**AEB response to the European Commission Consultation on a new Digital Finance Strategy for Europe**

The Spanish Banking Association (AEB) welcomes the European Commission’s *Consultation on a new digital finance strategy for Europe/Fintech Action Plan* and the opportunity to convey our insights in the relevant areas identified. This document summarizes the main points of our response to the Consultation.

**Initial remarks**

The banking sector is critical in providing financial services to the general economy and, in the last few months, has played a key role in channelling public and private credit and liquidity to businesses and consumers to lessen the economic impact of COVID-19 pandemic.

Going forward, as the most important source of financing to the European economy, the banking sector will continue committed with its mission and play a crucial role in financing recovery and the transition to a more sustainable and digital economy in the EU.

To fulfil this role, it is paramount that the different digital and financial initiatives being put forward by European authorities ensure a regulatory environment conducive to innovation and the provision of financial services on a level playing field, which does not undermine the viability and financing capacity of the banking sector in the future.

While technology is freely available to banks, some of the current banking regulations and supervisory expectations, together with existing fragmentation across Europe, may hamper the incorporation of innovative digital solutions into the activities and services provided by the banking sector and create an uneven playing field vis-à-vis other non-bank competitors with a lighter regulatory and oversight backpack.

To this end, we encourage authorities to define an ambitious regulatory response to the priorities identified in the new digital finance strategy and the challenges posed by digital financing in the future.

EU authorities have a paramount opportunity to **promote innovation in financial services.** For this purpose, they should focus, on the one hand, on **ensuring the participation of all financial actors on fair and equitable terms**:

1. **Level the playing field as regards access to data.**

Data driven innovation is a key enabler of European economic competitiveness, and for the European financial sector. We support the strategic vision of the Commission on the need to promote a data-driven financial sector for the benefit of EU consumers and firms. However, the measures to be taken need to be carefully analysed. These should not put the banking sector at a competitive disadvantage, by exacerbating the current asymmetry in access to data in favour of other global players without similar obligations and that clearly benefit from the current policy based solely on further opening up data gathered by financial entities (and specifically, banks).

We encourage the Commission to consider a policy option that goes beyond just the narrow sharing of financial data: clients should be able to share not only data from all financial service providers, but also data collected by other actors, including digital platforms (e.g. e-commerce, social media, streaming or mobility services), telcos and utilities, and tax and social security authorities.

The COVID19 pandemic has shown that leveraging data from multiple sectors is extremely useful, in this case to swiftly respond to a crisis situation, and this requires a complete data ecosystem. The EU needs a cross-sectoral framework to empower both individuals and firms, ensuring that they can share their data when and with whom they want. This would support greater competition and data-driven innovation, including a greater adoption of AI in Europe.

1. **Adapt competition policy and regulation to the challenges of digital markets.**

Reshaping the existing financial regulation might be insufficient to ensure fair and competitive conditions in digital markets in which a few large platforms currently benefit from network effects and gatekeeping roles.

BigTech firms have started to leverage their control of customer interactions and extensive data to enter into financial services’ verticals. Additionally, some of them control the access to digital and technical infrastructures required for the provision of digital financial services. These include devices and their associated functionality, such as biometric authentication or communication protocols like Bluetooth and near field communication (NFC), as well as app stores and pre-installed apps on devices.

Since access to digital or technical infrastructure outside the traditional financial sector is increasingly important for the provision of certain services, authorities should ensure **fair and non-discriminatory access** to the relevant technical infrastructure for all financial service providers.

Furthermore, the impact of the direct entry of these players could be very significant for the development of financial services, taking into account that the potential disintermediation of traditional players in this case may put in danger their role to sustain the European economy.

We welcome the Commission's initiative on the Digital Services Act Package and the New Competition tool to reflect on the potential development of rules to ensure that markets dominated by large platforms with significant network effects acting as gate-keepers, remain fair and contestable for innovators and new market entrants, and on the role of competition policy in a world increasingly digital.

On the other hand, EU authorities should **revise measures within financial regulation** to update or/and expand the current rulebook in order to ensure that regulation and supervision **protect consumers and systemic stability** while also preserving the benefits of innovation and competition:

1. **Ensure proportional rules for banking institutions**

* Shift from entity to activity/risk-based approach in financial regulation and application of proportionality to non-bank subsidiaries of banking groups provided adequate measures are taken to avoid contagion risk

Regulated banks face significant barriers to innovate and to invest in innovative businesses that stem from prudential regulation, which are distorting the competitive conditions in the financial markets.

The consolidated application of prudential rules implies that, even if some of the services offered by banks can be conducted by subsidiaries that are not funded with deposits, prudential requirements (including rules on internal control and corporate governance, remuneration policy or outsourcing policies) are applied nonetheless to all the entities within the banking group. As a result, in performing those non-core activities (i.e. not funded with deposits), banks and their subsidiaries always have an additional burden of prudential regulation and supervision, which delays the digital innovation procedure and the investment in innovative businesses.

Authorities should focus at limiting the negative impact of prudential regulation and advance towards a more activity/risks-based regulation. To this end, authorities should explore how risks within banking groups can be effectively isolated and thus, how the proportionality principle embedded in financial regulation could be more consistently applied to respond to the actual risks created by certain activities within banking groups.

- Develop a technology-neutral regulatory framework and move to a principles-based approach to provide with the flexibility necessary to incorporate new technologies or products that may emerge on the market.

Authorities should promote an enabling regulatory framework without unnecessary burdens for the use of technologies - Cloud, AI, DLT - that encourages the required investments (**Software**) and attracts the talent needed to compete with other non-bank financial service providers.

- Promote knowledge-sharing, cooperation and guidance to achieve common regulatory and supervisory approaches to the adoption of innovative technology by financial institutions in Europe.

One of the challenges of adopting new technologies in the banking industry also comes from the lack of technical knowledge and coordination among financial supervisors, as well as from insufficient clarity as regards authorities’ expectations. For example, an important area in which guidance, rather than additional regulation, under a common European approach would be welcomed, is on the deployment of AI tools and how to observe existing requirements and supervisory expectations on *explainability*, interpretability and non-discrimination.

Regulatory sandboxes can play a key role in enabling innovation, help to accelerate learning and information sharing between companies and supervisors, as well as facilitating a safe environment for innovation in the financial services market. Whilst a cooperation framework among the different national sandboxes will help create synergies and certain harmonisation, we encourage the Commission to put in place a regulatory framework for experimentation at the European Union level that will help to better understand and address obstacles to cross-border innovation.

- Develop a true digital single market for financial services that guarantees that EU citizens are provided with the most convenient products and services, irrespective of their location within the region.

Regulatory fragmentation across Europe can hamper the adoption of innovative technologies, detrimentally impacting tech-driven cross-border business. Regulatory fragmentation is mainly due to the existence of different national rules and/or different interpretation criteria followed by EU Member States when transposing directives. Furthermore, in some areas, such as **outsourcing**, the applied regulatory instrument (EBA Guidelines in this case) does not supersede the existence of national rules, which implies different supervision approaches across national markets.

We encourage the European Commission to prioritize the use of legislative mechanisms that ensure a maximum harmonization, such as Regulations, and establish the basic principles required to create efficiencies and the scaling-up of innovative business. The interpretation criteria or implementation guidelines could be provided by the ESAs in order to set regulatory standards and to avoid gold plating and different interpretations by NCAs (e.g. for cloud computing due to gold plating following the EBA Guidelines on outsourcing).

1. **Extend the regulatory perimeter to other entities, especially in the case of:**

* Systemic risks, including operational risks. Some of the activity-specific licensing and supervisory frameworks in place need to be revisited to ensure their fitness for the potential risks related to the large-scale provisioning of these services by BigTechs. We believe this is the case for the frameworks in place for e-money and payments: some changes are needed to mitigate the financial stability risks associated with the impact on banks’ funding and liquidity due to the reduction in the stock of lendable deposits that would occur with the large-scale entry of the Bigtech into payment services as e-money issuers.

Authorities should seek to mitigate potential stability issues associated with a large-scale provision of these services, which could include: tightening operational resilience and resolution requirements to ensure continuity, establishing supervisory and risk governance mechanisms as well as a proportionate prudential framework. Authorities could also consider defining a set of criteria and requirements for systemic non-bank providers of key financial services.

- Consumer protection. Authorities should consider whether some of the business models not previously covered by regulation should be brought into the regulatory perimeter (e.g. crypto-assets) and be subject to targeted obligations regarding AML/CFT, reporting or consumer protection as deemed adequate.

Special care must be taken to ensure that customers are able to differentiate between what is a bank deposit (with the backing of a deposit guarantee scheme offered by a highly regulated credit entity) and other form of non-deposit store-of-value products (e.g. payment instrument, e-money or crypto assets) .

- Regulate and/or supervise directly critical third-party providers for financial institutions.

Supervision should be implemented at European level, ensuring an EU-wide harmonized approach to supervisory requirements for third parties and especially CSPs. The framework should be preferably cross-sectoral, not stemming from financial authorities, since it would ensure equal conditions of access to those services by firms operating in different sectors. Nevertheless, as far as this additional regulation/supervision does not entail a reduction in the range of services offered to banks nor an increase in the cost of those services, an intervention by financial authorities only would also be welcomed.

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