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BSG Own Initiative Paper on Digitalisation: Challenges for consumers

1. INTRODUCTION

One of the priorities of the current European Commission (hereafter 'the Commission') is the digitisation of Europe. Embedded in this, the Commission published a strategy for digital finance in the EU (COM(2020) 591 final) and a strategy for retail payments (COM(2020) 592 final) on 24 September 2020. Part of the implementation of this strategy are the legislative proposals for 'Digital Operational Resilience' (DORA) (COM(2020) 595 final), 'Markets in crypto-assets' (MICA) (COM(2020) 593/3) and a pilot regime for DLT-based market infrastructures (COM(2020) 594/3).

The four priorities of the Digital Finance Strategy are:

1) Eliminating fragmentation of the digital single market.
2) Adapting the EU regulatory framework to facilitate digital innovation.
3) Promoting data-driven innovation in finance by creating a common financial data space.
4) Addressing the challenges and risks associated with the digital transformation.

The Commission emphasises in the Digital Finance Strategy, also with a view to overcoming the COVID-19 pandemic, that 'Digital technologies will be central to relaunching and modernising the European economy across sectors. It will move Europe forward as a global digital player. At the same time, financial service users must be protected from the risks associated with the increased use of digital financial services.' Digitalisation should lead to increased innovation, new services, more favourable conditions and better access for consumers and businesses, while protecting consumers, respecting data protection and safeguarding financial stability. The Commission also pledges to clarify the supervisory standards on the application of this legislative framework to artificial intelligence applications.

The Retail Payments Strategy focuses on four key pillars, which are closely interlinked:

1) increasingly digital and instant payment solutions with pan-European reach;
2) innovative and competitive retail payments markets;
3) efficient and interoperable retail payment systems and other support infrastructures;
4) efficient international payments, including remittances.

As it was clearly mentioned in the document released by the Commission, as payments are at the forefront of digital innovation in finance, implementing this strategy will contribute to the Commission's broader vision for digital finance and to its objectives of removing market fragmentation, promoting market-driven innovation in finance and addressing new challenges and risks associated with digital finance, while ensuring technology neutrality.

2. Main challenges of digital financial services from a consumer protection point of view

2.1. General remarks on different perspectives of consumers and service providers

It is one of the basic principles of the European Single Market that suppliers authorised in one Member State can offer their goods and services throughout the Single Market ('European Passport'). In a digital world of services, this principle creates a fundamental divergence in the perspectives of providers and consumers. While providers exercise their right to choose the most favourable location for their offer for economic or other reasons, the consumer in a digital world is confronted with 27 different legal systems. While in the analogue world the consumer, who has grown up in a specific legal system of his place of residence, can be expected to be clear about his and the provider's rights and obligations, this is neither possible nor reasonable in the digital world. This lack of clarity that remains with the consumer cannot really be countered by transparency obligations on the part of the provider.

The problem is further exacerbated in fragmented or poorly integrated value chains because it not only affects the comparison of services from different providers from different member states, but also individual parts of a service that appear to be a uniform product from the consumer's point of view, but are processed under different legal systems. The BSG is of the opinion that this different perspective of consumers and providers must be taken into account when regulating the digitalisation of financial services in order to ensure equivalence in the relationship between the two.

Ultimately, this contradiction can only be resolved through a far-reaching unification of private law in the EU member states, even if it is clear that this perspective is not feasible in the current state of EU integration. The highest possible degree of clarity about the legal system to be applied when a contract for a service is concluded and an avoidance of the application of different legal systems within the value chain of a service should therefore be ensured through regulation. This also requires clarity in the responsibilities of supervisory authorities and adequate complaint mechanisms for consumers. Ideally, consumers should have appropriate rights vis-à-vis the supervisory authority in their country of residence, which in turn should have adequate possibilities to intervene vis-à-vis the supervisory authority of the provider.

2.2. Financial and digital exclusion

Vulnerable consumers, especially the elderly and the young population
In the current financial consumer situation, the emergence of the COVID-19 pandemic in which we are still immersed cannot be ignored. It has also taken place at a time of profound transformation of financial services and products, with an intense migration to the digital field, accompanied by a progressive disappearance of in-person attendance in offices. In this

scenario, we cannot talk about financial exclusion without including digital exclusion parameters in the analysis, especially for vulnerable consumers.

Indeed, one of the most vulnerable groups is elderly people. They are used to receiving personal attention in financial branches. We cannot ignore either the fact that a large percentage of them are non-digital native, so they find obstacles on a daily basis to move through digital architecture, are forced to do online what they used to do at establishments and physical branches: from the most complex procedures of the bureaucracy with public administrations or financial operations with their banks, to even the simplest actions, such as online purchases or filing of personal material, such as photos or documents. The digital gap in this area is evident and efforts must be doubled to mitigate its most adverse effect, inequality, as these consumers cannot access the same products and services under equal competition conditions in the market.

Another group is the young population. Their access to the financial field, essential to deploying their first work and life projects, has also been mediated by the intense digitisation we are witnessing. However, in this case, technology may not be a problem as they are native users, but the lack of financial and digital literacy, can be very harmful for them.

While there is general acknowledgement of some efforts by the banking sector and by consumer organisations, to foster financial literacy and digital skills, more should be done. This is particularly true for the public sector, which could, for example, give financial literacy a more popular role in school curricula.

The new Fintech companies, with portfolios of innovative products, coexist with conventional entities and companies in a new battlefield with new artillery: data. The data, previously zealously guarded by the few companies with which consumers related, can now be shared, displayed, treated and processed, so its value has been maximised. The challenge is to alert the younger population of this reality: they may be savvy in the management of technology, but are poorly instructed in the management of personal finances and in the caution and future planning with which they have to be approached.

All the agents must be committed, not only authorities, but also economic actors, with companies as the main architects, to the inclusion of people with functional diversity in the digital financial transition. The collective effort to facilitate access under equal conditions for this group must be real and decisive given that the pandemic has also made their digital exclusion visible. Access to banking services is highlighted here, as well as the tools that allow professional performance and let us not forget, digital and financial literacy.

Economic conditions – access to digital devices or to paid Internet access

Physical barriers that prevent the digital management of finances also deserve a separate chapter. Beyond the personal, training and generational characteristics that determine the financial consumer, there is a crucial factor that depends on national policies allowing the technological deployment that enables bringing the latest generation Internet connections to all populations, however small they are.

The COVID-19 pandemic has shown that professionals with certain profiles prefer abandoning large cities to move to smaller towns with healthier environments in which they can work remotely. There are several positive aspects associated with this professional diaspora, such as the occupation of certain less densely populated territories and the consequent economic activation of these territories. Nevertheless, this change requires the political will to provide the conditions that allow, facilitate and promote teleworking with the implementation of basic services like health, schools and finance. However, there are fewer and fewer bank offices in little towns and the access to financial services is conditioned, not only on digital literacy, but to something that is much more basic, having high-speed Internet access.

2.3. Cashless society

All these issues must be addressed urgently because we are directing our steps towards a society that, from an economic and financial point of view, will undergo profound transformations. Will we witness the disappearance of cash, one of the essential pillars of transactions, since the beginning of time?

We do not know for sure right now, but it is safe to assume that digital currency will preside over most exchanges within a reasonable time frame. The transition, once again, will have to be balanced while facilitating access to the banking network of ATMs.

On the other hand, this future scenario raises several questions and challenges, for example, concerning the protection of electronic money. It will be necessary to articulate reinforced security mechanisms to give consumers secure custody of their digital economy, with barriers to cybercrime. Another issue relates to access to products and services. In a market dominated by online service, advice and contracting, and in which the sophisticated processing of data allowed by algorithms prevails, the exclusion of certain profiles may occur, which directly leads to discrimination and implies non-compliance with laws.

Managing the equipment, technological and human means that make it possible to correct the failures of the technological systems will require high investments by companies, as well as by system regulators in charge of auditing the quality of the processes and guaranteeing regulatory compliance. We are facing a human challenge to ensure that the digital transition does not exclude anyone, much less the most vulnerable.

2.4. Digital marketing of consumer/retail financial services

While digital means can provide for more effective risk management, fraud detection, AML compliance, among others, it may also pose a challenge from the users' perspective. Financial services for consumers are rapidly changing and most of the transformation of the markets, products and transactions environment are caused by digital technologies. The emergence of FinTech has brought financial services closer to underserved consumers. They can make instant payments and transfer money from anywhere and with a few swipes on the screen. Artificial intelligence (AI) is rapidly transforming digital marketing practices. With the use of AI and by expanding the role of robo-advisors, financial services for consumers will become more personalised in the future.

However, the benefits of these technologies are accompanied by new, often unknown, risks and challenges, which could undermine trust and confidence among consumers. There are still areas not covered by the existing legislation, such as the regulation of automated financial advice and access to redress and remedies for consumers in case of financial harm caused by the poor design and unethical use of algorithms and data, produced by automated decision-making biases and discrimination in banking. Given their highly data-driven nature, in Fintech, applications privacy rights, data and transaction security, protection against cyber threats are not always ensured and consumers fall victim to all kinds of scams[1].

Nowadays, digital lending allows for fast approval and quick access to small short-term loans via mobile phone. However, their fees and costs are presented in vague terms, while the mobile format may impede the readability of the contract terms and conditions. In recent years, the consumer credit market has changed significantly with the entrance of Fintech players and with the proliferation of crowdfunding platforms offering loans to consumers online. The BSG is supportive of the idea of including these new players in the scope of the Consumer Credit Directive, which is being reviewed. While digital microcredit products tend to be more expensive than traditional credit products, on peer-to-peer platforms high-cost consumer loans are also being marketed. Zero-fee price structures may involve less obvious costs. These kinds of practices take advantage of gaps in legislation or even bypass national legislations[2].

These companies use obscure information disclosure methods[3] and questionable marketing practices, they do not properly assess the borrowers' creditworthiness, and they do not show all the charges and the annual percentage rate in their offers[4].

The technology may not always help providers target their customers more effectively. While automated credit scoring can facilitate access to financial services for unbanked consumers, poor algorithm design and the use of unrepresentative data could produce biased results that are persistently unfavourable to certain groups and perpetuate exclusions and inequities[5]. AI is rapidly transforming digital marketing practices. Even if digitalisation and the use of AI generally benefits customers and businesses, extensive use of digital technologies increases the risks for financially vulnerable consumers[6]. At the level of the EU there still are a significant number of persons with limited access to financial services or technologies due to various reasons, such as level of education, age, location, precarious living conditions. The use of digital services and Fintech, which are new and evolve very quickly, may be complex, especially for elderly and/or less digitalised citizens.

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[1] https://www.oecd.org/finance/Financial-Consumer-Protection-Policy-Approaches-in-the-Digital-Age.pdf , page 10-17
[2] https://www.bis.org/fsi/publ/insights23.pdf , page 17, page 27, page 35
[3] https://www.beuc.eu/publications/beuc-x-2019-019_review_of_the_consumer_credit_directive.pdf
[4] https://www.cambridge.org/core/journals/german-law-journal/article/peertopeer-lending-and-eu-credit-laws-a-creditworthiness-assessment-creditrisk-analysis-or-neither-of-the-two/5CE96E68947E0A9496E018D67FD5DD50 , pages 115, 116, 119
[5] https://www.oecd.org/finance/Personal-Data-Use-in-Financial-Services-and-the-Role-of-Financial-Education.pdf , page16
[6] See Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor. Virginia Eubanks.

For an optimal customer experience and engagement with financial service providers, human assessment and supervision still plays an essential role. Robo-advisors cannot provide human reasoning; human control is therefore necessary to provide reliable and trustworthy financial services.

One of the most important elements of financial services to consumers in the digital environment is to ensure that consumers understand the services they are using and the conditions of their provisions. When targeting consumers or offering personalised prices, technologically advanced providers with a dominant market position and access to data have an advantage over competitors, benefiting from such practices, causing competition concerns.

With the increased role of digitalisation and AI in financial services for consumers, an inter-disciplinary approach[7] is necessary to properly address these issues through regulation.

An adequate EU regulatory regime is needed for cryptoassets that are currently not covered by the EU financial services legislation. Because cryptoassets do not currently qualify as financial instruments under MiFID II and consequently are not covered by key investor protections rules, consumers could be exposed to significant financial risks.

One concern is related to complicated online distribution chains that make it difficult for the consumer to understand who is responsible and how and where to file a complaint[8]. Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning distance marketing of consumer financial services needs to be substantially updated to correspond to the current realities and challenges and we welcome the consultation launched in June 2021 by the European Commission in this regard. Also, we consider it adequate that the scope of Payment Services Directive 2 (PSD 2) to cover other financial services products and an Open Finance regulatory regime be introduced to ensure that consumers are protected when using new digital financial services.

Consumer trust and confidence should be boosted by proper regulation and supervisory activity. Therefore ESAs role and enforcement powers should be increased when making use of their mandates provided under Article 9 of their respective founding regulations to 'monitor new and existing financial activities', 'adopt guidelines and recommendations with a view to promoting the safety and soundness of markets and convergence of regulatory practice'.

At the same time, banking industry should work on rebuilding consumer trust[9] [10]. Financial industry players such as banks and FinTech providers can also help reduce bias and discrimination by a combination of preventative measures, like increased transparency about the use of their algorithms, avoiding biases, ensuring high standards of consumer protection and supporting consumer financial education with regard to new digital technologies.

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[7] https://www.beuc.eu/publications/beuc-x-2021-018_eu_consumer_protection.0_0.pdf , part II
[8] https://www.beuc.eu/publications/beuc-x-2021-018_eu_consumer_protection.0_0.pdf , page 120-126
[9] After the financial crisis, many banks in Spain developed marketing campaigns to rebuild the trust of clients. The more impactful one was the campaign arranged by the new Board ABANCA, formerly Caixa Galicia. They published a letter in all national newspapers for forgiveness for having sold preferred shares to retail clients ('First of all, sorry.' See https://www.abc.es/espana/galicia/abci-novagalicia-pide-perdon-201207120000_noticia.html)
[10] https://www.edelman.com/trust/2021-trust-barometer/trust-financial-services

From a user's perspective, it is key to have simple, transparent and comparable financial products for consumers, the limitation of certain parameters in big data analytics for profiling, for creditworthiness assessment and in decision-making. It is also key to further support the provision of unbiased advice and transparent information while protecting consumers' data and their right to privacy.

2.5. Artificial Intelligence

On 24 April 2021 the European Commission adopted a proposal for a regulation on artificial intelligence (AI) (COM (2021) 206 final. The stated goals of the proposed AI regulation are:
To ensure that AI systems placed in the Union market and used are safe and respect existing laws on fundamental rights and Union values:

- ensure legal certainty to facilitate investment and innovation in AI;
- enhance governance and effective enforcement of existing law on fundamental rights and safety requirements applicable to AI systems;
- facilitate the development of a Single Market for lawful, safe and trustworthy AI applications and prevent market fragmentation.

Even though this proposal is the first legislative framework at EU level to deal with AI and has long been awaited, the proposed rules neither meet consumer's expectations, nor does the EU's own aim to give people and other users the confidence to embrace AI-based solutions. Regarding consumer protection, the proposed rules are focused on a very limited range of AI uses and aspects.

The proposal also does not include specific consumer rights, such as the right to challenge an algorithm-based decision and to make use of human assessment of AI-based decisions. The proposed act does not even provide remedies in case something goes wrong for consumers.

Although the European Commission wants to ban the use of certain AI practices, i.e. those that result in the distortion of a person's behaviour, the proposed rules only consider the risk of 'psychological or physical harm' thus omitting other possible harm or risks to consumers, such as financial losses or discriminatory results against consumers based on their age, gender, race, ethnicity, income or other economic criteria.

In the context of high-risk uses of AI technology with biased information and non-transparent exclusions criteria, consumers who do not carefully check the accuracy of the provided data might make a wrongful choice of financial products and services with the ensuing negative economic results. Therefore, it is of utmost importance that the proposal is improved. The regulation should take into account the manner in which the technology impacts economic aspects of consumers, so consumer protection stays apace with technological advances.

3. EU Digital Finance Strategy

3.1. Eliminating fragmentation of the digital single market

In its Digital Finance Strategy, the EU Commission assumes that a ‘well-functioning Single Market for digital financial services will help improve access to financial services for consumers and retail investors in the EU through more innovative, diverse and inclusive banking, investment and insurance services’. Therefore, building on harmonised anti-money laundering and counter-terrorist financing rules and a revised framework for electronic identities and trust services (eIDAS Regulation), it wants to establish a legal framework for so-called ‘onboarding’ by 2024, which would allow for the further use of customer data after information and consent of the customer. In this context, the EBA is invited, together with the other European Supervisory Authorities (ESAs), to develop guidelines by the third quarter of 2021 on the procedures and customer due diligence to be applied by financial institutions and their appointed service providers (third parties, including financial service providers) when entering into business relationships. At the same time, the Commission will clarify with the European Data Protection Board the data protection aspects of a possible further use of the data obtained in this process.

Also by 2024, the European Commission wants to ensure that the principle of the ‘European passport’ and licensing from a single source is implemented in all fields with potential for digital innovation. From the Commission’s point of view, the limiting factor is the respective legal framework of the individual Member States in which the service is to be offered. Referring to the harmonisation that has already taken place in crowdfunding and the planned harmonisation in cryptoassets, it announces further harmonisation, e.g. in RegTech applications and non-bank loans. It also announces the creation of an EU digital finance platform to improve cooperation between authorities and the ‘digital ecosystem’.

A common feature in EU Member States lies in the uncertainties surrounding the legal classification of virtual currencies: they are not considered to be legal tender or money, but a means of exchange; they represent intangible goods/intangible assets and may constitute alternative investments with specific risks, and are inherent in the investment risks specific to the financial/banking sector; they constitute units of account and are therefore financial instruments; forms of financial assets etc. Therefore, from a terminological point of view, it is sometimes preferred to use the term ‘virtual assets’, insofar as those instruments do not constitute a ‘currency’ in the established sense. Cryptoassets are not necessarily assets in their own right, but primarily instruments in digital form, best described as ‘tokens’.

The European Central Bank has chosen to define cryptoassets as ‘a new type of asset recorded in digital form and enabled by the use of cryptography that is not and does not represent a financial claim on, or a liability of, any identifiable entity.’ The focus is therefore on the regulatory, economic and business dimension of cryptoassets as a new asset class, rather than on the use of technologies that are currently needed for its existence but are not specific to it.[11]

From the perspective of consumer protection, these are risky tools where their protection is particularly needed. When investing in crypto assets, consumers may not sufficiently understand the risks involved in the transaction, in terms of the value of the investment, how

[11] https://www.ecb.europa.eu/pub/economic-bulletin/articles/2019/html/ecb.ebart201905_03~c83aeaa44c.en.html

and why the crypto asset price will change. In the case of investing in a crypto currency start-up, if the initial public offering (IPO) is launched, for the average consumer it is hard to determine how likely is that the crypto assets investment project for which the investment is made will be successful. There is also the issue of the reliability of trading platforms. Although some of these risks are present in other consumer transactions, they are exacerbated here due to the nature of the products, as they can be abstract, diverse and subject to accelerated innovation and the regulatory gap. The additional practical problem is that consumers may not easily distinguish between those assets that are regulated and those that are outside the scope of the regulatory framework.

Also, there are many other limits, barriers and risks in using emerging financial products and technologies, such as: the lack of transparency and accessibility of information for regular consumer as they act in a non-regulated market with highly volatile assets, the absence of a legal framework and there are a variety of players and jurisdictions involved. Additionally, there are a lot of hidden risks like tax evasion, money laundering and financing of terrorism and virtual cryptoassets do not always meet the sustainability standards (i.e. high energy consumption).

Another major problem[12] of cryptoassets is the aspect of easy manipulation of the consumer/investor's behaviour through social media.[13] The first 'Trends, Risks and Vulnerabilities (TRV) Report' of 2021 to ESMA, also highlights the risks linked with investments in the non-regulated cryptoassets. ESAs therefore remind consumers about risks.

'As crypto-assets, including so-called virtual currencies such as Bitcoin, continue to attract public attention, the European Supervisory Authorities (EBA, EIOPA and ESMA – together the 'ESAs') recall the continued relevance of their previous warnings.

The ESAs remind consumers that some crypto-assets are highly risky and speculative and, as stated in the ESAs February 2018 joint warning[14], consumers must be alert to the high risks of buying and/or holding these instruments, including the possibility of losing all their money. Additionally, crypto-assets come in many forms but the majority of them remain unregulated in the EU. This means that consumers buying and/or holding these instruments do not benefit from the guarantees and safeguards associated with regulated financial services.'

Regarding regulatory regime, the European Commission presented a comprehensive legislative proposal for a 'Regulation on Markets in Crypto assets (MiCA)'[15], a regulatory framework developed since 2018 to help regulate currently out-of-scope cryptoassets and their service providers in the EU and provide a single licensing regime across all Member States by 2024. Other EU regulations that should be targeted to fit to the scope of protecting consumers of financial services into the digital society are: the EU Digital Market Act (DMA), the EU Fintech Action Plan and the regulation of Distributed Ledger Technology (DLT) Market Infrastructures.

[12] https://edition.cnn.com/2021/05/24/investing/elon-musk-bitcoin-dogecoin-tesla/index.html
[13] https://twitter.com/elonmusk/status/1392602041025843203?lang=en
[14] https://www.esma.europa.eu/press-news/esma-news/esas-warn-consumers-risks-in-buying-virtual-currencies
[15] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020PC0593

Key aims regarding consumer protection of the proposed regulatory framework should be that digitalisation, including tokens and cryptoassets and FinTech must not create new stability risks or harm consumers. However, the proposal remains subject to the outcome of the co-legislative process and so consumers do not currently benefit from any of the safeguards foreseen in that proposal because it is not yet EU law.

Given the transnational nature of this market, a European and international approach would be required. The principles of legislative intervention could aim at a proportionate approach to the gaps in the protection of consumers and investors in cryptoassets but also to guarantee the integrity of the financial system.

3.2. Adapting the EU regulatory framework to facilitate digital innovation

This section also addresses the promotion of the use of artificial intelligence in financial institutions, in addition to the proposed legislative measures on cryptoassets and tokenised financial instruments, planned measures to promote cloud computing and strengthen investment in software by financial institutions, and ensuring a technology-neutral supervisory framework, which will not be commented on further here. A proposal for a corresponding legal framework is still planned for 2021. The EBA, together with the other supervisory authorities, is called upon to develop guidelines on this. This should take into account work that has already been done, such as that of the expert group on digital ethics based at EIOPA.

3.3. Promoting data-driven innovation in finance through the creation of a common financial data space

One focus of a common financial data space is the disclosure of data by financial institutions and their reporting obligations to supervisory authorities. The second focus is the creation of open finance with a binding legal framework for the exchange, access and protection of customer-related data. The Commission is building on the PSD 2 and is considering starting its review in 2021 (see also the objectives set out above in the retail payments strategy). At the same time, it wants to present a legal framework for open finance based on the Digital Markets Act and the Digital Services Act. This should also include binding rules for cooperation with platform providers.

Into the rapidly digitalised world, advanced computing increases the ability to store, manage and transfer data, while advanced analytics permits greater insight into customer behaviours and preferences. These innovations have created opportunities not only for business innovation but consumer innovation also. In recent years, we have seen a number of FinTech consumer protection initiatives surfacing. Of particular relevance to consumers are guidelines for responsible FinTech behaviour and the fit regulation for those activities. This is best achieved by combining public regulation with private standards that represent the collective view of best practice by all stakeholders, including civil society.

In relation to consumer protection, financial industry needs to continue to reform itself and the regulation and supervision of financial sector will have to consider the new systemic risks, those that emerge from capital markets, from the spread of transactions based on cryptoassets and the potential threat of climate changes on financial stability and on the well-being of humankind. A guiding principle should be 'same services, same risks, same regulation, same supervision'.

3.4. Addressing the challenges and risks associated with the digital transformation

In addition to strengthening the operational security of digital systems in the financial sector (Digital Operational Resilience Act), this priority also includes the questions that the Commission addressed to the European supervisory authorities in its Call for Advice (see next chapter).

In addition, the Commission announces for 2022 that it will review consumer and data protection rules in various regulations such as conduct of business rules, disclosure of information, creditworthiness checks and advice, as well as the Directive on Distance Marketing of Financial Services. The Commission also announces the promotion of financial literacy in the digital field.

For the benefit of establishing a true digital Single Market the BSG is of the opinion that consumers need to trust financial service providers operating in that space. To contribute to the building up of trust, it will be crucial for data protection safeguards and strict rules to be implemented in line with the General Data Protection Regulation. The aim of reusing data must be to build upon the notion of 'consumers/clients are the owners of their data', thus, providing consent must be fully understood. To that end, consent forms and its implications must be transparent, thoroughly informative and guarantees must be put in place that the use and reuse of data will only be done for the purposes set out in the consent.

Regarding cross-border activities, one necessary requirement is having clarity on the applicable legal framework overcoming the current patchwork of national regulations in some areas of financial services provision we refer to our basic considerations in Chapter 2.1

The BSG considers that facilitating digital innovation cannot be done without close attention to consumer outcomes. Looking at the use of AI by financial institutions some BSG Members consider that there are concerns for consumers. The use of algorithms for assessments (such as creditworthiness) may be based on biased criteria and thus result in discrimination. For example, if the assessment only considers digital tracking of financial behaviour this may exclude those consumers who are not so present in the digital space (whether due to lack of digital literacy or lack of access).

Another transversal issue related to digitalisation is related to personal data protection[16]. This is a fundamental requirement to establish a common financial data space. The excessive reliance on AI systems may result in a more ecosystem prone to violation of laws.[17] [18] [19] [20] [21]. A

[16] https://carnegieendowment.org/specialprojects/protectingfinancialstability/timeline
[17] https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf
[18] https://carnegieendowment.org/specialprojects/protectingfinancialstability/timeline
[19] https://digitalguardian.com/blog/top-10-finserv-data-breaches
[20] https://www.which.co.uk/policy/digital/2659/control-alt-or-delete-the-future-of-consumer-data-main-report
[21] https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf

strong and resistant framework for the provision and usage of AI is necessary to ensure that data is protected[22]. In this context, new processes and flows of providers will be established, therefore, requirements must ensure the traceability and accountability of the responsible party in the process. For consumers, the immediate contact point must be clearly indicated and this should include person-to-person options to communicate, avoiding a fully digital context that would create an excessive sense of distanciation and eventual exclusion.

To enhance the expression of views and concerns of consumers and other relevant stakeholders, including employees, it is important to ensure that their representatives are a part of this journey. This includes their active involvement in the different fora such as the EU Digital Platform. The design of regulation cannot be complete and efficient if the whole spectrum of stakeholders is not considered and their inputs and concerns are not taken into account. This includes consumers as they are the end users of retail financial services, thus their representatives are key entities in the process of policy design.

To ensure that consumers are fully aware and can reap the benefits of digitalisation in financial services, significant efforts need to be put in place to promote financial literacy, along with digital literacy. Several reports on financial literacy, such as the OECD/INFE 2020 International Survey of Adult Financial Literacy[23], show that there are significant differences in the levels of literacy at national level. To address this, a common initiative should be designed to implement an EU-wide programme allowing for a comprehensive evolution of the levels of understanding of financial issues. Only then, will consumers be able to fully grasp the implications of issues such as choosing the right product, channel and data usage.

Also, the supply side has a key role in this evolution. Providers should engage in fair market practices – including timely, transparent and actual information provision. To that end, regulation must ensure that provisions are inserted in the regulatory framework.
The BSG considers that implementing these measures is crucial to achieving the goals set out in the EU Digital Finance Strategy.

The Retail Payments Strategy includes many references to consumers and users and tried to find a proper balance between the opportunities offered and the risks involved by the new technologies and the new types of payments.

Regarding instant payments, of course consumers would like to see payments completed in milliseconds instead of hours or days. But this could also come with some challenges that should be properly addressed. First, the Commission considers that consumers should not pay more for an instant payment compared to regular credit transfers, which in the near future should become the new normal. The BSG supports this view on the topic and the argument that, in the absence of such an approach, instant payments will remain a niche product alongside regular credit transfers. Second, we fully agree with the Commission's approach that, to increase the confidence of consumers, instant payment services should offer features that put them on an equal footing with other payment instruments (e.g. cards) that offer chargebacks, i.e. the return of credit card funds used to make a purchase to the buyer in

[22] https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662913/IPOL_STU(2021)662913_EN.pdf
[23] https://www.oecd.org/financial/education/oecd-infe-2020-international-survey-of-adult-financial-literacy.pdf a

certain cases (e.g. mistakes). Third, to increase the convenience and affordability for consumers, it is necessary to standardise QR codes at EU level, which will be very helpful especially in cross-border transactions.

Reaping the full potential of the Single Euro Payments Area (SEPA)() is still a challenge, in particular when consumers still face unacceptable refusals of cross-border SEPA Direct Debit transactions (‘IBAN discrimination’). This is happening 6 years after the end-date for SEPA Credit Transfers (SCT) and SEPA Direct Debits (SDD) in Euro Member States, and 4 years after the end-date for non-euro Member States, which is totally unacceptable.

Although the advantages provided by digital payments are incontestable, especially in challenging times like COVID-19, it would be important for consumers to maintain the availability and the acceptance of cash. There are still around 30 million EU citizens without a bank account. There are also many who are not comfortable (because of age, disabilities, etc.) using digital devices for financial services. Therefore, we are supporting the Commission’s view of maintaining the cash as legal tender.

Strong customer authentication (SCA), introduced by PSD 2, designed to reduce the level of fraud in digital payments, also generated some challenges for consumers. In some cases, it was difficult for them to adapt to the changes and to understand the reasons that the old system with the SMS received via mobile phone was not secure enough. Sometimes, the new rules forced consumers to open different pages on their browsers at the same time and to go from one to another after introducing passwords and codes on both pages, which made the transactions much more complicated than in the past. In context, the BSG is supporting the Commission’s proposal to promote the use of an electronic ID (eID) to support the fulfilment of the SCA under PSD 2 for account login and for initiation of payments.

Contactless payments became much more popular during the pandemic, because they were much safer than transactions that involved the introduction of a PIN. The Commission will assess, with both stakeholders and Member States, if it is feasible to make it possible for consumers to set their preferred limits for contactless, taking into account both the convenience of such payments and the risks of fraud in the absence of the SCA.

The cost of remittances, which still represents an important part of the GDP for many low- and middle-income countries (especially those with many citizens working abroad), remains very high (an average of around 7%, whereas the international community has committed to reducing those costs to less than 3% by 2030). The BSG supports the Commission’s objective for cross-border payments involving non-EU countries, including remittances, to become faster, more affordable, more accessible, more transparent and more convenient.

4. Call for Advice to ESA’s

On 2 February 2021, the Commission issued a Call for Advice asking European supervisors to respond to a number of questions related in particular to aspects of addressing the challenges and risks associated with digitalisation in the context of the Digital Finance Strategy.

The following topics are addressed therein:

(a) Regulation and supervision of more fragmented or non-integrated value chains
(b) Platforms and bundling of various financial services
(c) Risks in groups combining different activities
(d) Non-bank lending aspects – will be addressed into a separate paper
(e) Protection of client funds and the articulation to the Deposit Guarantee Scheme Directive.

From a consumer protection perspective, points a), b) and e) are addressed below. The ESA's shall give an interim report on points a) to c) by 31 October 2021 and a final report by the end of 2021. On point e) the dates are 31 July 2021 and 31 October 2021, whereas point d) will be addressed at the end of 2021 and 31 March 2022.

4.1. Regulation and supervision of more fragmented or non-integrated value chains

Digitalisation and new technologies lead to reduced market entry barriers, specialised services and new types of cooperation thereby fragmenting the value chains of financial services, composed by regulated and non-regulated entities.

As the CFA states: 'The joint provision of a single financial service by several specialised entities may lead to greater efficiency and overall benefits to the users of financial services. It could however also create new risks as the provision of a service is divided into parts, each executed by a separate entity which may be subject to different legal requirements.' Also from a customer's point of view it must be clear which part of the value chain is effectively responsible for providing the service and where to request information, report problems and request remedies. This is especially true when it comes to cross-border services or partners in the value chain outside the customer's home country. In that respect, we refer to our basic considerations in Chapter 2.1. The advice should assess possible risks even in the field of customer protection.

It is important to ensure that the consumer protection framework is fit for purpose in today's world of globalised finance, complex value chains and corporate structures, rapid technological innovation and strong competition between financial service providers. Therefore, regulators need to understand the consumer perspective in a timely manner in order to establish effective regulation and supervision regimes.

4.2. Platforms and bundling of various financial services

Platforms can provide or market different financial services, covered by different sectoral regulation and cooperating in fragmented value chains partly outside any regulation. ESA's are requested to assess if the current rules lead to an effective regulation and supervision of platforms and its services. This includes customer protection.

From the perspective of the EBA BSG, data protection is one of the most pressing risks for consumers. The consumer data is exposed to risk from two sides. In the BSG's view, the use of data from the non-financial services activities of the platform for the distribution or settlement of the financial service should not take place without the explicit consent of the consumer. For example, insights based on analysis of the consumer's other activities on the platform should not be used without consent, e.g. to make a risk assessment of the consumer. In the view of the BSG, consent must be obtained when the financial service is offered or concluded and cannot be pre-emptively obtained in advance when the other activities are used, when the consumer may not even be thinking of purchasing a financial service via the platform. At the same time, refusal of consent should not lead to a refusal to offer or conclude the financial service. Conversely, the data generated during the purchase and settlement of the financial service may not be used or exploited in the other activities of the platform without the consumer's consent.

If the platform offers financial services that are subject to different regulations and if it is not sufficiently clear in a specific transaction the regulation to which a combined financial service is subject, some BSG Members believe that the regulation with the highest level of consumer protection provisions applies to the entire transaction. From the perspective of both the supervisory authority and the consumer, only this application can avoid that the combination of services leads to a circumvention of regulations to which a provider would be subject when offering the most extensively regulated service separately. This is also necessary to maintain a level playing field between different providers.

4.3. Protection of client funds and the articulation to the Deposit Guarantee Scheme Directive

The safeguarding requirements in different financial activities such as payment or investment lead to different results with regard to the protection of client funds. This may also be due to ambiguities or misconduct that lead to such client funds being removed from the protection of the Deposit Guarantee Schemes Directive (DGSD).

The EBA is requested to assess the impact of a possible review of the DGSD which would protect those client funds and propose possible amendments to the DGSD.

The EBA BSG supports equal treatment of client funds in terms of the level of protection regardless of the service in question. Client funds held for the client by an institution (e.g. in a payment process) should also be treated equally to the client's deposits in terms of their level of protection.