make the rules on third party reliance in the Anti-Money Laundering legislation more specific					X	
Provide further guidance relating to reliance on third parties for carrying out identification and verification through digital means, including on issues relating to liability					X	
Promote re-use of digital identities collected for customer due diligence purposes in accordance with data protection rules					X	
Promote a universally accepted public electronic identity					X	

Define the provision of digital identities as a new private sector trust service under the supervisory regime of the eIDAS Regulation					X	
Other				X		

Please specify what else could be done at EU level to facilitate reliance by financial institutions on digital identities gathered by third parties (including by other financial institutions) and data re-use/portability:

There is an issue in the existing regime where the sharing of information between market institutions, and also between market institutions and regulators, is difficult. Currently, it is not possible for a financial institution to share in an organised way with another financial institution information on individuals or bodies (i.e. customers) that have been under their compliance review or have taken part in their due diligence processes. This could result in situations where a financial intermediary (e.g. a bank) may accept customers that have been previously identified as a risk, by another financial intermediary, for the functioning of the financial ecosystem. This lack of information sharing comes at the detriment of the functioning of the EU's capital markets, by providing a venue for risk-taking actors that may not be complying with EU law and may pose a serious risk to the stability of the financial markets without a framework that allows the identification and sharing of compliance investigation result of those concerned.

FESE sees merit in reviewing the current EU regulatory framework to allow and promote the sharing of compliance information between different financial markets institutions on their customers and their level of risk. There is a need for a framework that allows the identification and sharing of compliance investigation results of the actors concerned. A new EU compliance framework that would allow and promote the sharing of information could result in situations where financial market institutions can collaborate in their work to perform due diligence processes on the relevant customers and help focus resources collectively to avoid duplicative work which would remain exclusive to those that have performed it. This effort can be supported with the use of new financial technologies to allow for this sharing of information to happen in a regulated and supervised environment.

In regard to the Commission's proposals above, FESE sees merit for the EU to promote a universally accepted public electronic identity. The MAR regulation asks for an identification from institutional issuers for AML controls, however the type of disclosure varies from country to country. A universally accepted public electronic identity could provide for one electronic identity which could be used for issuers but could also be extended to include institutional and retail investors.

Q18 - Should one consider going beyond customer identification and develop Digital Financial Identities to facilitate switching and easier access for customers to specific financial services?

Should such Digital Financial Identities be usable and recognised throughout the EU?

Which data, where appropriate and in accordance with data protection rules, should be part of such a Digital Financial Identity, in addition to the data already required in the context of the anti-money laundering measures (e.g. data for suitability test for investment services; data for creditworthiness assessment; other data)?

Please explain your reasoning and also provide examples for each case you would find relevant.

As a more general remark, we would like to connect this question to the debate about “digital identities” and raise the issue on whether a “digital finance identity” would be a separate identity for consumers/businesses or would the “digital finance identity” a subset of a “digital identities”. From our point of view, it would not be very efficient to create multiple digital identities for consumers/businesses. Nevertheless, we would like to highlight the need for a reliable identifier for businesses in a digital economy. However, any new identifier would need to be comprehensive and include the information provided by other identifiers. Otherwise, the additional demands in the finance sector would be rather marginal. Therefore, a modular approach could be most useful, to create this new identity comprising of existing identifiers (like LEI), which are already based on existing standards.

A further increased mandatory use of identifiers over time, especially of those building the new identity, is relevant, as it allows for more standardised processes and efficiency gains. This could also promote the uptake of such standards in other non-EU jurisdictions and could have a positive effect globally.

If the use of identifiers would be mandatory in the future, the rules should clearly state that the companies are obliged to have such an identifier. As an example, MiFIR states that trading venues have to accept only members with LEI. However, the legislation does not oblige market participants to get an LEI, which leads to complexity (for reference please see MiFIR Art. 27, and in particular RTS 23).

Q19 - Would a further increased mandatory use of identifiers such as Legal Entity Identifier (LEI), Unique Transaction Identifier (UTI) and Unique Product Identifier (UPI) facilitate digital and/or automated processes in financial services?

Yes

No

Don't know / no opinion / not relevant

If yes, in which framework(s) is there the biggest potential for efficiency gains?

FESE sees merit for a further increased mandatory use of identifiers such as LEI, UTI and UPI to facilitate digital and/or automated processes in financial services. However, it is important to note that these three identifiers should not be subject to renewals for issuers and institutional market participants. These identifiers, once granted, should be permanent and not be applied on a temporary basis. Applying these identifiers in a temporary basis would subject those using identifiers to additional administrative burdens and costs to comply.

In addition, we also believe that an increased mandatory use of identifier can only be undertaken via a global regulatory approach. If the EU were to require the use of identifiers, this may disincentivize the listings and trading of non-EU companies on the EU's capital markets. It would also have an impact on liquidity, as non-EU financial intermediaries also use these identifiers to trade on EU markets. It is, therefore, important that facilitating digital and/or automated processes in financial services is not at the expense of the functioning and attractiveness of the EU's capital markets.

Q20 - 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?

As already mentioned above, sandboxes are a solution in the technical testing phase, however if the service is offered to the retail sector, the existing rules have to apply to prevent a legal free-ride problem, for example regarding GDPR or sector specific regulations. It is also key that when the service is offered to the retail sector effective protective measures are in place to prevent that issues backfire on the uptake of digital services and products.

Based on some of FESE’s members experience, the main benefit of a regulatory sandbox is its ability to gather all initiatives under a single platform which creates a venue for experimentation. This drives new and innovative projects whilst ensuring a good control of the activities, services or products which are eligible. This allows for the development of risk management practices and the identification of policies that are needed or current legislative frameworks that need reform.

Q21 - 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 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						

Please specify how else could the relevant EU authorities enhance coordination among different schemes in the EU:

N/A

Q21.1 - If necessary, please explain your reasoning and also provide examples for each case you would find relevant:

N/A

Q22 - In the EU, regulated financial services providers can scale up across the Single Market thanks to adequate licenses and passporting rights.

Do you see the need to extend the existing EU licenses passporting rights to further areas (e.g. lending) in order to support the uptake of digital finance in the EU?

FESE considers that it is important to establish key principles upon which the EU can build a role in facilitating the development and implementation of FinTech. These principles include the need for:

- The application of the same rules for the same services and risks (including across different pieces of legislation) based on the principle of technology neutrality.
- A risk-based approach built on proportionality and materiality which allows for flexibility, particularly in respect of innovation with small groups of customers (i.e. sandboxes), while ensuring a level playing field across the EU.
- A balancing of the local (country) risks alongside the benefits of cross-border markets (i.e. scalability, interoperability and passporting of services).

Furthermore, FESE believes that the existing EU licenses passporting rights could be extended to the area of the crypto custodian business. However, this requires EU wide harmonised rules.

Q23 - In your opinion, are EU level initiatives needed to avoid fragmentation in the Single Market caused by diverging national measures on ensuring non-discriminatory access to relevant technical infrastructures supporting financial services?

Please elaborate on the types of financial services and technical infrastructures where this would be relevant and on the type of potential EU initiatives you would consider relevant and helpful:

One prominent example would be the need for EU harmonised rules for outsourcing into the cloud. Currently, national measures on outsourcing hinder the usage of this technology

and the respective services. This is not only relevant for the financial sector, but for the economy as a whole.

In this regard a Trusted Third Party (TTP) is required in the financial industry to create trust in the market; and ensure investor protection. In a DLT environment, TTPs are building a bridge for the existing financial instruments in the “traditional world” via DLT solutions, increasing market integrity by e.g. “OFF-Chain to ON-Chain bridging” and guaranteeing the substance of a token, which is backed by financial instruments that is kept off ledger/chain. TTPs will play the role of a gatekeeper for future native digital assets, which will be issued directly on the chain. In this regard, a TTP will be responsible for addressing functions such as:

1. Control access/admission
2. Set rules for the participating nodes
3. Address potential conflicts of interest and KYC and AML requirements
4. Apply risk management measurers
5. Be reliable for market integrity, security and other regulatory requirements

The TTP will check standards for admission and the eligibility of an asset on chain. For instance, it will check if the asset is a security and transform it to a security token. Another role that the TTP will play would be to check smart contract codes to assess adherence with international standards. A TTP should operate within a regulatory compliant framework and adhere to the relevant existing rules and regulation.

Q24 - 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				X		

consumers						
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				X		

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

With regard to financial education and being fully aware of the EU's limited competencies in this regard, we think that financial literacy should be anchored in school lessons to a sufficient extent and on a compulsory basis for all students in Europe. A compulsory subject in financial literacy offers the necessary space for the appropriate, pedagogically meaningful treatment of the topic, also including the manifold references to other social science perspectives.

All teachers who teach the subject of financial literacy or a corresponding subject should be offered training in related didactics. Teacher training courses, for which professorships in business didactics are responsible, should be established at universities and/or universities of applied sciences. Economically sound teacher training and further training is also an essential prerequisite for the design of innovative forms of teaching, including digital formats, extracurricular learning places, practical contacts, competitions and much more.

Financial literacy and its anchoring in the school curriculums throughout the EU are urgently needed to provide equal opportunities and the equality of living conditions in Europe. The European Commission should work to ensure that everyone has secure access to appropriate and professional school education and appropriate continuing education throughout life in the context of financial literacy.

In addition, The EU can play a role to achieve improved financial education and literacy in the digital context and play a role to support current initiatives that have been launched by financial market participants or market infrastructures). This would foster the

emergence of strong innovative entrepreneurs within the EU, foster a higher participation of retail investors and strengthen the EU capital markets.

Q25 - 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?

N/A

3. Promote a well-regulated data-driven financial sector

Q26 - 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.

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?

FESE supports the strategy of the European Commission in proposing an overarching data strategy that has the potential to achieve the benefits of the single market and avoid further fragmentation. To this end, we believe a harmonised European approach is preferable to speed up the use and investment in technologies and avoid lagging behind other jurisdictions. Even if self-regulatory approaches could be supported, these could take an excessive amount of time to be deployed and have risks to create fragmentation in a sector where harmonisation is favoured. Therefore, we consider that regulators possess the appropriate tools to act quickly and effectively to prepare a harmonised approach in the form of legislation. Nevertheless, caution should be exercised and legislation should be designed proportionally to the existing business environment.

It is important to find a careful balance between 'data privacy' and the use of data for public interests. Society can benefit from the larger use of data from various sources, allowing for analysis and monitoring for research and developments purposes. However, not all data can be considered as a 'common good' and it is fundamental to consider the incentives that the data originator needs to have in order to produce innovative and valuable data. Companies should be allowed to 'upgrade' raw data and develop products/services based on these sources. It is, therefore, important not to create disincentives towards data collection/standardisation and product developments, i.e. allowing for commercialisation of data. Considering the above, FESE sees the need for a clear and concise definition of "data" in the form of a classification framework. As such, we would propose the following:

6. **Source of data.** It makes a significant difference whether data is originated by (i) private individuals, (ii) companies, and (iii) if data is created in the retail market (C2B) vs wholesale data (B2B).
7. **Ownership of data.** There could be cases where the originator of data does not correspond to the owner of the same data. For example, Exchanges have ownership of data through their market data licensing agreements (i.e. contractual ownership).
8. **Data quality.** Differentiating between pure 'raw' data and a form of data that is refined and upgraded.
9. **Data value.** Meaning, distinguishing between commercially valuable data that has the potential to be monetisable, and data that is not commercially valuable.
10. **Pooling of data.** Having the possibility of commercialisation for making pooled data readable/available.

11. **Availability.** Data sets can be either free for distribution, linked to a fee, for user subscription, etc.
12. **Timestamp.** Which would be used also as a measure to determine when data lose its commercially valuable characteristic after a certain amount of time.
13. **Data Sensitivity.** To classify if the data has to be considered public or highly restricted.
- Regarding the “EU data spaces” proposal, prudence should be exercised. While a harmonised approach across different industry sectors might be attractive, we believe this option would likely result in an excessively complex project where the desired innovation will eventually not be achieved. In this sense, a competitive approach is preferable. On the same line, ‘standardisation of data’ is a task better performed by industry bodies who possess the necessary technical knowledge and work on common standards on a voluntary basis.

Q27 - 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						
Disclosure regarding retail investment products				X		
Other				X		

Please specify in which other area(s) you would see the need to facilitate integrated access to these data in the EU:

FESE supports measures that would facilitate sharing of company information, the provision of information to investors, and that give companies visibility on a European basis. One such proposal currently being discussed in the creation of an EU Single Access

Point, in considering this, it will be important to ensure that any reporting requirement targets information that is useful. While this idea is relatively new, other similar projects already exist. Notably the European Financial Transparency Gateway (EFTG) project where Officially Appointed Mechanisms that handle the financial documents received from European companies have worked on a more advanced EEAP system over the last two years. There is also work ongoing to create European business register. Ideally, an inventory of ongoing similar projects should take place in order to get a better overview and merge those projects that have similar objectives.

FESE considers that an EU Single Access Point should include information disclosed by companies listed on Regulated Markets, MTFs and SME Growth Markets (SME GMs). The Single Access Point would facilitate access and availability of data about companies and as such serve as a basis for investors' assessments. Moreover, also the CMU High-Level Forum in their final report call for the establishment of a EU Single Access Point to companies' public financial and non-financial information, as well as other financial product or activity-relevant public information.

To increase integration but keep the project, efficient and manageable in terms of administrative burden of data processing, FESE believes that the scope should be limited to disclosures stemming from the Transparency Directive or, in the case of issuers on SME GMs, the relevant disclosure documentation required. Should it extend to other requirements, it is important to consider that, depending on how it is implemented, this may introduce considerable extra costs for listed companies compared to non-listed ones as many reporting obligations do not apply to private companies and this would be a concern.

Please note that as the scope of the NFRD is, and should be, for both listed and non-listed companies in regards to the rules regarding disclosure, the reporting, storage and access to information. Therefore, if the National Competent Authorities' supervisory databases are leveraged for non-financial information, they will also need to be adapted accordingly to ensure the supervision of companies' compliance with the disclosure framework. There are certain structures already in place for listed companies which can be used as a model for the information provided by non-listed companies, such as the Officially Appointed Storage Mechanisms under the Transparency Directive, but these structures may not be suitable straight off for the broader scope of companies within the NFRD.

We believe that digitisation could help to expand and improve the reporting. The handling of science-based targets, climate stress tests, scenario analyses and disclosure by financial institutions of the compatibility of their portfolios with the reduction targets of the Paris Agreement on Climate Change will possibly be easier. This kind of forward-looking sustainability data is an important prerequisite for improved assessments of the risks and opportunities associated with the future viability of companies and their external effects on the environment.

Q28 - 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.
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Standardised (e.g. XML) and machine-readable format						
Further development of the European Financial Transparency Gateway, federating existing public databases with a Single EU access point						
Application Programming Interfaces to access databases						
Public EU databases						
Other				X		

Please specify what else would be needed to make these data easily usable across the EU:

The questions asked in the above table are too generic and answers would depend on each type of information concerned.

Q29 - 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?

FESE shares the Commission's principle that data subjects must have full control over their data. This includes what type of their data that can be shared and how the users of such data need consent from the data owners prior to it being shared.

FESE favours the sharing of data relevant to financial services with other financial services providers, notably for sectors that provide innovative products or services (such as biotech). Granting consent to such information-sharing should be clarified within the legislation to make sharing data practices easier to financial services providers to incentivise and facilitate the uptake of better offers for financial products and services. Financial services providers need to know the type of data they can share and how they can control it once shared. In particular, consumers would be more likely to favour sharing of their data if they have control over who can access their data as well as the use of such data.

Q30 - 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.
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						X
New opportunities for incumbent financial services 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				X		
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If you see other benefits of implementing an open finance policy in the EU, please specify and explain:

FESE understands that the Commission is reflecting on implementing a policy in the area of financial services inspired by the principle of open finance (i.e. that data subjects must have “full control” over their data). However, in order for the policy to be successful, we believe that the Commission should provide for an objective in undertaking an ‘open finance’ approach, as it seems the principle is primarily linked to a market practice rather than a specific goal.

If the Commission’s objective is to facilitate data sharing practices among financial market participants, by enabling for better oversight and control over their data - without imposing any additional costs or administrative burdens to financial market participants - we believe that this has the potential to lead to more innovative and convenient services for the benefit of either consumers or investors.

Q31 - In your opinion, what could be the main risks 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.
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		
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If you see other risks of implementing an open finance policy in the EU, please specify and explain:

One additional concern is touching upon the trust of consumers and clients regarding the safety of their data. As it stands, if an open finance policy would be implemented, currently most of collected/used data would be processed by non-EU CSP's. Therefore, if an open finance policy would be implemented, guidance on this issue would be welcomed in order to create certainty among market participants. Nevertheless, many FESE Members use cloud services in their operations. We acknowledge the limited offer of providers but to favour innovation, is crucial that the EU market remains open to non-EU cloud providers.

Q32 - In your opinion, what safeguards would be necessary to mitigate these risks?

Clear guidance for companies based on existing rules would be beneficial. Further, there is a clear need for EU rules covering cloud outsourcing, which on the one hand promotes the uptake of the technology to make the financial industry more competitive and on the other hand incorporates existing standards, which are already used by the industry.

In addition, a strengthened EU regulatory framework that would allow and promote the sharing of compliance information between different financial market institutions on their customers and their level of risk. There is a need for a framework that allows the identification and sharing of compliance investigation results of the actors concerned.

A new EU compliance framework that would allow and promote the sharing of information could result in situations where financial market institutions can collaborate in their work to perform due diligence processes on the relevant customers and help focus resources collectively to avoid duplicative work which would remain exclusive to those that have performed it.

This effort can be supported with the use of new financial technologies to allow for this sharing of information to happen in a regulated and supervised environment.

Q33 - 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						
Consumer credit						
SME credit						

Mortgages						
Retail investment products (e.g. securities accounts)						
Non-life insurance products (e.g. motor, home...)						
Life insurance products						
Pension products						
Other						

If you see other financial products that would benefit of an open finance policy, please specify and explain:

N/A

Q33.1 - Please explain your answer to question 33 and give examples for each category:

N/A

Q34 - 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:

The personal data that would be the most relevant when developing open finance services based on customer consent would be their personal email and telephone number. This applies to all sectors.

Q35 - 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.
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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 shared in real-time (e.g. standardised APIs)					X	
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					X	
Clarity on the terms and conditions under which data can be shared between financial services providers (e.g. fees)					X	
Interoperability across sectors						X
Clarity on the way data shared will be used					X	
Introduction of mandatory data sharing beyond PSD2 in the framework of EU regulatory regime						X
If mandatory data sharing is considered, making data available free of cost for the recipient	X					

Other				X		
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Please specify what other element(s) should be considered to implement an open finance policy:

FESE believes that there should be more clarity on the Commission’s “open finance” policy and which objective this policy aims to achieve. We see merit for data subjects to have full control of their data, but this should be followed with an objective to incentivize data-sharing between financial market participants, and between financial market participants and regulators. There should be clarity on the entities that could be covered by this practice. Sectors that provide innovative products or services could benefit from such a policy. The healthcare and science sectors especially would benefit from data-sharing practices, with a framework that would provide protection from the risks identified in the previous questions.

FESE would like to emphasise that the terms and conditions in which data can be shared have to be clear for financial market participants to adhere to in an ‘open finance’ policy to ultimately benefit the uptake of innovation services.

Q36 - 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

Q36.1 - If you/your firm do/does already deploy AI based services in a production environment in the EU, please specify for which applications?

N/A

Q37 - Do you encounter any policy or regulatory issues with your use of AI?
Have you refrained from putting AI based services in production as a result of regulatory requirements or due to legal uncertainty?

There are difficulties with regard of the use of data due to restrictive EU regulations (e.g. banking secrecy versus developing big data solutions to fight anti-money-laundering). We see the need for clarification to comply with existing rules and simultaneously to develop further solutions (e.g. via criteria for the use of anonymised or pseudonymised data in order to facilitate broader analysis). AI needs per se more data and should be allowed to use data on an aggregated level. It is important to find a careful balance between data privacy, GDPR, and use of data for private interests.

Q38 - 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?

N/A

Q39 - 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. Financial industry

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
1.1. Lack of legal clarity on certain horizontal EU rules				X		
1.2. Lack of legal clarity on certain sector-specific EU rules				X		
1.3. Lack of skills to develop such models			X			
1.4. Lack of understanding from and oversight by the supervisory authorities			X			
1.5. Concentration risks				X		
1.6. Other				X		

Please specify what other main challenge(s) or risk(s) the increased use of AI- based models is likely to raise for the financial industry:

FESE would support a certification of high-risk AI applications. Further, for non-high-risk AI applications it should be allowed for companies to receive a voluntary certification.

Self-certification: We are opposing “self-certification” systems in general, as they lead to a lot of certificates and blurring the information for end users.

Risk Assessment: In general, any AI application must have clear and well-designed rules/objectives to minimize the associated risks. It is crucial that the necessary capacities are in place to assess the AI, to ensure the efficiency to support the launch of AI products.

Please refer to our response to the Commission consultation on AI for a detailed view on the subject.

2. 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						
2.2. Lack of transparency on how the outcome has been produced						
2.3. Lack of understanding on how the outcome has been produced						
2.4. Difficult to challenge a specific outcome						
2.5. Biases and/or exploitative profiling						
2.6. Financial exclusion						
2.7. Algorithm-based behavioural manipulation (e.g. collusion and other coordinated firm behaviour)						
2.8. Loss of privacy						
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:

N/A

3. Supervisory authorities

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
3.1. Lack of expertise in understanding more complex AI-based models used by the supervised entities						
3.2. Lack of clarity in explainability requirements, which may lead to reject these models						
3.3. Lack of adequate coordination with other authorities (e.g. data protection)						
3.4. Biases						
3.5. Other				X		

Please specify what other main challenge(s) or risk(s) the increased use of AI- based models is likely to raise for the supervisory authorities:

In order to achieve a successful use of AI, we are in favour to build upon already existing rules and regulations in general. Not only would this create certainty amongst market participants but would also be more efficient for supervisory authorities. In general, it might be useful to ask whether a completely “new”, and therefore unregulated, task is performed by an AI application in contrast to an already “known”, and therefore regulated task. In the latter case, adjustments to the existing framework might be sufficient. For example, if a company can prove that it fulfilled all requirements, it should not be held liable because of “negligence”.

Need to highlight the differences between AI applications operating in “open” or “closed” systems. In open systems, the AI does not possess the required ability to cover all eventualities, as training data is limited. Therefore, humans should be required as final decision-making actors. This is also true for high-risk applications in closed systems. However, reinforcement learning is designed to work in open systems, leading to an increased number of eventualities covered by AI. A revision of the regulatory framework is necessary, taking into account the impacted sectors, in order to review/regulate, inter alia, the responsibility that would be required for the use of these systems, their imputation (to which multiple agents involved in the design, release, use), during what phases (release of the product on the market and afterwards), any new risks derive from learning which were not foreseen in the marketing moment and they appear a posteriori.

Q40 - 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				X		

Please specify what other way(s) could be best to address these new issues:

As mentioned above, it might be useful to ask whether a completely “new”, and therefore unregulated, task is performed by an AI application in contrast to an already “known”, and therefore regulated task. In the latter case, adjustments to the existing framework might be sufficient. For example, if a company can prove that it fulfilled all requirements, it should not be held liable because of “negligence”.

It is important to allow for innovation. Assessment requirements need to be economically feasible (time, costs, efforts, bureaucracy) in order not to hinder innovation.

Q41 - 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						

Please specify what are the other main barrier(s) for new providers of RegTech solutions to scale up in the Single Market:

N/A

Financial service providers:

	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 trust in newly developed solutions				X		
Lack of harmonised approach to RegTech within the EU				X		
Other						

Please specify what are the other main barrier(s) for new Financial service providers solutions to scale up in the Single Market:

N/A

Q42 - In your opinion, are initiatives needed at EU level to support the deployment of these solutions, ensure convergence among different authorities and enable RegTech to scale up in the Single Market?

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

Q42.1 - Please explain your answer to question 42 and, if necessary, please explain your reasoning and provide examples:

N/A

Q43 - In your opinion, which parts of financial services legislation would benefit the most from being translated into machine-executable form?

Please specify what are the potential benefits and risks associated with machine-executable financial services legislation:

FESE believes that market transaction surveillance and Ultimate Beneficial Owners (UBOs) surveillance services would benefit the most from being translated into machine-executable form, and where outcomes can be shared between financial institutions.

Q44 - The Commission is working on standardising concept definitions and reporting obligations across the whole EU financial services legislation.

Do you see additional initiatives that it should take to support a move towards a fully digitalised supervisory approach in the area of financial services?

Please explain your reasoning and provide examples if needed:

As mentioned above, in considering proposals for harmonising standards and establishing databases, it will be important to ensure that any reporting requirement targets information that is useful. The costs linked to a lack of clarity in the regulation should not be underestimated as risk averse issuers (in particular SMEs) will consider the regulatory risks in choosing their financing options. SMEs would benefit from pooling the information they disclose at a one-stop shop: The SMEs' visibility would be increased and barriers to access capital reduced, overall ensuring and increasing their competitiveness. A Single Access Point could also serve as a starting point for the establishment of a European database for SME-research.

Moreover, while some harmonisation of information may be required, this should be done in a proportional manner that does not negatively impact issuers, in general, and SMEs, in particular, that may lack resources to report according to certain standards. It should therefore be considered that there is value added in pooling information in one place, even where the information may not be exactly the same.

There will need to be a differentiation between SME GM and Regulated Market issuers, where, while they are both required to disclose similar information, they are still subject to different requirements. We would not support issuers on SME GMs being subject to the same requirements as issuers on Regulated Markets under the Transparency Directive.

Q45 - What are the potential benefits and drawbacks of a stronger use of supervisory data combined with other publicly available data (e.g. social media data) for effective supervision? Should the Please explain your reasoning and provide examples if needed:

N/A

4. Broader issues

Q46 - How could the financial sector in the EU contribute to funding the digital transition in the EU? Are there any specific barriers preventing the sector from providing such funding?

Are there specific measures that should then be taken at EU level in this respect?

N/A

Q47 - Are there specific measures needed at EU level to ensure that the digital transformation of the European financial sector is environmentally sustainable?

N/A