

Digital Finance outreach, DG FISMA: Luxembourg Summary Report

22 June 2020

Event date: 11 June 2020

Conducted online via videoconference

Key outcomes & recommendations

- Adequate and effective regulation of an industry undergoing significant transformation depends on **transnational and cross-agency collaboration**
 - For instance, collaboration between data regulators and financial regulators will become increasingly relevant as we move towards “open finance”
- The **value of data**, the ability of market participants to engage in free - albeit regulated - contracting, and the ability for market participants and end users to more effectively trace and control the flow of data have been highlighted. User-centric policies, such as direct payment of users (natural persons) for the provision of their data, have been put forth.
- **Digital identity** (“digital ID”) and other trust services as defined by eIDAS are viewed as increasingly important considerations for the financial industry, both in the context of the ongoing sanitary crisis but also with a view on the organic growth in digital finance. National obstacles to the full implementation of eIDAS should be examined.
- There is a need for clarification and potentially new regulation with regard to **disintermediation of financial market infrastructure** as digital ledger technology continues to make headway in the industry.

Introduction by DG FISMA

The webinar begins with a presentation by DG FISMA representatives, detailing EU initiatives and priorities with regard to digital finance, digital services more broadly and the adjacent areas of AI and data strategy. The Commission representatives notably explain that the goal of the ongoing digital finance consultation is to promote a data-driven financial sector. To this end, for instance, PSD2 is currently undergoing review, potentially enabling broader use of financial and non-financial data – the goal being to move from “open banking” to “open finance”. An upcoming digital services act could also have a material impact on the financial sector.

Following the Commission presentation, a discussion which was open to the public and moderated by the Luxembourg House of Financial Technology ensued. Below we attempt to summarize key feedback resulting from this exchange.

Participant feedback

Participants believe that **harmonization of rules and practices** on an EU level should be promoted, all the while retaining a “local touch” resulting from local know-how. To that end, an EU-level exchange on best practices regarding digital finance should be promoted.

In the context of **PSD2** and its potential for an increase in scope, one participant raised the question of the **value of data**, arguing that the Commission should focus on providing a framework for **free contracting** instead of mandating that existing players “give up their data” for free.

Another participant cautioned that **Big Tech** firms have benefited from the concurrent advantage that is access to troves of (non-financial) data as well as from favorable trends in talent acquisition. Both Google and Facebook have in the meanwhile obtained EMI licenses in the EU, and the overall trend is clearly for Big Tech to **enter finance**. The participant noted that PSD2 and a potentially extended version of the regulation could lead to an exacerbation of the **competitive advantages** which Big Tech currently enjoys over traditional financial institutions.

Participants diverged on the topic of **data privacy** and the utility of EU-level restrictions to the international exchange of information. One participant highlighted the importance of **user-centric policies**, notably promoting a free exchange of data via direct payment of users for the provision of their personal data. Another highlighted the importance for market participants to evaluate the quality and sourcing of data, and to avoid bias (including in algorithms). Finally, a participant cautioned that the utility of cloud services could be diminished by geographical restrictions, e.g. relating to hosting services.

Several participants highlighted **digital ID** as an important topic through the current crisis and beyond. The eIDAS regulation has laid the groundwork for mutual recognition of trust services; however, there are still obstacles to the frictionless adoption of eID and electronic signatures across EU jurisdictions. For instance, there may be no “presumption of conformity” between physical and digital documents in many EU jurisdictions, and a legal framework for equivalence may not be present.

On **crypto-assets and the role of DLT more broadly**, participants diverged as to the necessity for EU-level regulation. One participant argued that clarification of existing rules, rather than the introduction of new ones, is called for. The participant cited the question of liability for financial markets infrastructure in the event of technological disintermediation as an area in need of clarification.

Participants diverged on the utility of **regulatory sandboxes**. One participant argued that sandboxes are prone to creating favoritism towards commercial entities involved with the sandbox at the detriment of others, and that competition between national regulators may also play out via their respective sandboxes. To alleviate this problem, a EU-level sandbox could be explored.

Participants emphasized the importance of EU-level coordination on topics such as **data regulation vs financial regulation** or **IP & tech transfers between academia and industry** with a view on creating innovative products & services. As the borders of traditional finance

and digital services are increasingly blurred, so will lawmakers and regulators need to increase their cross-sectorial efforts for laws and regulations to remain appropriate.

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