

Consultation Response

European Commission Public Consultation on 'A New Digital Finance Strategy for Europe / FinTech Action Plan'

26th June 2020

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on **A NEW DIGITAL FINANCE STRATEGY FOR EUROPE / FINTECH ACTION PLAN**. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is registered on the EU Transparency Register, registration number 65110063986-76.

Our high-level response to the consultation and answers to the individual questions is provided below.

I. Executive Summary

AFME welcomes the European Commission's public consultation on '**A New Digital Finance Strategy for Europe / FinTech Action Plan**' (the "**CP**"). We believe that this CP is a positive effort to further deepen the European Single Market for digital financial services, shape a European financial services regulatory framework which is more supportive of innovation, and enhance the resiliency of the financial system.

AFME recognises the increasing importance of digitisation for financial services and the wider-economy, and the need to continue supporting the development of digital finance in the EU. The European Commission, through a combination of policies (e.g. financial services specific and horizontal), has increasingly embraced digitisation and innovation for the financial sector over the past five years. In a fast-evolving and competitive environment, Europe must continue to set ambitious goals for the adoption and scaling-up of innovative technologies and ensure consumers and firms remain at the forefront of global trends.

Overall, AFME is supportive of the proposals set out in the CP and the three focus areas for policy over the next five years (1. ensuring that the EU financial services regulatory framework is fit for the digital age; 2. enabling consumers and firms to reap the opportunities offered by the EU-wide Single Market for digital financial services; and 3. promoting a data-driven financial sector for the benefit of EU consumers and firms).

These priorities will support the further development of an EU financial services regulatory framework that is technology neutral and innovation-friendly, reduces fragmentation of the European Single Market for digital financial services, and increases the uptake of innovative technologies in the financial sector.

However, while it is crucial the European Commission continues to deliver on a Digital Finance Strategy agenda for the future of Europe, it is equally important that more frequent evaluations are conducted to ensure policies implemented meet their intended objective and current needs. The current wide-scale public and private sector responses to COVID19 is likely to have profound repercussions, and the EU may find it beneficial to evaluate if the policy priorities developed in 2019/2020 are still adequate or if potential adjustments may be required.

To support this CP we have provided the following four recommendations which **aim to support the Commission's efforts in ensuring: the EU regulatory framework for innovative technologies in wholesale financial services supports innovation; a competitive level playing field; and the future competitiveness of the EU.**

- ***AFME recommends the Commission ensure the EU regulatory framework for innovative technologies is globally consistent, wherever possible, to support EU competitiveness and sufficiently mitigate risks.***
 - AFME recommends the European Commission take into consideration that the EU financial sector is part of a globally interconnected market of clients, competitors, suppliers. Therefore, any EU specific legislation or policy, that is not globally consistent, risks reducing the attractiveness of Europe as a global hub for innovation, compared to other jurisdictions, potentially isolating the EU from a global market of innovators. This may potentially make it more difficult for firms to operate cross-border, thus reducing the competitiveness of the EU and its potential role in servicing global wholesale markets. AFME believes that maintaining Europe's attractiveness and competitiveness for innovative technologies will further the accomplishment of key European projects such as the EU Single Market and Capital Markets Union.
 - A globally consistent regulatory framework is critical for maintaining financial stability and protecting end users, to address gaps in supervision across jurisdictions that could create systemic vulnerabilities, as the use of innovative technologies continues to grow. Any European developments on the regulation of innovative technologies should be consistent with on-going global risk assessments or initiatives (e.g. G7/G20, FSB, BIS, IOSCO) and adhere to global standards, to maintain interoperability. AFME supports the development of technology standards and/or of interoperable standards amongst innovative technologies, that will enable their efficient use in wholesale markets, and beyond.
 - Alongside global consistency of regulatory frameworks, AFME believes the testing of innovative technologies across multiple jurisdictions should be accelerated in the EU. This will ensure adequate and consistent levels of knowledge and understanding of innovation subject matters globally. Efforts should focus on facilitating knowledge sharing, education between regulators and a wider network of market participants, and joint work on policy and regulatory requirements applied to innovative technologies, ensuring they are safely implemented. AFME is supportive of global initiatives such as the BIS Innovation hub¹, the Global Financial Innovation Network (GFIN)² and the International Association for Trusted Blockchain Applications (INATBA)³, and encourages the European Forum for Innovation Facilitators (EFIF)⁴ to take part in relevant forums for the sharing of lessons learned related to innovative technologies.
- ***To establish a truly accommodative regulatory framework for technology innovation, AFME recommends the European Commission develop a clear strategic vision and make progress on increasing the uptake of innovative technologies in the financial sector.***
 - First, AFME recommends the European Commission develop a clear strategic vision for the digital transformation of the EU financial sector. Currently it is not clear how the various policies initiated by the European Commission in 2020 (e.g. a digital operational resilience framework for financial services⁵, an EU framework for markets in crypto-assets⁶, a European strategy for data⁷, a white paper on artificial intelligence⁸, standard contractual clauses for cloud use by financial institutions⁹), complement/interact with each other or build on from previous achievements (e.g. FinTech action plan¹⁰, ROFIEG report¹¹). In particular, similar questions are repeated in different consultations (e.g. on data, artificial intelligence, third party oversight), thus creating confusion. Similarly, it is not explicit how the different Directorate Generals (DGs) may collaborate or oversee the policies proposed, in particular if horizontal policies that apply across sectors, interact with specific financial services requirements.
 - Second, AFME recommends the European Commission develop a 'roadmap' to support the strategic vision and incrementally deliver a truly accommodative regulatory framework for

¹ <https://www.bis.org/topic/fintech/hub.htm>

² <https://www.thegfin.com/>

³ <https://inatba.org/>

⁴ <https://esas-joint-committee.europa.eu/Pages/Activities/EFIF/European-Forum-for-Innovation-Facilitators.aspx>

⁵ 'Digital Operational Resilience Framework for financial services: Making the EU financial sector more secure' (2019).

⁶ 'On an EU framework for markets in crypto-assets' (2019).

⁷ 'A European strategy for data' (2020).

⁸ 'White Paper on Artificial Intelligence - a European Approach' (2020).

⁹ 'Cloud Service Providers consultation meeting on standard contractual clauses for cloud use by financial institutions' (2020).

¹⁰ 'FinTech action plan: For a more competitive and innovative European financial sector' (2018).

¹¹ 'Expert Group on Regulatory Obstacles to Financial Innovation: 30 Recommendations on Regulation, Innovation and Finance' (2019).

technology innovation. A 'roadmap' would provide additional clarity and support the coordination of efforts between various European market participants and EU/Member State level authorities, fostering common understanding of EU shared goals, removing duplicative or potentially conflicting European policy initiatives.

- Third, AFME recommends the European Commission identify a list of targeted actions, based on a thorough analysis of past and current legislative proposals, that will deliver on the roadmap and strategic vision in the near to medium term. Actions should focus on: i/ removing barriers to innovation; ii/ addressing market failures; iii/ evolving the EU regulatory framework to become fit for the digital age. Actions also should be measurable and reviewed periodically, when relevant, to assess their effectiveness against the goals developed.
 - Finally, AFME recommends the European Commission carefully assess the impact of current and proposed legislation on the competitiveness of financial services firms. EU legislations such as the EBA Material Risk Takers¹², the PSD2¹³, the prudential treatment of innovation for banks, rules and regulations requiring wet signatures/processing or receiving physical documents/in person voting and AGMs, may place an additional burden (such as higher operational costs or barriers to innovation) compared to other market participants, thus reducing financial services firms' ability to innovate and competitiveness over time. The Commission could conduct more frequent reviews of policies implemented, with the support of market participants, to assess if policies developed have indeed met their objectives
 - AFME believes that these four recommendations would support prioritisation of efforts and target areas with greatest benefits and impact, to deliver on the goals developed by the European Commission.
- ***The EU regulatory framework for supporting technology adoption and innovation must remain technology neutral and principles based.***
 - In line with global standardisation, technology neutrality and principles-based legislation provide the flexibility needed for firms to implement appropriate control, in a risk based and proportionate manner, that meet the continuously evolving nature of technology. Firms of different size and complexity may present different risks, and therefore implement different controls, while mitigating risks and demonstrating similar outcomes. AFME believes that the introduction of prescriptive and detailed legislative requirements are at risk of becoming obsolete in the short to medium term, as innovation in technology and new services continues at pace.
 - AFME recommends the legislative proposals focus on how firms can demonstrate outcomes that mitigate risks and are aligned with regulatory expectations. Technology neutrality and principles-based legislation would also align with the final guidance developed in the European Banking Authority 'Fintech Roadmap'¹⁴.
 - ***A competitive level-playing field is needed to ensure all firms involved in financial services adhere to the 'same risk, same activity, same regulation'.***
 - While AFME is supportive of innovation and increased market competition, a level playing field for all financial services firms is needed to manage and appropriately mitigate any risks to consumers and financial stability. A level-playing field should be maintained based on the principle of 'same risk, same activity, same regulation'.
 - This should include the applicability of existing regulation to other entities who may be currently outside the financial services regulatory framework and may be conducting the same or similar activities as regulated financial institutions. In such cases, these entities should also be included, where applicable, within the financial services regulatory perimeter to mitigate any risks that such activity may entail, to protect investors/consumers, market integrity and financial stability. For instance, to the extent a part of a technology firm provides financial products or services, akin to a regulated financial institution, that part of the firm should be regulated in the same way as an incumbent counterpart.
 - This could also include alleviating parts of the prudential, regulatory, and supervisory framework of non-core banking businesses. Currently the consolidated application of prudential requirements

¹² EBA '[Regulatory Technical Standards for the definition of material risk takers for remuneration purposes](#)'

¹³ European Commission '[Payment Services Directive \(PSD2\)](#)'

¹⁴ EBA '[The EBA's Fintech Roadmap](#)' (2018). See technology neutrality, flexibility and proportionality (p. 11).

applies to all entities within the banking group. As a result, in performing these non-core activities (i.e. not funded with deposits), banks have a higher cost and time-to-market than their technology counterparts, subject to activity-specific regulation.

- Moreover, we believe further examinations are required regarding situations where, due to regulatory requirements, organisations have had to bear the costs for the business models of their competitors (for instance where PSD2 has given rise to organisations being able to develop banking services without the cost of maintaining banking technology infrastructure). These initiatives could limit firm's incentive and ability to invest in innovative technologies but may also have negative implications on their ability to maintain and continuously improve their technical infrastructure and business model. Similarly, firms should be able to retain elaborated/inferred data insights they generate, under this level playing field. As this data is the product of the intellectual property of an organisation, to continue encouraging research, development and innovation, organisations must be able to retain this value.

AFME welcomes the opportunity to discuss the recommendations made in response to this CP and to continue to identify opportunities to support the Commission in this important initiative.

II. Comments to the sections of the public consultation

Introduction

Question	In scope/Out of scope	Response
1	AFME to respond	<ul style="list-style-type: none"> • The Expert Group on Regulatory Obstacles to Financial Innovation (ROFIEG) published in December 2019 a report setting out to identify regulatory obstacles to financial innovation. The report made 30 recommendations to address these issues and create an accommodative framework for technology-enabled provision of financial services ('FinTech') in the EU. • AFME supports the conclusions brought forward by the ROFIEG report and establishing priorities in regulating FinTech¹⁵: <ul style="list-style-type: none"> ○ Explainability and interpretability of technology, especially AI, as measures to protect consumers and businesses and facilitate supervision, or to meet supervisory expectations. ○ Creation of a regulatory framework built on the principle that activities that create the same risks should be governed by the same rules, with a view to ensuring adequate regulation and supervision and maintaining a level playing field. ○ Ending regulatory fragmentation, especially in the area of customer due diligence/KYC, as an important step towards creating a level playing field. ○ Preventing unfair treatment of competing downstream services by large, vertically integrated platforms, in order to strengthen innovation and maintain consumer choices. ○ Strengthening framework for access to, processing and sharing of data, in order to promote innovation and competition and establish a level playing field amongst actors. ○ All recommendations are best pursued by regulation that is neutral and international cooperation in setting relevant standards, ideally leading to interoperability.

¹⁵ ['30 Recommendations on regulation, innovation and finance'](#) (2019). See Establishing priorities in regulating FinTech (p. 95-96).

2	AFME to respond	<ul style="list-style-type: none"> • AFME agrees with the benefits of an accommodative EU regulatory framework for new digital technology driven services and business models, as identified in the ROFIEG report: <ul style="list-style-type: none"> ○ Achieve a high degree of security, resilience and client/consumer protection (e.g. including data protection); ○ Enable market participants to provide financial services at lower cost; ○ Enable market participants to develop a broader range of products and services, ○ Open certain products or services to consumers or businesses that were previously excluded; and ○ Achieve more effective regulation and compliance of relevant market players. • Similarly, in line with the ROFIEG report, AFME agrees that it is important to distinguish risks between those that are ‘traditional risks’, linked to the provision financial service, versus those that are specific to the technology itself (https://ec.europa.eu/info/publications/191113-report-expert-group-regulatory-obstacles-financial-innovation_en p.11).
3	AFME to respond	Yes
3.1	AFME to respond	<ul style="list-style-type: none"> • Other areas meriting attention from the Commission: • AFME recommends the Commission continue to ensure the EU regulatory framework for innovative technologies is globally consistent, wherever possible, to sufficiently mitigate risks and support the competitiveness of firms. <ul style="list-style-type: none"> ○ A globally consistent regulatory framework is critical for maintaining financial stability and protecting end users, to address gaps in supervision across jurisdictions that could create systemic vulnerabilities, as the use of innovative technologies continues to grow. Any European developments on the regulation of innovative technologies should be consistent with on-going global risk assessments or initiatives (e.g. G7/G20, FSB, BIS, IOSCO). ○ Alongside global consistency of regulatory frameworks, AFME believes the testing of innovative technologies across multiple jurisdictions, should be accelerated in the EU to ensure adequate and consistent levels of knowledge and understanding of innovation subject matter, globally. Efforts should focus on facilitating knowledge sharing, education between regulators and a wider network of market participants, and joint work on policy and regulatory requirements applied to innovative technologies. AFME is supportive of global initiatives such as the BIS Innovation hub, the Global Financial Innovation Network (GFIN) or the International Association for Trusted Blockchain Applications (INATBA) and encourages the European Forum for Innovation Facilitators (EFIF) to take part in relevant forums for the sharing of lessons learned related to innovative technologies. ○ Finally, AFME recommends the European Commission take into consideration, that the EU financial sector is part of a globally interconnected market of client, competitors, suppliers. Therefore, any EU specific legislation, that is not globally consistent, risks stifling the competitiveness of EU firms compared to peers in other jurisdictions. • To establish a truly accommodative regulatory framework for technology innovation, AFME has four recommendations for the European Commission: <ul style="list-style-type: none"> ○ First, AFME recommends the European Commission develop a clear strategic vision for the digital transformation of the EU financial sector. Currently it is not clear how the various policies initiated by the European Commission in 2020 (e.g. a digital operational resilience

		<p>framework for financial services, an EU framework for markets in crypto-assets, a European strategy for data, a white paper on artificial intelligence, standard contractual clauses for cloud use by financial institutions), complement/interact with each other or build on from previous achievements (e.g. FinTech action plan, ROFIEG report). In particular, similar questions are repeated in different consultations (e.g. on data, artificial intelligence, third party oversight), thus creating confusion. Similarly, it is not explicit how the different Directorate Generals (DGs) may collaborate or oversee the policies proposed, in particular if horizontal policies that apply across sectors, interact with specific financial services requirements.</p> <ul style="list-style-type: none"> ○ Second, AFME recommends the European Commission develop a 'roadmap' to deliver on the strategic vision and incrementally deliver a truly accommodative regulatory framework for technology innovation. A 'roadmap' would provide additional clarity and support the coordination of efforts between various European actors, such as market participants and EU/Member State level actors, fostering common understanding of EU shared goals, removing duplicative or potentially conflicting European policy initiatives. ○ Third, AFME recommends the European Commission identifies a list of targeted actions, based on a thorough analysis of past and current legislative proposals, that will deliver on the roadmap and strategic vision in the near to medium term. Actions should focus on: i/ removing barriers to innovation; ii/ addressing market failures; iii/ evolving the EU regulatory framework to become fit for the digital age. Actions also should be measurable and regularly reviewed to assess their effectiveness against the goals developed. ○ Finally, AFME recommends the European Commission carefully assess the impact of current and proposed legislation on the competitiveness of financial firms. EU legislations such as the EBA Material Risk Takers, the PSD2 or the prudential treatment of innovation for banks, may place an additional burden (such as higher operational costs or barriers to innovation) compared to other market participants, thus reducing financial services firms' ability to innovate and competitiveness over time. The Commission could conduct more frequent reviews of policies implemented, with the support of market actors, to assess if policies developed have indeed met their objectives. ○ AFME believes that these four recommendations would support prioritisation of efforts and target areas with greatest benefits and impact, to deliver on the goals developed by the European Commission.
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1. Ensuring a technology-neutral and innovation friendly EU financial services regulatory framework

Question	Comment	Reasoning
4	AFME to respond	No
4.1	AFME to respond	<ul style="list-style-type: none"> • While the EU regulatory framework is 'technology neutral', AFME believes the EU regulatory framework for innovative technologies is not innovation friendly. • The consolidated application of prudential requirements implies that, even if some of the services offered by banks can be conducted by subsidiaries that are not funded with deposits, authorities extend the application of prudential requirements to all entities within the banking group. As a result, in performing these non-core activities (i.e. not funded with deposits), banks

		<p>have to account for the additional burden of prudential regulation and supervision, regardless of the activity it is conducting. The application of prudential rules also increases the cost and time-to-market of banks' digital transformation processes (e.g. imposing stringent internal controls and risk management frameworks), which add additional challenges for talent attraction and retention.</p> <ul style="list-style-type: none"> • The EU regulatory framework for innovation technologies is fragmented, due to divergent implementations and interpretations by Member State National Competent Authorities/Supervisory authorities, of EU guidance and requirements. This fragmentation adds additional complexity and cost for firms: <ul style="list-style-type: none"> ○ Outsourcing: the European Banking Authority (EBA) Guidelines on Outsourcing Arrangements¹⁶, which have significant requirements related to the adoption of cloud computing, have been implemented by national competent authorities (NCAs). Whilst welcome by the industry, the guidelines require further support to harmonise differences between NCA interpretations, representing a hurdle to financial institutions continued adoption of cloud solutions. For example, the Luxembourg Commission de Surveillance du Secteur Financier (CSSF) Cloud Circular imposes notification and approval requirements for the use of cloud platforms constituting “material activities”¹⁷. However, the EBA requires firms to undertake their own assessment of whether an outsourcing agreement is “critical or important” (i.e., material), and there is no set notification that is specific to cloud. Further, the circular also includes private cloud adoption within the circular requirements, which deviates from the approaches taken by other NCAs. ○ Digital on-boarding: Procedure differ in EU countries for digital on-boarding, as each country requires different national identification requirements (i.e. the relevant ID card or any other particular documentation, a corporate document that assures customer identity, etc.). ○ Electronic signatures: Procedures to conclude contracts by electronic signature vary among EU Member States. Rules and regulations requiring wet signatures/processing or receiving physical documents/in person voting and AGMs, have caused delays to financial services operations during COVID and should be reviewed/addressed by EU policy makers going forward. • The competitive level playing field for innovative technologies requires further examination in the EU: <ul style="list-style-type: none"> ○ PSD2: We believe that further examination is needed regarding situations where, due to regulatory requirements, organisations have had to bear the costs for the business models of their competitors (for instance where PSD2¹⁸ has given rise to organisations being able to develop banking services without the cost of maintaining banking technology infrastructure). These initiatives could limit firm's incentive and ability to invest in innovative technologies but may also have negative implications on their ability to maintain and continuously improve their technical infrastructure and business model. • The EU regulatory framework for innovative technologies must remain technology neutral and principles-based: <ul style="list-style-type: none"> ○ PSD2: Prescriptive and detailed requirements for Strong Customer Authentication (SCA) rules in PSD2, may improve overall security levels,
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¹⁶ EBA ‘[Guidelines on Outsourcing Arrangements](#)’ (2018)

¹⁷ https://www.cssf.lu/fileadmin/files/Lois_reglements/Circulaires/Hors_blanchiment_terrorisme/cssf19_714eng.pdf

¹⁸ [Payment Services \(PSD2\) Directive EU 2015/2366](#)

		<p>at the same time the application of SCA when accessing information from a payment account or when certain limits have been reached (for instance for contactless transactions), raise barriers to innovation without necessarily reducing the risk posed by those operations.</p> <ul style="list-style-type: none"> • Finally, as stated in the ROFIEG report¹⁹, 'the current EU legal and regulatory framework is built around traditional bilateral understanding of outsourcing and account relationships as building blocks of the financial market. Wherever services, products or functions will in the future be delivered using a distributed setting (e.g. in asset settlement, payment, crypto-assets, etc.), the current legal and regulatory framework will not apply smoothly.' ○ The report further elaborates (p.50-51) on where the application of specific regulation will need to be considered DLT/blockchain context. As noted on pages 50-51 'Wherever an existing regulation, such as CSDR, EMIR, FCD, SFD, MiFID, the SIPS Regulation and AMLD, is engaged, defined terms and established concepts may not apply unambiguously. For instance, fundamental notions such as 'account', 'client', 'customer' need clarification as they are based on a 'bilateral view' of relationships which cannot be applied smoothly in the context of a DLT network. Concepts such as 'trade repository', which is an entity connected to the market through a large number of bilateral relationships, may need to be translated into the multilateral context of distributed financial networks, as would terms such as 'system', 'book entry', 'settlement', or 'finality'. Similarly, fundamental ideas of client asset protection or segregation are not translated easily into a distributed, multilateral environment. The relevant questions will inevitably occur wherever market participants and supervisors attempt to use and supervise distributed financial networks under existing rules and any absence of clarity will restrict market participants' and supervisors' openness to this technology. In responding to these questions, it is important to ensure consistency and uniformity regarding the concrete applications of regulatory terms and concepts across the EU. Sectoral divergences, e.g. per relevant regulatory area, or approaches fragmented along jurisdictional borders, would gravely restrict the adoption of such network across the EU.'
5	AFME to <u>not</u> respond	
5.1	AFME to <u>not</u> respond	
Identify areas where the financial services regulatory framework may need to be adapted		
6	AFME to respond	<ul style="list-style-type: none"> • DLT: 5 - fully relevant • Cloud: 4 - rather relevant • AI/ML: 5 - fully relevant • IoT: 3 - neutral • Biometrics: N/A • Quantum Computing: 3 - neutral • Other: 5 - fully relevant
	AFME to <u>not</u> respond	N/A
6.1	AFME to respond	<ul style="list-style-type: none"> • AFME encourages the European Commission consider implementing more regular policy review mechanisms, to ensure policies are fit for purpose and achieve the goals set out initially. For instance, more regular review processes could be supported by Innovation hubs/Regulatory sandboxes or even an

¹⁹https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/191113-report-expert-group-regulatory-obstacles-financial-innovation_en.pdf (p.49)

		<p>independent ‘Technology Committee’, providing recommendations to the European Commission or if policies have contributed to foster a accommodative regulatory framework for technology innovation.</p> <ul style="list-style-type: none"> • See AFME’s response provided in Question 4.1. • To support the response of this CP, we have included in Annex the Executive Summary of recent consultation responses submitted by AFME. • In addition, the application of some EU regulation not discussed in this response will also warrant clarification in some instances from a DLT perspective. These include: <ul style="list-style-type: none"> ○ GDPR: As noted by the European Parliament’s study on Blockchain and GDPR²⁰, GDPR is based on an underlying assumption that in relation to each personal data point there is at least one natural or legal person; assumes that can be modified or erased where necessary; and includes requirements of data minimisation and purpose limitation. These requirements can be problematic in a blockchain environment. ○ Banking Secrecy Laws: To the extent that DLT is leveraged for the purposes of information provision, and also more generally within Financial Services, some EU jurisdictions have national confidentiality and banking secrecy legislation that may prevent consistent cross border deployment of DLT technologies. ○ The application of other regimes such as, Financial Collateral Directive, Shareholder Rights Directive, and the European Market Infrastructure Regulation (EMIR) will also need to be considered.
7	AFME to respond	<ul style="list-style-type: none"> • Setting up dedicated observatories to monitor technological and market trends (e.g. EU Blockchain Observatory & Forum; Platform Observatory): 5 - fully relevant • Funding experimentation on certain applications of new technologies in finance (e.g blockchain use cases): 5 - fully relevant • Promoting supervisory innovation hubs and sandboxes: 5 - fully relevant • Supporting industry codes of conduct on certain applications of new technologies in finance: as long as voluntary, based on international standards: 4 – rather relevant • Enhancing legal clarity through guidance at EU level for specific technologies and/or use case: 5 - fully relevant • Creating bespoke EU regimes adapted to nascent markets, possibly on a temporary basis: 4 – rather relevant • Other: 5 - fully relevant
	AFME to respond	<ul style="list-style-type: none"> • In support of our response provided above, AFME would like to provide the following additional comments: <ul style="list-style-type: none"> ○ Alongside global consistency of regulatory frameworks, AFME believes the testing of innovative technologies across multiple jurisdictions, should be accelerated in the EU to ensure adequate and consistent levels of knowledge and understanding of innovation subject matter, globally. Efforts should focus on facilitating knowledge sharing, education between regulators and a wider network of market participants, and joint work on policy and regulatory requirements applied to innovative technologies. AFME is supportive of global initiatives such as the BIS Innovation hub, the Global Financial Innovation Network (GFIN) or the International Association for Trusted Blockchain Applications (INATBA), and encourages the European Forum for Innovation Facilitators (EFIF) to take part in relevant forums for the sharing of lessons learned related to innovative technologies.

²⁰ European Parliament [‘Blockchain and the General Data Protection regulation: Can distributed ledgers be squared with European data protection law’](#) (2019)

		<ul style="list-style-type: none"> ○ Regarding industry codes of conduct on certain applications of new technologies in finance, AFME believes these efforts could positively contribute to the uptake of innovative technologies, as long as they are voluntary and based on international standards. Indeed, there is a risk codes of conducts become obsolete over-time, if they are not reviewed regularly, or only meet specific regional requirements, if they are not based on international standards or are not sufficiently flexible for firms to implement if mandatory or too prescriptive. ○ Regarding creating bespoke EU regimes adapted to nascent markets, possibly on a temporary basis, AFME believes these efforts could positively contribute to the uptake of innovative technologies, as long as they are harmonised and developed consistently across the EU. There is a risk that national bespoke regimes introduce fragmentation in the single market, if approaches only meet national requirements, making it more difficult for firms that operate across borders. A single reconciled pan-European approach would be preferable to bespoke national regimes. ○ AFME is generally supportive of harmonised rules and regulations at EU level. This is to avoid fragmentation and regulatory arbitrage, whilst providing a common and homogenous regulatory framework, which in turn facilitates the efficient and scalable functioning of financial markets. The EU should support Member States to coordinate and harmonise national laws and regulations, related to the financial services industry, to help standardise regulation, aiming at creating efficiencies and economies of scale and promoting innovation. ○ For further detail see AFME's response provided in Question 4.1.
Assess the need for adapting the existing prudential frameworks to the new financial ecosystem, also to ensure a level playing field		
8	AFME to respond	<ul style="list-style-type: none"> • Intra-European retail payments: N/A • Intra-European wholesale payment: 3 – neutral (~10% – 20%) • Consumer credit provision to households with risk taking: N/A • Consumer credit distribution to households with partner institution(s): N/A • 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: 3 – neutral (~10% – 20%) • Credit distribution to SMEs with partner institution(s): 4 – significant market share (~20% – 25%) • Syndicated lending services with risk taking: 2 – low market share (~5% – 10%) • 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 nonlife 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: 2 – low market share (~5% – 10%) • Asset management: 2 – low market share (~5% – 10%) • Others: 5 - fully relevant
	AFME to respond	<ul style="list-style-type: none"> • As identified by the FSB²¹ and the BIS²², AFME expects technology companies to progressively gain markets in financial services. As stated in the BIS report,

²¹ ['BigTech in Finance: Market developments and potential financial stability implication'](#) (2019)

²² ['Big tech in finance: opportunities and risks'](#) (2019)

		<p>provided technology companies are able to gain sufficient amounts of data on clients/customers, and provided that they can leverage a large platform, they are able to utilise this data to offer a range of services that exploit natural network effects, generating further user activity. Increased user activity then completes the circle, as it generates yet more data.</p> <ul style="list-style-type: none"> • These reports have identified that there are multiple ways technology companies gain entry to financial services, spanning multiple financial services sub-sectors (e.g. retail, payments, credit, wholesale) and geographies. While these companies have mainly gained market share in payments and retail in recent years; there is increasing interest to provide lending and risk services to SMEs, as well as in the near future wholesale markets (e.g. digital assets) and insurance (e.g. Insuretech). • Technology companies are expected to gain market shares in financial services via: <ul style="list-style-type: none"> ○ Providing solutions to clients where those can now transact peer-to-peer (e.g. disintermediation); ○ Designing client/customer centric solutions, by harnessing behavioural data to develop interfaces and offer products/services that may meet expectations (e.g. increasing customer retention/traffic); and/or ○ Partnering with financial institutions to integrate technology solutions with regulated financial products and services (e.g. developing partnerships). • While AFME is supportive of innovation and increased market competition, a competitive and level-playing field is needed to ensure all firms involved in financial services adhere to the 'same risk, same activity, same regulation'. This is essential for all financial services participants to manage risk to clients/consumers and financial stability. For instance, to the extent a technology firm provides financial products or services, akin to a regulated financial institution, they should be regulated in the same way as their incumbent counterparts.
8.1	AFME to respond	<ul style="list-style-type: none"> • See AFME's response provided in Question 8.
9	AFME to respond	Yes
9.1	AFME to respond	<ul style="list-style-type: none"> • We believe that further examination is needed regarding situations where, due to regulatory requirements, organisations have had to bear the costs for the business models of their competitors (for instance where PSD2 has given rise to organisations being able to develop banking services without the cost of maintaining banking technology infrastructure). These initiatives could limit firm's incentive and ability to invest in innovative technologies but may also have negative implications on their ability to maintain and continuously improve their technical infrastructure and business model. • The consolidated application of prudential requirements implies that, even if some of the services offered by banks can be conducted by subsidiaries that are not funded with deposits, authorities extend the application of prudential requirements to all entities within the banking group. As a result, in performing these non-core activities (i.e. not funded with deposits), banks have to account for the additional burden of prudential regulation and supervision, regardless of the activity it is conducting. The application of prudential rules also increases the cost and time-to-market of banks' digital transformation processes (e.g. imposing stringent internal controls and risk management frameworks), which add additional challenges for talent attraction and retention. • Additionally, this could result in making more difficult for potential clients to find/access banks services, than non-banks. Currently all entities of a bank group must apply equally comprehensive client/consumer protection rules.

		<p>Non-bank group are not obliged to comply with these requirements, making it easier for potential clients to find/access their services.</p> <ul style="list-style-type: none"> • AFME recommends the European Commission consider scenarios where, if certain circumstances are met, the prudential, regulatory, supervisory framework could apply in a proportionate manner, to those activities/function that are not banking activities. For financial institutions (FIs), this may alleviate some of the burden to innovate, while levelling the playing field. Conversely, if non-FIs conduct banking activities, either directly or indirectly, those should be included in the prudential, regulatory, supervisory framework in a proportionate manner so as not to stifle innovation. • Further, AFME warrants the European Commission to carefully consider how to appropriately mitigate risks stemming from new market entrants which could quickly gain systemic importance. As identified in the BIS report²³, while BigTech present opportunities for efficiency, inclusion, increased market competition, regulators should ensure a level playing field is maintained under the principle of 'same risk, same activity, same regulation'. This is essential to ensure any risks to clients/consumers or market stability are appropriately mitigated. However, as stated in the BIS report, BigTech could present new and complex trade-offs, due to their size and innovative business model, where if structural changes are brought may require different policy approaches.
10	AFME to respond	<ul style="list-style-type: none"> • Liquidity risk in interbank market (e.g. increased volatility): 4 – increase in risks • Liquidity risk for particular credit institutions: 4 – increase in risks • Liquidity risk for asset management companies: 4 – increase in risks • Credit risk for household lending: N/A • Credit risk for SME lending: 4 – increase in risks • Credit risk for corporate lending: 4 – increase in risks • Pro-cyclical credit provision: 4 – increase in risks • Concentration risk for funds collected and invested (e.g. lack of diversification): 3 - neutral • Concentration risk for holders of funds (e.g. large deposits or investments held in a bank or fund): 4 – increase in risks • Undertaken insurance risk in life insurance: N/A • Undertaken insurance risk in non-life insurance: N/A • Operational risks for technology companies and platforms: 5 – significant increase in risks • Operational risk for incumbent financial service providers: 3 – neutral • Systemic risks (e.g. technology companies and platforms become too big, too interconnected to fail): 5 – significant increase in risks • Money-laundering and terrorism financing risk: 5 – significant increase in risks • Other
	AFME to respond	<ul style="list-style-type: none"> • In support of our response provided above, AFME would like to provide the following additional comments relative to potential scenarios/outcomes over the next 5 to 10 years: <ul style="list-style-type: none"> ○ If technology firms were to gain sufficient market shares in financial services in the EU, and the European Commission were not to adhere to the principle of 'same risk, same activity, same regulation', there is a risk technology firms may be able to provide financial services to clients/consumers, without appropriate regulatory oversight, mitigating

²³ ['Bigtech in Finance: opportunities and risks'](#) (2019)

		<p>risks associated with the provision of financial services, potentially leading to an increase in financial risks.</p> <ul style="list-style-type: none"> ○ If technology firms were to gain sufficient market shares in financial services in the EU, and the European Commission were to adhere to the base principle of 'same risk, same activity, same regulation', there is risk technology firms, due to their size and innovate business model, may bring additional risks which could require different policy approaches, as identified in the BIS report²⁴. While AFME is supportive of the benefits of increased market competition, technology firms could bring structural changes to the market by quickly acquiring a dominant position or representing a systemic risk due to their large user base. For instance, a rapid expansion of credit provision by BigTech firms could lead to enhanced procyclicality in credit provision, as funding flows from BigTech could become large or concentrated in some market segments. It is currently unclear how BigTech would maintain credit supply or be affected in a downturn. Reliance on BigTech credit might make it more difficult to provide liquidity to the economy during crisis situations, a role in which banks have proven critical in the situation prompted by COVID19. As identified in the BIS report, AFME believes any appropriate policy response to those risks would have to be based on international cooperation, a common assessment of systemic risks and coordinated policy responses, globally. ○ However, regardless of these scenarios, there are potential operational risks stemming from technology firms providing financial services infrastructure, where an assessment of appropriate regulatory requirements should be conducted (e.g. such as potential applicability of the Principles for Financial Market Infrastructures (PFMI)²⁵). A significant incident or failure could cause widespread disruption across the financial system and the economy more broadly. Unlike regulated entities such as banks, financial markets infrastructures and other providers of systemic importance, it is currently unclear how technology firms would ensure continuity in the provision of their services, potentially systemic or essential, should an idiosyncratic or system-wide event take place.
10.1	AFME to <u>not</u> respond	<ul style="list-style-type: none"> • See AFME's response provided in Question 10.
11	AFME to respond	<ul style="list-style-type: none"> • Default risk for funds held in non-banks and not protected by Deposit Guarantee Scheme: 4 – increase in risk • Liquidity risk: 3 – neutral • Misselling of insurance products: N/A • Misselling of investment products: N/A • Misselling of credit products: 4 – increase in risk • Misselling of pension products: N/A • Inadequate provision of information: 5 – significant increase in risk • Inadequate complaint and redress process and management: 5 – significant increase in risk • Use/abuse of personal data for financial commercial purposes: 4 – increase in risk • Discrimination e.g. based on profiles: 3 –neutral • Operational risk e.g. interrupted service, loss of data: 5 – significant increase in risk • Other:

²⁴ 'Big tech in finance: opportunities and risks' (2019)

²⁵ https://www.bis.org/cpmi/info_pfmi.htm

	AFME to respond	<ul style="list-style-type: none"> • See AFME's response provided in Question 10. • Additional risks could include increased fraud and compliance risks.
11.1	AFME to respond	<ul style="list-style-type: none"> • We note that in the context of Anti Money Laundering (AML) regulation there is appropriate guidance for traditional banking services on the application AML regimes. As noted above, we support the principle of 'same risk, same activity, same regulation', and what may be useful for new market entrants in understanding and applying this principle, is similar guidance on how they may fall within the financial services regulation regime. For example, FATF²⁶ has specific guidance that applies in the context of correspondent banking services²⁷. To the extent that similar guidance was available to new technology companies, this would assist with their compliance journey and also help to ascertain the AML controls that they are required to embed. Furthermore, this would also assist financial services firms in their onboarding and due diligence process when they are looking to take on such new technology companies as clients. • Clients/Consumer risks may arise in relation to business models, such as platforms or marketplaces, often employed by technology firms, where clients/consumers can access a wide variety of products from different providers. As these are generally unregulated, platforms or marketplaces do not always make important information, clear for clients/consumers (e.g. who is the responsible party, what is the regulatory status, who is the responsible authority), and might face inadequate complaint and redress processes as well as increase the risk of mis-selling products. Moreover, the lack of an appropriate regulatory framework for platforms or marketplaces, generates uncertainty as regards the allocation of liabilities, and whether the responsibility lies with the provider or with the platform. • In recent years, technology firms have come under increasing scrutiny regarding practices for collecting/using personal data and the level of control they are able to provide users. Their novel business model and global nature may pose supervisory and oversight challenges for authorities should they lack the necessary expertise, knowledge and capacity within their organization. • It is important to note that the likelihood of these risks materializing depends on a number of scenarios, such as the engagement model chosen by Bigtech companies to interact with financial services. For example, if technology firms were to collaborate with traditional financial institutions, they would benefit from financial service firms expertise in regulatory compliance and risk management.
12	AFME to respond	<ul style="list-style-type: none"> • First, AFME encourages the European Commission to make adjustments to the EU regulatory framework were needed and ensure it is more supportive of technology adoption and innovation. <ul style="list-style-type: none"> ○ We believe this approach would be best supported by a technology neutral and principles based regulatory framework, providing the flexibility needed for firms to implement appropriate control, in a risk based and proportionate manner, that meet the continuously evolving nature of technology. The introduction of prescriptive and detailed legislative requirements are at risk of becoming obsolete in the short to medium term, as innovation in technology and new services continue at pace. ○ Additionally, and to support a more innovation regulatory framework, AFME recommends the European Commission carefully assess the impact of current and proposed legislation on the competitiveness of

²⁶ <https://www.fatf-gafi.org/>

²⁷ FATF Guidance '[Correspondent Banking Services](#)' (2016)

		<p>financial firms and ability to innovate. The Commission could conduct more frequent reviews of policies implemented or make use of innovation hubs/regulatory sandboxes for testing innovative technologies, with support of market actors, to assess if policies developed have indeed met their objectives.</p> <ul style="list-style-type: none"> • Second, while AFME is supportive of innovation and increased market competition, a level playing field for all financial services firms is needed to manage and appropriately mitigate any risks to consumers and financial stability. A level-playing field should be maintained based on the principle of 'same risk, same activity, same regulation'. <ul style="list-style-type: none"> ○ This should include the applicability of existing regulation to other entities who may be currently outside the financial services regulatory framework and may be conducting the same or similar activities as regulated financial institutions. In such cases, these entities should also be included, where applicable, within the financial services regulatory perimeter to mitigate any risks that such activity may entail, to protect clients/consumers, market integrity and financial stability. For instance, to the extent a part of a technology firm provides financial products or services, akin to a regulated financial institution, that part of the firm should be regulated in the same way as an incumbent counterpart. ○ This could also include alleviating parts of the prudential, regulatory, and supervisory framework of non-core banking businesses. Currently the consolidated application of prudential requirements applies to all entities within the banking group. As a result, in performing these non-core activities (i.e. not funded with deposits), banks have a higher cost and time-to-market than their technology counterparts. subject to activity-specific regulation. ○ Moreover, we believe further examination is needed regarding situations where, due to regulatory requirements, organisations have had to bear the costs for the business models of their competitors (for instance where PSD2 has given rise to organisations being able to develop banking services without the cost of maintaining banking technology infrastructure). These initiatives could limit firm's incentive and ability to invest in innovative technologies but may also have negative implications on their ability to maintain and continuously improve their technical infrastructure and business model. ○ Regarding data, the EU needs a cross-sectoral framework to empower individuals and firms, ensuring they can both maintain control over when and with whom their data can be shared. This would support greater competition and data-driven innovation, including through greater adoption of artificial intelligence in Europe. ○ New EU initiatives should ensure that there is fair access by all market players to the relevant technical infrastructure, that is now, or in the future, required for the digital transformation of financial services. ○ Additionally, and to support a competitive level-playing field, AFME recommends the European Commission remains actively engaged and a contributor to international efforts related to innovative technologies and BigTechs. For instance, participation to the testing of innovative technologies across multiple jurisdictions, should be accelerated in the EU to ensure adequate and consistent levels of knowledge and understanding of innovation subject matter, globally. As well, developing appropriate policy response to BigTech must be based on international cooperation, a common assessment of systemic risks and coordinated policy responses, as highlighted in the BIS report²⁸.
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²⁸ ['Big tech in finance: opportunities and risks'](#) (2019)

12.1	AFME to <u>not</u> respond	
Enhance multi-disciplinary cooperation between authorities		
13	AFME to respond	<ul style="list-style-type: none"> • AFME recommends the Commission ensure the EU regulatory framework for innovative technologies is globally consistent, wherever possible, to sufficiently mitigate risks and support the competitiveness of firms. • A globally consistent regulatory framework is critical for maintaining financial stability and protecting end users, to address gaps in supervision across jurisdictions that could create systemic vulnerabilities, as the use of innovative technologies continues to grow at pace. Any European developments on the regulation of innovative technologies should be consistent with on-going global risk assessments or initiatives (e.g. G7/G20, FSB, BIS, IOSCO) and adhere to global standards, to maintain interoperability. • Many of the challenges created by new entrants in financial services (e.g. competition, data protection, privacy), where those are technology firms, are due to the grey areas related to the creation of new infrastructures for the global economy. Those challenges expand beyond the financial sector alone, and therefore, are not the sole remit of financial authorities. In addition, some of these firms are inherently global, and thus add additional complexity, for adequate governance within national borders. National authorities often lack adequate leverage to apply domestic policies to global companies. An ad-hoc task force created under the supervision of the G20 might be appropriate to coordinate international responses to these challenges. We encourage EU authorities to actively participate in these international debates. • Alongside global consistency of regulatory frameworks, AFME believes the testing of innovative technologies across multiple jurisdictions should be accelerated in the EU. This is to ensure adequate and consistent levels of knowledge and understanding of innovation subject matter globally. Efforts should focus on facilitating knowledge sharing, education between regulators and a wider network of market participants, and joint work on policy and regulatory requirements applied to innovative technologies. AFME is supportive of global initiatives such as the BIS Innovation hub, the Global Financial Innovation Network (GFIN) and the International Association for Trusted Blockchain Applications (INATBA), and encourages the European Forum for Innovation Facilitators (EFIF) to take part in relevant forums for the sharing of lessons learned related to innovative technologies. • Similarly, any EU specific legislation, that is not globally consistent risks stifling the competitiveness of EU firms, compared to peers in other jurisdictions, potentially making more difficult the ability for firms to interoperate or operate cross-border.
14	AFME to respond	<ul style="list-style-type: none"> • See AFME's response provided in Question 13.

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

Question	Comment	Reasoning
15	AFME to respond	<ul style="list-style-type: none"> • Please see AFME's comments provided in the Executive Summary. • Obstacles remain to fully deliver a single market for digital financial services. The EU regulatory framework for innovation technologies is fragmented, due to divergent implementations and interpretations by Member State National Competent Authorities/Supervisory authorities, of EU guidance and requirements or supervisory practices. This fragmentation adds additional complexity and cost for firms.

		<ul style="list-style-type: none"> ○ See AFME's comment provided in response to question 4.1. ○ For example, the use of minimum harmonisation directives for AML has led to differences in national implementations. As a result, requirements for customer identification in digital onboarding processes have followed different paths and speeds in Member States. Another example is the transposition of the PSD2²⁹ into the Spanish legislative framework, which has led to the imposition of different AML requirements for banks, which need to provide account information services, than those imposed for non-bank players. ○ Harmonization efforts are also required in the enforcement of EU regulatory requirements by national supervisory authorities, which follow different practices. For example, firms willing to operate in several jurisdictions often find language barriers and different formats and communications methods. Financial institutions often find difficulties in exercising passporting rights, especially without physical presence in a jurisdiction. In most EU member states, authorities require compliance with local prudential or AML/CFT rules, although as passported entities, the applicable framework should be from the home Member State. As a result, the cost of having to comply with local rules, coupled with the language barrier, can pose significant barriers to the scale up of activities in other EU jurisdictions. ○ Another obstacle to the realisation and full potential of an EU digital single market is digital education and skills. See AFME's comment provided in response to question 24 and 25.
Facilitate the use of digital financial identities throughout the EU		
16	AFME to respond	<ul style="list-style-type: none"> ● Harmonise rules governing customer due diligence requirements in the Anti-Money Laundering legislation: 5 – fully relevant ● Harmonise rules governing the acceptable use of remote identification technologies and services in the Anti-Money Laundering legislation: 5 – fully relevant ● Broaden access for obliged entities to publicly held information (public databases and registers) to enable verification of customer identities: 5 – fully relevant ● 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): 4 – rather relevant ● Facilitate the development of digital on-boarding processes, which build on the e-IDAS Regulation: 5 – fully relevant ● Facilitate cooperation between public authorities and private sector digital identity solution providers: 5 – fully relevant ● Integrate KYC attributes into eIDAS in order to enable onboarding through trusted digital identities: 5 – fully relevant ● Other
	AFME to respond	<ul style="list-style-type: none"> ● Please see our response to question 13. ● Harmonisation of the AML legislation is paramount to ensure that interoperable EU digital on-boarding solutions can be implemented. To the extent individual Member States embed additional/complex requirements, over and above those set out in EU Directives, can act as a barrier to the consistent application of solutions in Europe. <ul style="list-style-type: none"> ○ We support the harmonisation of AML rules, which will be beneficial for cross border interoperability and digital on-boarding. Currently, there

²⁹ [Payment services \(PSD2\) – Directive \(EU\) 2015/2366](#)

		<p>are significant divergences in approaches to AML rules implementation between Member States, for customer due diligence and the acceptable use of remote identification technologies. We therefore welcome any EU initiatives with a view to create a higher degree of harmonisation. This could also be achieved by supporting the creation of private industry bodies in Member States that would help with the development of AML/CFT industry guidance.</p> <ul style="list-style-type: none"> ○ We are also supportive of initiatives at the EU level that will stipulate compliant methods for the use of digital technologies for the purposes of AML identity verification. At present, we note that digital identities are primarily used by public bodies and uptake is less prevalent in the private sector. In fact, we would like to point out that the FATF guidance on digital identity states that <i>'using reliable, independent digital ID systems with appropriate risk mitigation measures in place, may present a standard level of risk, and may even be lower-risk'</i>³⁰ from the AML/CFT perspective. ○ The e-IDAS Regulation³¹ could be a useful mechanism to clarify digital onboarding processes. The interoperability framework under the e-IDAS Regulation is particularly beneficial from a cross border cooperation perspective as it allows for the interoperability of national digital ID systems. This interoperability should be maintained in any extension of the regime for the purposes of digital onboarding. We comment further below on the use of digital identities.
17	AFME to respond	<ul style="list-style-type: none"> • Make the rules on third party reliance in the Anti-Money Laundering legislation more specific: 4 – rather relevant • Provide further guidance relating to reliance on third parties for carrying out identification and verification through digital means, including on issues relating to liability: 5 – fully relevant • Promote re-use of digital identities collected for customer due diligence purposes in accordance with data protection rules: 5 – fully relevant • Promote a universally accepted public electronic identity: 3 – neutral • Define the provision of digital identities as a new private sector trust service under the supervisory regime of the eIDAS Regulation: 3 – neutral • Other
	AFME to respond	<ul style="list-style-type: none"> • Currently, eIDAS ensures that people and businesses can use their own national electronic identification schemes (eIDs) to access public services in the EU, and that other EU eID are available. However, the use of eIDAS for the EU financial sector will require further data attributes related to financial transactions, and harmonisation of practices across EU Member States. • AFME refers the Commission to the FATF's recent guidance on digital identities which sets out useful recommendations for government authorities³². In particular, AFME supports the recommendations to develop clear guidelines or regulations allowing the appropriate, risk-based use of reliable, independent digital ID systems by entities regulated for AML/CFT purposes, and to assess whether existing regulations and guidance on customer due diligence (CDD) could accommodate digital ID systems. Furthermore, we emphasise the need for the EU to monitor developments in the digital ID space with a view to share knowledge, best practices, and to establish legal frameworks at both the domestic and international level that promote responsible innovation and allow for greater flexibility, efficiency and functionality of digital ID systems, both within and across borders.

³⁰ <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/Guidance-on-Digital-Identity-Executive-Summary.pdf>

³¹ [eIDAS regulation \(EU\) n.910/2014](https://eur-lex.europa.eu/eli/reg/2014/910/oj)

³² <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/Guidance-on-Digital-Identity.pdf>

		<ul style="list-style-type: none"> • More generally, AFME would support further guidance relating to reliance on third parties for carrying out identification and verification through digital means. To the extent that firms were able to rely on digital identities gathered by other institutions, this would promote portability and improve efficiency from an onboarding perspective. However, we note that in respect of 'reliance', there a number of issues that need to be considered: <ul style="list-style-type: none"> ○ Series of attributes: A digital identity cannot be viewed as a 'singular' data point. An identity is made up of several data attributes and in order to ensure that 'reliance' can be placed on third party identities, firms must be in a position trust to source of each data attribute. The focus should therefore be on creating a framework of data attributes that will enable firms to verify each of the attributes that are provided. ○ AMLD 4: The directive has introduced requirements around the concept of 'reliance on third parties established in high risk countries'³³. As such, it has become more complex, to rely on third parties based on high risk countries, for know your customer (KYC) processes. This would therefore need to be considered as part of any guidelines or regulation that looks to facilitate the use of third-party digital identities from an AML perspective.
18	AFME to respond	<ul style="list-style-type: none"> • Yes, should consider going beyond customer identification and develop digital financial identities. • AFME believes digital financial identities would be beneficial to the EU financial services sector. However, key challenges would have to be addressed. A digital identity is made up of a series of attributes which could include some financial attributes. However, we note that extending into granular financial information may see a confusion of concepts between open finance and digital identities. Furthermore, as with a physical identity, a consumer only has one of these. As such, extending the concept of digital identities to sector specific areas may see a proliferation of identities on a sector by sector basis which could see the concept move away from 'identity' and more into a mechanism to share any type of information.
19	AFME to respond	Yes
	AFME to respond	<ul style="list-style-type: none"> • Yes, the mandatory use of LEI, UTI UPI may facilitate digital and automated processes in financial services. The potential benefits of their mandatory use would have to be assessed on a case by case basis (e.g. depending on the situation, business model). • Overall, AFME is are supportive of LEI being used as a unique identifier to facilitate automated processes: <ul style="list-style-type: none"> ○ LEI can be used to help automate a variety of processes including AML/KYC and general client onboarding, making these processes more reliable. ○ Regulated financial services firms already use LEI for other regulatory purposes such as MiFIR, EMIR and Dodd Frank reporting, and hence are familiar with it. • Regulators, both in the EU and globally should continue to progress toward achieving a data standardization framework. Establishing and implementing a common global language for financial instruments and transactions will create efficiency, reduce costs and result in the improved usability of financial data to create valuable information and manage systemic risk. Mandated use of these common identifiers will encourage the uptake of global standards as some market participants are resistant to change. Potential mandatory use

³³ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015L0849&from=EN> (see 29.)

		may obtain quicker and more thorough adoption of a given standard which brings forth the benefits sooner and with less friction.
Make it easier for firms to carry out technology pilots and scale up across the Single Market		
20	AFME to respond	<ul style="list-style-type: none"> • Regulated industries, such as financial services, have a higher degree of complexity due to compliance with regulatory requirements. This complexity can add additional delays and costs when bringing innovation to the market. • Regulatory sandboxes and Innovation hubs³⁴ are initiatives 'that are designed to promote greater engagement between competent authorities and firms about financial innovations with a view to enhancing firms' understanding of regulatory and supervisory expectations and increasing the knowledge of competent authorities about innovations and the opportunities and risks they present'. While most sandboxes and innovation hubs have similar objectives and approaches, common principles (e.g. common application criteria) across national/regional regulatory sandboxes and innovation hubs would foster greater cooperation, sharing of information and comparability between jurisdictions. • We believe, that when adequately implemented, regulatory sandboxes offer promising benefits for all parties involved: <ul style="list-style-type: none"> ○ Regulatory sandboxes facilitate the understanding of costs, risks and opportunities of new solutions for regulators and supervisors, as well as identifying any amendments needed to the regulatory framework to appropriate regulate/supervise firms; ○ Clients/consumers benefit from efficiency gains and being able to access a broader range of innovative solutions; ○ New market entrants benefit from increased dialogue with authorities and better understanding of compliance with regulatory requirements; ○ Financial Institutions benefit from lower costs and lesser delays when bringing innovation to the market. • Sandboxes offer firms the possibility to accelerate innovation projects and increasing learnings. AFME believes the testing of innovative technologies across multiple jurisdictions, should be accelerated in the EU to ensure adequate and consistent levels of knowledge and understanding of innovation subject matter, globally. Efforts should focus on facilitating knowledge sharing, education between regulators and a wider network of market participants, and joint work on policy and regulatory requirements applied to innovative technologies. AFME is supportive of global initiatives such as the BIS Innovation hub, the Global Financial Innovation Network (GFIN) and the International Association for Trusted Blockchain Applications (INATBA), and encourages the European Forum for Innovation Facilitators (EFIF) to take part in relevant forums for the sharing of lessons learned related to innovative technologies.
21	AFME to respond	<ul style="list-style-type: none"> • Promote convergence among national authorities in setting up innovation hubs and sandboxes, through additional best practices or guidelines: 5 – fully relevant • Facilitate the possibility for firms to test new products and activities for marketing in several Member States ("cross border testing"): 5 – fully relevant • Raise awareness among industry stakeholders: 4 – rather relevant • Ensure closer coordination with authorities beyond the financial sector (e.g. data and consumer protection authorities): 5 – fully relevant

³⁴ EBA, ESMA, EIOPA '[FinTech: Regulatory sandboxes and innovation hubs](#)' – see definitions for innovation hubs and regulatory sandboxes (p5)

		<ul style="list-style-type: none"> • 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): 3 – neutral • Other
	AFME to respond	<ul style="list-style-type: none"> • The Commission and the ESAs should actively take part and monitor the outcomes of tests conducted in national regulatory sandboxes, leveraging lessons learned to improve the EU financial services regulatory framework. In particular, the Commission and the ESAs should ensure that regulation or standards that are proven to be unfit for innovative technologies, as a result of sandboxes, are assessed/adapted accordingly. • Moreover, the ESAs should build on the results of the EFIF and consider the establishment of an EU-level regulatory sandbox. • While AFME is generally supportive of innovation hubs and regulatory sandboxes that cover a broad spectrum of innovative technologies and participants, that can span multiple geographies or sectors; we believe there is benefit in establishing those with a specific focus. A specific focus would help identify/test specific applications where SME knowledge would be beneficial.
21.1	AFME to respond	<ul style="list-style-type: none"> • AFME supports the work of European Supervisory Authorities to promote the use of innovation facilitators across the EU. This has taken the form of an identification of best practices (ESAs report³⁵) and the creation of a network for innovation facilitators, the European Forum for Innovation Facilitators (EFIF). • Still, we urge EU authorities to take more decisive steps towards the establishment of a true pan-European framework for experimentation. Coordination across EU member states should be enhanced. This would imply the possibility for national authorities to rely on the outcome of testing done by another authority, within a national sandbox, through mutual recognition/memorandum of understanding. • We would welcome the establishment of dedicated guidance, building on the ESAs' best practices, seeking to harmonize the use of regulatory sandboxes across the EU, so as to ensure a level playing field across the Single Market and facilitate the scaling up of cross-border businesses. • We also welcome efforts to facilitate the testing of cross-border projects in more than one Member State. In this regard, the ESAs and the Commission should build on the results of the EFIF and consider the establishment of an EU-level regulatory sandbox. AFME believes the testing of innovative technologies across multiple jurisdictions, should be accelerated in the EU to ensure adequate and consistent levels of knowledge and understanding of innovation subject matter, globally. Efforts should focus on facilitating knowledge sharing, education between regulators and a wider network of market participants, and joint work on policy and regulatory requirements applied to innovative technologies. AFME is supportive of global initiatives such as the BIS Innovation hub, the Global Financial Innovation Network (GFIN) or the International Association for Trusted Blockchain Applications (INATBA) and encourages the European Forum for Innovation Facilitators (EFIF) to take part in relevant forums for the sharing of lessons learned related to innovative technologies. • Finally, to maximize the benefits of regulatory sandboxes, we recommend innovation hubs/regulatory sandboxes include the broadest scope, and involvement/close cooperation with relevant authorities beyond the financial

³⁵ ESMA, EBA, EIOPA 'FinTech: Regulatory sandboxes and innovation hubs' (2019)

		sector; for instance, data protection authorities, AML authorities or consumer protection agencies.
22	AFME to respond	<ul style="list-style-type: none"> • A level playing field for all financial services participants is needed to manage and mitigate any risk to clients/consumers and financial stability, while supporting competition and innovation. A level-playing field should be maintained based on the principle of 'same risk, same activity, same regulation'. See AFME comments provided in the Executive Summary. • Regarding lending activity, currently, some countries require non-bank credit providers to obtain a licence, while others have in place an opt-in framework (e.g. as in the case of Spain's 'Establecimientos Financieros de Crédito'³⁶). In practice, this could lead to situations of an un-levelled playing field between countries and between different types of credit providers. In this regard, we believe that lending activity should benefit from higher levels of harmonisation at least through the establishment of a common framework that guarantees minimum requirements being applied to all credit providers across the EU.
Ensure fair and open access to relevant technical infrastructures for all financial service providers that wish to offer their services across the Single Market		
23	AFME to respond	<ul style="list-style-type: none"> • It is important to note that there are currently a number of interpretations and definitions of the term 'relevant technical infrastructures' both within and outside the financial sector. • Regarding the technical infrastructure provided by third parties, such as platforms, financial services firms are increasingly required to use this infrastructure to remain abreast of changes and benefits brought forward by the digital transformation of society/the economy and to remain competitive. For example, <ul style="list-style-type: none"> ○ Firms must remain abreast of client/customer preferences and changes, such as the rise of electronic means of payment; or being able to provide financial services products through digital means. Similarly, firms must remain abreast of changes to the technical infrastructure provided by third parties, that can underpin the digital transformation of firms, such as hand-held devices (e.g. and associated functionalities) and other type of technical infrastructure that may be relevant to their business. However, this infrastructure is not always available on an equal basis to all market participants. This potential un-equal availability could result in some market players being restricted to particular terms and conditions for their use. • As the trend towards greater digital transformation of financial services continues in Europe, it is essential the EU has an appropriate regulatory framework to enable future innovation, a competitive level playing field and fair access to relevant technical infrastructure provided by third parties: <ul style="list-style-type: none"> ○ Appropriate action is needed to address any concerns over market fragmentation. Disparate and potentially conflicting approaches across different Member States must be avoided as these divergences ultimately undermine the objective of a digital single market for financial services. ○ Fair access by all market players to the relevant technical infrastructure, that is now, or in the future, required for the digital transformation of financial services. • In payments, it is also necessary to ensure the market remain competitive. Currently some payment service providers, such as wallet providers, are able to unilaterally impose commissions on payments service providers, which

³⁶<https://clientebancario.bde.es/pcb/es/menu-horizontal/productosservici/relacionados/entidades/guia-textual/tiposentidadesso/Establecimientos-financieros-de-credito.html>

		<p>impact the sustainability and price to end users. Over time these situations could reduce incentives to innovate.</p> <ul style="list-style-type: none"> ○ Further, some local practices prevent the full realisation of the single euro payments area (SEPA). From an EU perspective, the way in which transactions are processed should be done in a consistent manner in order to create fair and open markets. The adoption and maintenance of different standards within the EU creates a fragmented approach to payments processing and prevents efficient cross-border transactions. For instance, in Finland, the Payment Service Provider (PSP) is required to provide the date when the payer's account was debited or up to 999 payments can be bundled in a single message. Also, as a result of diverging 'local' interpretation, banks in some countries disclose payment data to the beneficiary, whereas in other countries this would be considered sensitive data (e.g. a payer's IBAN, for instance)³⁷ ● Finally, if a situation occurs where certain Financial Institutions (FIs) bear the costs for the business models of their competitors (for instance where PSD2 has allowed other organisations to develop banking services without maintaining banking technology infrastructure or paying for its use), this will not only limit an FIs ability to invest in innovation, but may also have negative implications on their ability to maintain and continuously improve their technical infrastructure, adapt their business model, and ensure resilience for the financial sector overall.
Empower and protect EU consumers and investors using digital finance across the Single Market		
24	AFME to respond	<ul style="list-style-type: none"> ● Ensure more affordable access at EU level to financial data for consumers and retail investors: 5 – fully relevant ● Encourage supervisors to set up hubs focused on guiding consumers in the digital world: 5 – fully relevant ● Organise pan-European campaigns and advisory hubs focusing on digitalisation to raise awareness among consumers: 5 – fully relevant ● Collect best practices: 5 – fully relevant ● Promote digital financial services to address financial inclusion: 5 – fully relevant ● 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: 4 – rather relevant ● Other
	AFME to respond	<ul style="list-style-type: none"> ● Financial education and literacy can contribute directly to the more efficient functioning of financial markets. Clients/consumers who are 'well educated' and possess the right skills/knowledge, are more likely to make educated choices, suited to their risk profile and operating environment (e.g. from selecting adequate financial products, to detecting fraudulent activities), which in turn promote greater efficiency, financial stability and resilience. ● The digital transformation of financial services brings additional challenges to clients/consumers who may not possess adequate digital skills. These may come in the form of new tools, interfaces, potentially new actors or threats which add on top of the current challenges of financial literacy. ● AFME encourages the European Commission consider the following actions to promote both financial and digital education/literacy: <ul style="list-style-type: none"> ○ Promote international cooperation to develop consistent practices for digital financial literacy and continue to recognise the importance of digital financial literacy;

³⁷ <https://www.europeanpaymentscouncil.eu/what-we-do/sepa-payment-schemes/sepa-credit-transfer/sepa-credit-transfer-additional-optional>

		<ul style="list-style-type: none"> ○ Increase efforts to promote financial and digital skills through education (e.g. schools, universities, continuous learning); ○ Frequently review financial education program to complement those with digital skills/tools; ○ Promote the continued assessment of the financial and digital literacy of clients/customers to identify where additional training or skills could be beneficial; and ○ Promote the use of technology tools to raise financial literacy levels as those could be accessed and used more widely (e.g. videos, webinars, online courses).
25	AFME to respond	<ul style="list-style-type: none"> ● Alongside increasing digital financial education, AFME recommends the European Commission consider the following additional initiatives to increase digital financial literacy: <ul style="list-style-type: none"> ○ Increasing the overall availability of digital tools (e.g. mobile and internet access); ○ Supporting clients/customers acquiring skills relating to financial services regulation; and ○ Digital literacy and skills like coding should be encouraged in education (e.g. schools, university).

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

26	AFME to respond	<p>AFME welcomes the Commission's aim to develop a European data economy that is built on a robust legal framework and promotes competition. We believe this can be only achieved by implementing a cross-sectoral regulatory framework that enhances data portability and ensures end user control. We also request the Commission to continue to address data localisation restrictions across Member States, which act as a barrier to greater data sharing.</p> <p>We support the Commission's European Strategy for data, specifically where it recognises:</p> <ul style="list-style-type: none"> ● The benefits of cross sectoral data sharing as a crucial element in ensuring a level playing field, and the ability for end-users to share and transmit their data across multiple sectors. We note that regulatory initiatives should not be confined to the Digital Finance Strategy, but should such as also apply to other sectors, at the very least those outlined in the Data Strategy, as well as digital platform providers. ● The need to delineate clearly between raw/observed data and elaborated/inferred data insights when imposing mandatory data sharing requirements. We believe elaborated or inferred data insights should not be shared between organisations on a mandatory basis, except where required as part of specific competition policy interventions. We note that there may also be instances where monetisation of elaborated or inferred data insights is appropriate. ● The need to increase data portability under GDPR; such as through the use of Application Programming Interfaces (APIs). This will allow individual users or firms to share their data in a real time, ongoing, secure and standardised basis with other providers. We also believe this initiative should also be extended to non-personal data under the Data Act/Digital Services Act (for example by applying ex-ante rules in the Digital Services Act to business users' data held by digital platforms). ● The need to preserve data security by creating operational standards for data access to ensure data can be seamlessly connected in a secure environment. This will be essential to creating trust between parties and encouraging greater data sharing. ● Any data deemed highly sensitive, such as financial information, should only be accessible by firms with an appropriate license and robust oversight. ● Appropriate liability and redress mechanisms will be required for users to clearly understand who is responsible for their data.
Facilitate the access to publicly available data in finance		

27	AFME to respond	<ul style="list-style-type: none"> • Financial reporting data from listed companies: 5 – fully relevant • Non-financial reporting data from listed companies: 5 – fully relevant • SME data: 5 – fully relevant • Prudential disclosure stemming from financial services legislation: 4 – rather relevant • Securities market disclosure: 4 – rather relevant • Disclosure regarding retail investment products: 3 – neutral • Other: 5 – fully relevant
	AFME to respond	<ul style="list-style-type: none"> • We note that access should only be provided to data that is already publicly available. Further, any initiative should leverage existing regulations to avoid imposing additional obligations to entities. • At present, firms do generally not have access to aggregated and anonymised reporting data. This also includes data provided to regulators following regulatory reporting such as the ones prescribed under MiFID, SFTR, CSDR and others, where entities provide this data, but have limited or no access to the aggregated output thereof. Such access to aggregated and anonymised data would be very insightful, not only for internal firm purposes, but also for benchmarking with the wider industry and developing or refining market practices and regulations in order to meet specific objectives. • Improving access to non-financial reporting data would make it easier to evaluate the non-financial performance of companies in order to meet Environmental Social Governance (ESG) objectives. For example, standardisation and amalgamation of this data on an automatic basis would be beneficial to limit the additional effort that is required to manually review ESG disclosures. Further, it would be helpful to include non-financial reporting data from both listed and non-listed companies. • Regarding securities market disclosure, there may be an opportunity to improve access to public information generated by regulators and investments firms relating to EMIR and MiFID II, as well as other trading venue information, including through initiatives already in place to improve data sharing between market participants, such as the ongoing MiFID review on market transparency. • Regarding government to business (G2B), data sharing mechanisms should be put in place to ensure market participants are able to share their data stored by a Government (the public sector). This will create more effective reuse of data across private sector services (including potentially within the public sector itself). <p><u>High-value datasets:</u></p> <ul style="list-style-type: none"> • A number of datasets that are made available by the public sector could be valuable in the provision of financial services; however, these datasets are not always easily accessible or conducive to efficient reuse, often due to a lack of standardisation and machine-readable formats, or manual access methods. As part of the work to establish and improve access to high-value public datasets under the Open Data Directive, we encourage the EU to focus on the following datasets: <ul style="list-style-type: none"> ○ <u>Geospatial:</u> Businesses locations, detailed cadastre data for business and household premises. ○ <u>Earth observation and environment:</u> Natural disasters risk maps, energy data (such as official certification of building efficiency). ○ <u>Statistics:</u> Economic indicators (such as income) at high levels of granularity and frequency (e.g. available on a monthly basis). The data should be disaggregation by geography or local administrative region and demographic characteristics. ○ <u>Companies and company ownership:</u> Company registration information and public accounts.
28	AFME to respond	<ul style="list-style-type: none"> • Standardised (e.g. XML) and machine-readable format: 4 – rather relevant • Further development of the European Financial Transparency Gateway, federating existing public databases with a Single EU access point: 4 – rather relevant • Application Programming Interfaces to access databases: 5 – fully relevant • Public EU databases: 5 – fully relevant

		<ul style="list-style-type: none"> • Other
	AFME to respond	<ul style="list-style-type: none"> • Allowing financial institutions to more easily integrate standardised APIs would be beneficial to all industry participants (including supervisory authorities and third-party providers) and would support promoting a competitive level playing field. Creating operational standards for data access will be key in ensuring data can be shared in a secure environment, in order to facilitate trust between parties. • APIs should be uniform where possible, and technical details of the required API functionality and standards landscape should be clearly defined. APIs are the preferred method for data transmission as they are secure, efficient and can provide data access on a real-time and/or regular basis. Further, access can also be more easily revoked, where appropriate. Interoperability between different APIs will be essential to make data sharing a reality (both within and across sectors). • In addition, authorities should carry out the following actions to facilitate the usability and re-usability of data across Europe: <ul style="list-style-type: none"> ○ Help the re-user identify the exact authority that holds a specific set of data (i.e. one-stop-shop); ○ Ensure that requests for data access are processed quickly and within agreed deadlines; ○ Ensure anonymisation of specific data for concrete use-cases; ○ Offer the opportunity to process data within a secure environment; ○ Provide clarity from the outset on the legal rules on which the data can be used (e.g. firms' legal rights to their data, rules on the repackaging and reuse of datasets); ○ Ensure the cost of the data sharing initiative is proportionate to the benefits of the use-case (e.g. does it allow firms to offer better products or services, or bring cost efficiencies; this analysis is separate to that of individual firms); and ○ Establish appropriate governance controls to ensure that data access and sharing is appropriate and fair. • Securities market disclosure: <ul style="list-style-type: none"> ○ Transparency regime data: A large part of the public data generated by investment firms who are regulated under MiFID II stems from their role as Systematic Internalisers (SI); the data linked to this execution venue must be made available to its participants (quotes subject to pre-trade transparency) or made public (transactions subject to post-trade transparency). This transparency regime is applicable to all equity and non-equity financial instruments. The conditions of the execution of client orders is also made public through the mandatory publication of Best Execution reports. Other data is made public by regulators themselves (e.g. liquidity / illiquidity thresholds, all thresholds linked to the transparency waivers - LIS, SSTI). ○ One common feature across these disclosures is the production of large amounts of data that are: <ul style="list-style-type: none"> ▪ Difficult and costly to extract for investment firms and regulators (e.g. annual transparency calculations for non-equity instruments other than bonds and quarterly calculations for the SI regime for derivatives, structured finance products and emission allowances); ▪ Not user or machine friendly; and ▪ Little used by end-users as this data is not needed to operate efficiently. ○ Trading Venue (TV) Data: Currently, the collection of TV data is fragmented. Market data fees have significantly risen since the application of MiFID II, and at the same time, there is no standard format to access TV information. We believe access to this data should be cheaper, more open and standardised. ○ A lack of a standardised formats and significant costs are the two greatest hurdles regarding TV data. Free or reasonable commercial access to market data, with a common structure / format, should be a policy priority. Public and free access to market data gathered and generated by trading venues is fundamental for effective functioning of MiFID II. The industry is working with policymakers to ensure that the market-wide information aggregator role of CTP (Consolidated Tape Provider) under MiFID II be fulfilled. Therefore,

		it is of critical importance to harmonise the EU securities market data structure to make market data easily accessible to all market participants at a reasonable cost.
Consent-based access to personal data and data sharing in the financial sector		
29	AFME to respond	<ul style="list-style-type: none"> • Important conditions that encourage data sharing by individuals (retail or wholesale) include ensuring: <ul style="list-style-type: none"> ○ The secure transmission of data (e.g. via APIs); ○ The efficient and timely transmission of data (i.e. transmission that is simple, on-going, real time and standardised; and ○ That individuals are in control of their data, by enhancing data portability and securing data protection rights. • Further, data sharing is only successful if users complete the necessary process, including any authentication processes (identity verification) and a selection of relevant datasets. This requires the data sharing process to be efficient, user-friendly and to instil users' confidence. Certain standard approaches can help ensure this is adhered to by all organisations. This could include, for example, maximum API response times, minimum API uptimes and the removal of artificial barriers during the user journey.
30	AFME to respond	<p>Benefits of an open finance policy:</p> <ul style="list-style-type: none"> • More innovative and convenient services for consumers/investors, e.g. aggregators, comparison, switching tools: 4 – rather relevant • Cheaper traditional services for consumers/investors: 3 - neutral • Efficiencies for the industry by making processes more automated (e.g. suitability test for investment services): 4 – rather relevant • Business opportunities for new entrants in the financial industry: 4 – rather relevant • New opportunities for incumbent financial services firms, including through partnerships with innovative start-ups: 3 - neutral • Easier access to bigger sets of data, hence facilitating development of data dependent services: 3 - neutral • Enhanced access to European capital markets for retail investors: 3 - neutral • Enhanced access to credit for small businesses: 3 - neutral • Other: 5 – fully relevant
	AFME to respond	<ul style="list-style-type: none"> • We welcome the Commission's aim of encouraging the sharing and reuse of data to strengthen the European digital economy. However, we believe that an open data policy must be cross-sectoral (not financial services specific) to bring benefits to users, and our answers to Q30 reflect this position. This is aligned with the views of the Commission's Expert Group on Regulatory Obstacles to Financial Innovation (ROEFIEG) in their December 2019 final report on 30 Recommendations on Regulation, Innovation and Finance, that regulatory schemes for data sharing should be developed on a horizontal basis. • However, if an open finance approach is implemented in isolation from, or more quickly than, broader action across other sectors, it will likely lead to weaker outcomes and potentially a number of corresponding risks (such as increased risks for FIs that may be required to bear the liabilities of a data breach from a third party; for more detail on risks please see response to Q31 below). • We believe a cross-sectoral open data policy could result in the following non-exhaustive list of benefits: <ul style="list-style-type: none"> ○ More innovative and convenient services for consumers/clients, which are not limited to aggregating information but also analysing and going beyond current value propositions; ○ Efficiencies for the industry by making processes more automated, robust and traceable, with the opportunity to have a more complete view of the customer and provide solutions for the long term; ○ Business opportunities for new entrants in the financial industry, but also for existing firms who prove value for consumers and clients;

		<ul style="list-style-type: none"> ○ New opportunities for incumbent financial services firms, including through partnerships with innovative start-ups; ○ Access to bigger sets of data would enhance the development of data dependent services; and ○ Enhanced financial stability through reduced data concentration and greater competition.
	AFME to respond	<p>Risks of an open finance policy:</p> <ul style="list-style-type: none"> ● Privacy issues / security of personal data: 5 – fully relevant ● Financial exclusion: 3 – neutral ● Poor consumer outcomes (e.g. unfair pricing strategies): 4 – rather relevant ● Misuse of consumers' financial data: 4 – rather relevant ● Business confidentiality issues: 4 – rather relevant ● Increased cyber risks: 4 – rather relevant ● Lack of level playing field in terms of access to data across financial sector activities: 5 – fully relevant ● Other: 5 – fully relevant
	AFME to respond	<p><u>Risks to financial sector resilience:</u></p> <ul style="list-style-type: none"> ● If a situation occurs where certain FIs bear the costs for the business models of their competitors (for instance where PSD2 has allowed other organisations to develop banking services without maintaining banking technology infrastructure or paying for its use), this will not only limit an FI's ability to invest in innovation, but may also have negative implications on their ability to maintain and continuously improve their technical infrastructure, adapt their business model, and ensure resilience for the financial sector overall. <p><u>Risk to firms' digital competitiveness:</u></p> <ul style="list-style-type: none"> ● If regulatory initiatives are put in place only for FIs (where PSD2 is already in place), without similar action across other sectors, this would further exacerbate an unlevel playing field in terms of data access and could put FIs' digital competitiveness at risk. In particular, some authorities (e.g. BIS Bigtech in Finance Report, 2019; FSB Bigtech in Finance Report, 2019) have identified that the entry or expansion of large technology firms in financial services verticals, as open banking / open finance policies can play a catalysing role by accelerating entry into new business lines and opening up new risk vectors. ● In particular, the existing datasets held by technology firms could be combined with data made available through open banking/open finance policies to provide an unfair advantage over existing FIs, with this effect strengthened by some technology firms' large user bases and roles as gatekeepers in the digital economy; giving them leverage over the user interaction. ● It is therefore important not only that any new initiatives to data sharing apply to all market participants, but this principle should apply to previous data sharing initiatives such as PSD2 if they are not already encompassed. ● Further, action is needed from policymakers regarding data pertaining to users to delineate clearly between raw/observed data and elaborated/inferred data insights. Users have rights relating to their raw and observed data; organisations can then use their expertise to build around this data (for instance through data validation, combination and analysis). This data is the product of the intellectual property of an organisation, so to continue to encourage research, development and innovation, organisations must be able to retain this value. Further, this data is unique to an individual organisations' processes and would not necessarily be easily standardised or understood by other industry participants. It is for these reasons that we believe elaborated or inferred data insights should not be shared between organisations on a mandatory basis, except where required as part of specific competition policy interventions where a market failure is clearly detected. There may also be instances where data monetisation is appropriate. For instance, for elaborated/inferred data, including validated data, where costs have been incurred for the collection and processing of the data. The ability to monetise data services will encourage innovation and competition and improve FIs' capacity to offer enhanced products and services. <p><u>Liability risk:</u></p>

		<ul style="list-style-type: none"> • Open finance policies such as PSD2 can expand the ecosystem of providers that users interact with to access financial services. Where rules regarding responsibilities and liabilities are unknown, unclear or undefined, this can generate additional overhead and risks for FIs. Where open finance policies are implemented and data is used by third parties, there should be a clear framework for assigning liability. For example, it must be considered how and where to assign liability for a data breach and the resulting financial harm to users, from a third party. <p><u>Risk of mistreatment of firms' data:</u></p> <ul style="list-style-type: none"> • Other risks may arise if clear rules are not set out regarding the treatment of firms' data when shared, this includes the permissions required from the entities whom the data are being used by, and the logic and algorithms used to analyse the data. While regulations such as GDPR provide a basis for addressing some of these questions, they will need to be further developed for application to firms. <p><u>Reputational risk for the account operator:</u></p> <ul style="list-style-type: none"> • If data is mis-used or used in settings that the users did not expect, there is a risk of mistrust in the financial services actors (and the financial services industry overall) who are obliged to give out this data.
32	AFME to respond	<p><u>Lack of a level playing field:</u></p> <ul style="list-style-type: none"> • We ask the Commission to implement a cross sectoral data sharing policy that should include key sectors identified within the Data Strategy, and also significant digital platform providers. As highlighted above, a number of initiatives proposed in the Digital and Data strategies offer a practical first step towards achieving this outcome. To empower clients/customers, the Commission should prioritise enhancing GDPR portability through the Data Act. To empower firms, the Commission has an opportunity to start with business users' data held in digital platforms through ex-ante rules in the Digital Services Act; however, the Commission should also work towards broader portability rights for firms as well as individuals. In addition, in line with the Article 29 Working Party, we believe that portability for individuals and firms should apply to raw or observed data, rather than elaborated or inferred data insights. At the same time, competition and financial services authorities should carefully assess on an ongoing basis the changing market structure of financial services (influenced by open finance policies such as PSD2) and its implications for competition and financial stability. <p><u>Privacy issues/security of personal data, increased cyber risks & poor consumer outcomes:</u></p> <ul style="list-style-type: none"> • We believe APIs are the preferred method for the transmission of data to address these risks. APIs are secure, efficient and can provide data access on a real-time and/or regular basis. Further, access can also be more easily revoked, where appropriate. APIs should be uniform where possible, and technical details of the required API functionality and standards landscape should be clearly defined. In addition, a cross-sectoral approach to managing cyber risks would be beneficial. • We also believe these risks could arise with the emergence of new financial services providers in a more open finance ecosystem, and the increased availability of new processes and services to users. These risks could be effectively mitigated by applying the same principles and rules to new entrants or firms as they are currently applied to existing FIs. • For example, due to the sensitive nature of financial services data and operations, any sharing of financial data requires a robust regime that enforces appropriate rules on consent, transparency, security, licensing and authorisations. In addition, open banking policies must ensure that the broader ecosystem remains sustainable and conducive to future innovation. • While PSD2 has begun to establish this regime, there are a number of considerations that still must be addressed: <p><u>Competitiveness and innovation:</u></p> <ul style="list-style-type: none"> • Under the current PSD2 framework, account providers are unable to charge third parties for access to data or payment initiation. This results in a part of the financial markets infrastructure being provided without remuneration, undermining its financial sustainability. To address this, firms should be able to recover the costs associated with the implementation and operation of

		<p>open finance infrastructure, such as APIs, through reasonable charges on the use of such mechanisms.</p> <p><u>Responsibilities and liabilities:</u></p> <ul style="list-style-type: none"> • Clearer rules and coordination models are needed to allow firms to resolve issues that may arise, including inappropriate use of data or loss of data in one part of the ecosystem, or recovery of funds related to a fraudulent payment when the responsibility sits with a third party.
33	AFME to respond	<p>An open finance policy would offer benefits and opportunities to the following financial products:</p> <ul style="list-style-type: none"> • Savings accounts: N/A • Consumer credit: N/A • SME credit: N/A • Mortgages: N/A • Retail investment products (e. g. securities accounts): N/A • Non-life insurance products (e.g. motor, home...): N/A • Life insurance products: N/A • Pension products: N/A • Other: 5 – fully relevant
	AFME to respond	<ul style="list-style-type: none"> • We believe the focus should not be on financial products, but on use cases that can ensure significant advances in innovation. Additional access to data will enhance products and services, but also the way users are served and in managing risk.
33.1	AFME to respond	<ul style="list-style-type: none"> • The benefits of an open finance policy will be most prominent if implemented as part of a wider cross-sectoral approach. A cross-sectoral approach would allow for increased data flows within and between sectors, leading to increased competition and data-driven innovation both in the financial sector and the wider digital economy.
34	AFME to respond	<ul style="list-style-type: none"> • As stated previously, we believe a cross-sectoral approach to an open data policy will be crucial to improving services and processes across the economy. Access to additional and varied data, if facilitated appropriately, could improve service offerings to users, for instance through improved risk management by FIs (e.g. better fraud and cyber incident detection). We provide below some key examples where data from other sectors would be relevant for financial services: <ul style="list-style-type: none"> ○ Financial crime data: Combatting fraud and scams, is a clear example of where greater data sharing between sectors could result in societal benefits (e.g. protecting clients from fraud and stemming the flow of funds to organised crime). These types of crimes are increasingly undertaken through the exploitation of vulnerabilities across multiple organisations (e.g. social media sites, online sales platforms, dating websites, telecoms networks, and financial services firms). Greater sharing of data, in full compliance with GDPR, could enable potential fraud and scams to be identified and stopped sooner. ○ Environmental data: We believe that Environmental Social Governance (ESG) data would be useful for FIs, as it is a driving force for reshaping financial services (for instance through the provision of green financial products) and will assist with the assessment and analysis of climate risk. ESG data is also useful for understanding the physical risks that contribute to the measurement of an organisation's climate risk exposure, and for the development of improved services and offerings for clients who seek to hedge against their own climate risk. We note that ESG data can be utilised like any alternative data source for financial analysis purposes, such as for investment and credit forecasting. Specific types of environmental datasets could include information that pertain to the physical risk associated with climate risk, such as natural disaster risk mapping (e.g. flood plain data) and weather forecasting information. Building energy efficiency certifications could also be leveraged as part of investment analyses. However, ESG data quality is an important issue that will need to be addressed, and ESG source diversity is key. We request the Commission to consider further how the European Data Strategy will cover ESG data.

		<ul style="list-style-type: none"> ○ Statistics: Relevant statistics could include economic indicators (such as income) at high levels of granularity and availability on at least a monthly basis, with disaggregation by geography or local administrative region and by demographic characteristics. Ideally, these statistics would be published on a regular basis by central and regional governments and be available wherever feasible through standardised technical interfaces, such as APIs. ○ Company ownership: In respect of ‘companies and company ownership’, the provision of beneficial ownership information can be utilised for AML purposes within financial institutions, which would be beneficial for firms. The following information might be useful regarding company ownership, if not already available through APIs: <ul style="list-style-type: none"> ▪ Company registration information and public accounts; and ▪ Court information regarding companies, e.g. public case brought by state against a firm.
35	AFME to respond	<p>Elements to consider in implementing an open finance policy:</p> <ul style="list-style-type: none"> • Standardisation of data, data formats: 5 – fully relevant • Clarity on the entities covered, including potential thresholds: 5 – fully relevant • Clarity on the way data can be technically accessed including whether data is shared in real time (e.g. standardised APIs): 5 – fully relevant • Clarity on how to ensure full compliance with GDPR and ePrivacy Directive requirements and need to ensure that data subjects remain in full control of their personal data: 5 – fully relevant • Clarity on the terms and conditions under which data can be shared between financial services providers (e.g. fees): 5 – fully relevant • Interoperability across sectors: 5 – fully relevant • Clarity on the way data shared will be used: 5 – fully relevant • Introduction of mandatory data sharing beyond PSD2 in the framework of EU regulatory regime: 3 – neutral • If mandatory data sharing is considered, making data available free of cost for the recipient: 3 – neutral • Other
	AFME to respond	<ul style="list-style-type: none"> • As stated previously, we believe that an open data, not an open finance policy is needed, so our scores on specific financial services related areas for Q35 reflect this. • Users should remain in control of their data. To ensure users can effectively share their data, further consideration may be required relating to user consent, including ensuring the effective implementation of GDPR to data access. This could include for instance, the need for clear and accessible documentation on how data is controlled, implementing proactive controls to manage data use and access in order to maintain user trust, implementing proper controls for revocation and lineage management (in the case of data compromise) and the need for clear management of end of life access (managing access in case of data revocation). • If a cross-sectoral approach is utilised, we believe that other relevant points include: <ul style="list-style-type: none"> ○ Control must be given to the users (individuals and firms); ○ Data access should be facilitated through APIs; to ensure the data shared is safe and useful for innovation purposes; ○ Access to greater and varied data, via cross-sectorial data sharing, is critical to triggering disruptive innovation; and ○ Incentives must be kept for players to invest in data processing, so data sharing should not include derived or inferred data.
Support the uptake of Artificial intelligence in finance		
36	AFME to <u>not</u> respond	<ul style="list-style-type: none"> • Not relevant

36.1	AFME to <u>not</u> respond	<ul style="list-style-type: none"> • Not relevant
37	AFME to respond	<ul style="list-style-type: none"> • While AFME considers that, overall, the regulatory framework as it applies to AI within capital markets is largely appropriate, we would like to take the opportunity to raise some specific challenges. These should be considered in light of our earlier comments on the importance of technology-neutral and principles-based regulation. <ul style="list-style-type: none"> ○ Data limitation/minimisation: The data minimisation principle recognised in GDPR might limit AI innovation, as the suitability of new personal datasets for a certain use case must be known before requesting consent from users to access their data. That is, under GDPR, data scientists cannot experiment on the appropriateness of new personal datasets that have not been previously identified as relevant for the use case. Consent can be difficult to obtain and the ‘purpose limitation’ principle of Article 5(1)(b) makes it further difficult to rely on the validity of any consent given ○ Use of synthetic/anonymised data in AI: we suggest that further clarity is needed on the point at which such data is no longer able to be traced back to individuals and therefore does not fall within GDPR. We note that the UK Information Commissioner’s Office (ICO) has performed some useful research in this area (https://ico.org.uk/about-the-ico/news-and-events/ai-auditing-framework/) ○ Transparency: further work with the industry would be welcome in this area, for example (i) the use of models with a lower degree of explainability, e.g. use of AI for complex internal capital models, and (ii) the need for clarity for clients on firms’ use of AI and the level of human intervention. ○ Supervisory approaches: it may become the case that the support for the use of complex AI differs between the policy and supervisory teams within authorities, which can be extremely challenging for firms. ○ Risk minimisation/mitigation: it would be helpful for firms if this were the key focus of supervisory oversight of firms’ use of AI, rather than any requirement for the elimination of risk, which is not practical in a business scenario (whether using AI or not). ○ Global coordination: as the use of AI in financial services becomes a key focus for global and regional authorities, harmonisation of approaches is key. AFME’s members operate cross-border business, meaning that regulatory fragmentation imposes unnecessary cost and operational inefficiencies, which inhibits the realisation of benefits from technologies such as AI. ○ Fragmentation: EU Member States take different approaches to their implementation of GDPR, and have their own local privacy laws and data protection authorities. The intersection of these different approaches can present issues for the consistent deployment of models across the EU and therefore negate the benefits that can be obtained from EU wide data insight and analysis of such models. • We also direct the Commission to our recent response to its White Paper on ‘Artificial Intelligence – a European Approach to Excellence and Trust’ (https://www.afme.eu/Portals/0/DispatchFeaturedImages/20200612%20AFME%20EC%20AI%20CP%20Response%20-%20Final.pdf).
38	AFME to respond	<ul style="list-style-type: none"> • As outlined in AFME’s 2018 White Paper ‘Artificial Intelligence; Adoption in Capital Markets’ (https://www.afme.eu/reports/publications/details/Artificial-Intelligence-Adoption-in-Capital-Markets), there are many areas in which AI is already beginning to be deployed, bringing significant benefits for the sector. • Our report on Technology and Innovation in Europe’s Capital Markets, published later that year (https://www.afme.eu/reports/publications/details/technology-and-innovation-in-europes-capital-markets) noted that market participants saw AI being embedded over 5 years in functions such as: natural language processing (NLP), such as speech recognition; optical character recognition (OCR), such as the ability to read unstructured (e.g. handwritten) documents; and trading risk analytics, and social networks analysis.

		<ul style="list-style-type: none"> • The key benefit of AI is that it allows firms to perform tasks that would otherwise be too complex, slow or labour-intensive. Our white paper called out the following particular benefits for capital markets firms: <ul style="list-style-type: none"> ○ Client servicing, e.g. personalised products and services to meet individual client needs; automated and predictive resolution of client service issues; ○ Organisational change and operational efficiency, e.g. enables existing staff to focus on high value efforts and activities; improved decision-making based on increased data and simulations; continuous performance improvements; ○ Market efficiency, e.g. reduced transaction breaks and exceptions and increasing data quality; more rapid entry into and development of new markets; increased standardisation and commoditisation of existing products and services; more efficient pricing and execution algorithms; ○ Compliance and reporting, e.g. better use of data to prevent and detect fraud, money-laundering and market abuse; more efficient processing of information; increased ability for firms to report and supervisors to evaluate large and complex data sets; mining of both structured and unstructured data sets; improved ability for internal monitoring, including voice, for infractions; ○ Cybersecurity, e.g. reduced time required to detect and respond to cyber threats; and ○ Risk management, e.g. better assessment of financial and non-financial risks.
39	AFME to respond	<p>1. Main challenges or risks of AI based models for the financial industry:</p> <ul style="list-style-type: none"> • 1.1. Lack of legal clarity on certain horizontal EU rules: 4 – rather relevant • 1.2. Lack of legal clarity on certain sector-specific EU rules: 3 - neutral • 1.3. Lack of skills to develop such models: 5 – fully relevant • 1.4. Lack of understanding from and oversight by the supervisory authorities: 4 – rather relevant • 1.5. Concentration risks: 2 – rather not relevant • 1.6. Other
	AFME to respond	<ul style="list-style-type: none"> • In relation to a lack of legal clarity on horizontal or sector-specific rules, we note our response to Question 37. In most cases, we feel that the solution would be more dialogue between supervisors and the industry to obtain clarity on expectations, rather than regulatory changes. • In relation to industry skills and supervisory understanding of AI, these should be a key priority for both the public and private sectors. We note that although supervisors have devoted significant resource to upskilling their staff, this must be a continuous process. Additionally, we feel that the progress has not been consistent across all supervisory authorities, which risks leading to a disparity of approaches and potentially unequal development of AI capabilities across the EU. • In relation to other issues, access to quality and consistent data sets presents a challenge for AI adoption in financial services. Broad data sets are required to train models, and to ensure the benefits data-driven innovation can materialise. • Further, we note while there is potential for risks that not listed above to arise, these should be appropriately addressed by firms' robust internal control frameworks. These include the inadvertent creation of malfunctions in models, machine's learning to engage in misconduct, and inappropriate data use. However, these issues should all be addressed by firms through the use of skilled first and second line talent, ongoing user testing, appropriate model governance, close engagement with model developers and robust data use governance.
	AFME to respond	<p>2. Main challenges or risks of AI based models for consumers/investors:</p> <ul style="list-style-type: none"> • 2.1. Lack of awareness on the use of an algorithm: 3 - neutral • 2.2. Lack of transparency on how the outcome has been produced: 3 - neutral • 2.3. Lack of understanding on how the outcome has been produced: 3 - neutral • 2.4. Difficult to challenge a specific outcome: 3 - neutral • 2.5. Biases and/or exploitative profiling: 3 - neutral

		<ul style="list-style-type: none"> 2.6. Financial exclusion: N/A 2.7. Algorithm-based behavioural manipulation (e.g. collusion and other coordinated firm behaviour): 3 - neutral 2.8. Loss of privacy: 3 - neutral 2.9. Other
	AFME to respond	<ul style="list-style-type: none"> We have selected 'neutral' for each of the above risks, noting that capital markets is already a highly regulated industry, with firms subject to significant obligations such as preventing/detecting misconduct and the protection of clients. Our scoring is therefore based on our view of the residual risk once this existing regulatory environment is taken into account.
	AFME to respond	<p>3. Main challenges or risks of AI based models for supervisory authorities:</p> <ul style="list-style-type: none"> 3.1. Lack of expertise in understanding more complex AI-based models used by the supervised entities: 4 – rather relevant 3.2. Lack of clarity in explainability requirements, which may lead to reject these models: 4 – rather relevant 3.3. Lack of adequate coordination with other authorities (e.g. data protection): 4 – rather relevant 3.4. Biases: 2 – rather not relevant 3.5. Other
	AFME to respond	<ul style="list-style-type: none"> As outlined in our responses to question 37, more discussion would be welcome on supervisory expectations in relation to transparency/explainability of more complex models. In relation to industry skills and supervisory understanding of AI, these should be a key priority for both the public and private sectors. We note that although supervisors have devoted significant resource to upskilling their staff, this must be a continuous process. Additionally, we feel that the progress has not been consistent across all supervisory authorities, which risks leading to a disparity of approaches and potentially unequal development of AI capabilities across the EU.
40	AFME to respond	<p>Best ways to address these issues:</p> <ul style="list-style-type: none"> New EU rules on AI at horizontal level: 2 – rather not relevant New EU rules on AI for the financial sector: 2 – rather not relevant Guidance at EU level for the financial sector: 4 – rather relevant Experimentation on specific AI applications under the control of competent authorities: 5 – fully relevant Certification of AI systems: 2 – rather not relevant Auditing of AI systems: 2 – rather not relevant Registration with and access to AI systems for relevant supervisory authorities: 2 – rather not relevant Other
	AFME to respond	<ul style="list-style-type: none"> Overall, we believe that the regulatory framework as it applies to AI within capital markets is largely appropriate (except as in reference to Q 37), and any future initiatives in this regard should remain technology-neutral and principles-based. Greater supervisory dialogue between the industry and sectoral authorities regarding developments in AI and supervisory expectations would be our preferred priority. Coordination with authorities in other jurisdictions should also be prioritised, in order to share experience and best practices. We note that in relation to 'Auditing of AI systems', we currently understand 'systems' to be regulatory audits. If systems referred to internal audits, our answer would be '3 – neutral'. We also direct the Commission to our recent response to its White Paper on 'Artificial Intelligence – a European Approach to Excellence and Trust' (https://www.afme.eu/Portals/0/DispatchFeaturedImages/20200612%20AFME%20EC%20AI%20CP%20Response%20-%20Final_.pdf), where we raised some concerns with its proposed regulatory and certification framework for AI in Europe.

Harness the benefits data-driven innovation can bring in compliance and supervision		
41	AFME to respond	<p>1. Barriers for new RegTech solutions to scale up in the EU Single Market for providers of RegTech solutions:</p> <ul style="list-style-type: none"> • Lack of harmonisation of EU rules: 5 – fully relevant • Lack of clarity regarding the interpretation of regulatory requirements (e.g. reporting): 5 – fully relevant • Lack of standards: 5 – fully relevant • Lack of real time access to data from regulated institutions: 4 – rather relevant • Lack of interactions between RegTech firms, regulated financial institutions and authorities: 3 – neutral • Lack of supervisory one stop shop for RegTech within the EU: 5 – fully relevant • Frequent changes in the applicable rules: 5 – fully relevant • Other
	AFME to respond	<p>2. Barriers for new RegTech solutions to scale up in the EU Single Market for Financial service providers:</p> <ul style="list-style-type: none"> • Lack of harmonisation of EU rules: 5 – fully relevant • Lack of trust in newly developed solutions: 5 – fully relevant • Lack of harmonised approach to RegTech within the EU: 5 – fully relevant • Other
	AFME to respond	<ul style="list-style-type: none"> • The RegTech market is still developing, with no solution as yet identified as dominant or widely used by firms or authorities. This might be due to the reluctance by firms to use innovative technologies for conducting regulated activities (e.g. reporting, compliance). • However, the constantly evolving nature of the EU regulatory framework, has added additional uncertainty and made difficult, for firms, the use of a particular solution or technology. • Finally, the lack of common interpretation and implementation of EU requirements, across EU Member States, has often led to inconsistent requirements. This is another obstacle to the development of a mature RegTech market.
42	AFME to respond	Yes
42.1	AFME to respond	<ul style="list-style-type: none"> • The development of a RegTech market requires collaboration of technology providers, financial institutions (FIs), and financial services authorities. • Whilst technology providers and FIs are increasingly collaborating, public sector participation and engagement is inconsistent across EU Members States. To increase and facilitate the participation of all parties, it would be beneficial for authorities to contribute to initiatives such as accelerators or innovation centres, to promote an effective exchange of knowledge between parties. • Similarly, alongside technology firms and FIs, financial sector authorities should also continue to acquire experience and knowledge on innovative technologies and solutions to maximize potential opportunities. • See AFME's comments provided in response to question 20.
43	AFME to respond	<ul style="list-style-type: none"> • For additional information on areas where data collection could be enhanced in the Financial services sector, please read AFME's response³⁸ to the Bank of England consultation paper on ‘Transforming Data Collection from the UK Financial Sector’.
44	AFME to respond	<ul style="list-style-type: none"> • Further to the Commission's work to standardise concept definitions and reporting obligations across the whole EU financial services legislation, additional initiatives should be taken to support a move towards a fully digitalised supervisory approach in financial services.

³⁸https://www.afme.eu/Portals/0/DispatchFeaturedImages/2020-05%20AFME%20Transforming%20Data%20Response%20-%20Final_.pdf

		<ul style="list-style-type: none"> We believe it will be essential long-term as part of this initiative to coordinate with other national, regional, and global authorities, wherever practicable. AFME's members, and the wholesale capital markets industry, are cross-border in nature and this is inherent in many of the requirements, and obligations, in reporting development and submissions today.
45	AFME to respond	<ul style="list-style-type: none"> The use of 'other publicly available data' would need to be appropriately defined by regulators to the extent that it was relied upon from a supervisory perspective, along with the purpose for which it would be relied upon. An important consideration would be the extent to which the information provided can be verified. Where this information was limited to verified information that derives from social media platforms owned and operated by the supervised entity, this may be appropriate. However, in this context, it is important to note that regulators are mandated to supervise legal entities, as opposed to brand presence. Social media channels may represent the global brand messages that may be misconstrued or out of context with reference to individual legal entities that sit within a global group. Broader reliance on social media information, outside of the social media platforms owned and operated by the supervised entity, would need to be very carefully considered from an accuracy perspective. It may be very difficult to accurately verify the source and correctness of such information and to therefore justify relying on such information for supervisory purposes.

4. Broader issues

Question	Comment	Reasoning
46	AFME to respond	<ul style="list-style-type: none"> The EU financial sector is an essential component of a transition towards a digital single market. First, by providing financing to support firms' digital transformation (e.g. including new skills, culture, customers' expectations). Also, by providing financing to support the scaling-up of firms across the Single Market, as well as funding entrepreneurial activity. Finally, by offering safe, efficient, and affordable financial services suited to the needs of EU firms and clients/customers. However, to deliver on this crucial task, the EU requires: <ul style="list-style-type: none"> Fair and even conditions for all market players, to access data, and promote data-driven innovation in the EU; A regulatory framework that does not impose undue limitations or burden on the uptake of innovative technologies (e.g. cloud, AI, DLT); A level playing field that ensures all market players benefit from the opportunities of digital transformation, while ensuring risks to financial stability, integrity and client/consumer protection are mitigated through appropriate controls. A true digital single market for financial services that guarantees EU clients/customers are provided with safe, effective and efficient products and services, irrespective of their location within the region; Regulatory harmonisation globally and within the EU, to enable the EU financial sector, to remain competitive in a global landscape.
47	AFME to respond	<ul style="list-style-type: none"> A cross-sectoral approach to data sharing will be key to fulfilling sustainability objectives, as outlined in the European Green Deal, as data on emissions, energy usage, and climate risk mapping will be key in identifying more sustainable products and services and ways of doing business. We therefore invite the Commission to facilitate the development of data ecosystems for the sharing of relevant Environmental Social Governance (ESG) data. We welcome the proposals put forward in the European Strategy for Data on creating Common European Data Spaces to facilitate the greater sharing of relevant data between market participants. A "European Green Deal data space" may support access to and sharing of data that is useful across a number of

		<p>different sectors, including the financial sector. The financial sector could use relevant data to contribute to its role in helping its customers and wider economy meet their sustainability objectives, including through better climate change related risk assessments, or the provision of green-loans.</p> <ul style="list-style-type: none"> ○ In addition, innovation forums provide a place to share best practises while regulatory sandboxes provide opportunities to test new digital tools in a safe environment. We recommend that the Commission continue to support innovation forums such as the European Forum for Innovation Facilitators (EFIF) and to further develop regulatory sandbox testing environments in order to maximise the potential of digital tools for integrating sustainability.
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About AFME

The Association for Financial Markets in Europe (AFME) is the voice of all Europe's wholesale financial markets, providing expertise across a broad range of regulatory and capital markets issues. AFME represent the leading global and European banks and other significant capital market players. AFME advocates for deep and integrated European capital markets which serve the needs of companies and investors, supporting economic growth and benefiting society. AFME aims to act as a bridge between market participants and policy makers across Europe, drawing on our strong and long-standing relationships, our technical knowledge and fact-based work. For more information, visit <https://www.afme.eu/>