European Commission
Directorate-General for Financial Stability,
Financial Services and Capital Markets Union
1049 Bruxelles/Brussel
Belgium

(Submitted via an online questionnaire)

25 June 2020

Dear Sir, Madam,

Response to European Commission Consultation on a new digital finance strategy for Europe / FinTech Action Plan

The International Capital Market Association (ICMA)[1] has submitted a response to certain aspects of the European Commission Consultation on a new digital finance strategy for Europe / FinTech Action Plan via the European Commission's online questionnaire. A copy of those responses is set out in the appendix to this letter.

Background to ICMA

ICMA is a not-for-profit membership association, headquartered in Switzerland, that serves the needs of its wide range of member firms in global capital markets. Among its members are private and public sector issuers, banks and securities houses, asset managers and other investors, capital market infrastructure providers, central banks, law firms and others. ICMA currently has over 590 members located in 62 countries. See: www.icmagroup.org.

General remarks related to ICMA's response

The ICMA response was prepared with comments expressed by ICMA's stakeholders, notably the ICMA Legal & Documentation Committee[2], the European Repo and Collateral Council (ERCC), in particular the ERCC's SFTR Task Force[3], associated ICMA members, and relates to the following questions:

- Q19: Use of identifiers (LEI, UTI, UPI)
- Q27: Access to publicly available data
- Q28: Access to publicly available data

[1] European Transparency Register #0223480577-59
[2] https://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/Primary-Markets/primary-market-committees/icma-legal-and-documentation-committee/
[3] https://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/repo-and-collateral-markets/regulation/regulatory-reporting-of-sfts/

- Q38: Areas for AI-applications in the financial sector
- Q44: Standardising concept definitions and reporting obligations

We remain at your disposal should you wish to discuss further.

Yours faithfully,

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ICMA
International Capital Market Association

APPENDIX

Set out below is a copy of certain of the European Commission's questions from section of the consultation (in grey text) and ICMA's responses (in black text).

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

Removing Single Market fragmentation has always been on the radar of EU institutions. In the digital age, however, the ability of firms to scale up is a matter of economic productivity and competitiveness. The economics of data and digital networks determines that firms with substantial network effects enjoy a competitive advantage over rivals. Only a strong Single Market for financial services could bring about EU-wide businesses that would be able to compete with comparably sized peers from other jurisdictions, such as the US and China.

Removing fragmentation of the Single Market in digital financial services while maintaining an adequate level of security for the financial system is also essential for expanding access to financial services for consumers, investors and businesses across the EU. Innovative business models and services are flourishing in the EU, with the potential to bring greater choice and better services to consumers. Traditional players and start-ups are both competing, but also increasingly establishing partnerships to innovate. Notwithstanding the opportunities provided by the Digital Single Market, firms still face obstacles when scaling up across the Single Market.

Examples include a lack of consistency in the transposition, interpretation and application of EU financial legislation, divergent regulatory and supervisory attitudes towards digital innovation, national 'gold-plating' of EU rules, cumbersome licensing processes, insufficient funding, but also local preferences and dampen cross-border and international ambition and entrepreneurial spirit and risk taking on the part of business leaders and investors. Likewise, consumers face barriers in tapping innovative digital products and being offered and receiving services from other Member States other than of their residence and also in accessing affordable market data to inform their investment choices. These issues must be further addressed if the EU is to continue to be an incubator for innovative companies that can compete at a global scale.

Question 19. Would a further increased mandatory use of identifiers such as Legal Entity Identifier (LEI), Unique Transaction Identifier (UTI) and Unique Product Identifier (UPI) facilitate digital and/or automated processes in financial services?

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

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

ICMA response: Generally, ICMA strongly supports the use of standardised identifiers such as LEI, UTI and UPI, as they help to create consistency and facilitate automation. This is particularly true in the context of the different transaction reporting regimes, provided there is sufficient regulatory guidance to ensure a consistent use of the identifiers (eg responsibility to generate UTIs).

However, it is also important to keep in mind that these are global identifiers and that the scale of adoption differs significantly across jurisdictions. Where a mandated use within Europe is feasible this would seem sensible and has already led to a widespread use and availability of these identifiers in Europe (eg under MiFID II). However, where the mandated use applies to entities/transactions outside of the EU jurisdiction, such a requirement can (still) be very problematic.

A good example is reporting under the EU SFT Regulation which introduces "LEI of securities issuers" as a mandatory reporting field, despite persistent gaps in the availability of issuer LEIs for many jurisdictions around the world and the fact that firms reporting under SFTR in most cases have no leverage on the relevant issuers to apply for an LEI code.

The FSB's "Thematic Review on Implementation of the Legal Entity Identifier" published in May 2019 found that so far only 11% of firms issuing securities across the 25 FSB jurisdictions obtained an LEI (or 55% of all financial instruments). On this basis, European entities cannot be obliged to use LEI codes consistently on a global level. As a priority, we would therefore encourage the European Commission to use its weight and influence in the relevant global regulatory fora (in this case mainly FSB/CPMI-IOSCO) to accelerate the global adoption of the relevant identifiers.

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

Data-driven innovation can enable better and more competitive financial services for consumers and businesses, as well as more integrated capital markets (e.g. as discussed in the on-going work of the High-Level Forum). Whilst finance has always been a data-intensive sector, data-processing capabilities have substantially improved over the recent years, enabling fast parallel computing at low cost. Large amounts of data have also become available as computers and their users are increasingly linked, supported by better storage data capabilities. These developments have enabled the use of artificial intelligence (AI) applications to make predictions about future outcomes at a lower cost. Following on to the European data strategy adopted on 19 February 2020, the Commission services are considering a number of steps in this area (see also the parallel consultation on the Mifid review).

Facilitate the access to publicly available data in finance

Financial institutions are currently required to make public a wealth of financial information. This information e.g. allows investors to make more informed choices. For example, such data include financial reporting and non-financial reporting, prudential disclosures under the Capital Requirements Directive or Solvency II, securities market disclosures, key information documents for retail investment products, etc. However, this data is not always easy to access and process. The Commission services are reflecting on how to further facilitate access to public disclosures of financial and supervisory data currently mandated by law, for example by promoting the use of common technical standards. This could for instance contribute to achieving other policies of public interest, such as enhancing access to finance for European businesses through more integrated capital markets, improving market transparency and supporting sustainable finance in the EU.

Question 27. Considering the potential that the use of publicly available data brings in finance, in which areas would you see the need to facilitate integrated access to these data in the EU? Please rate each proposal from 1 to 5:

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
Financial reporting data from listed companies				X		
Non-financial reporting data from listed companies				X		
SME data			X			
Prudential disclosure stemming from financial services legislation				X		
Securities market disclosure				X		
Disclosure regarding retail investment products			X			
Other				X		

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

ICMA response: Facilitating integrated access to documents (eg via aggregation of information on one easily accessible, free to use, portal) would be useful for investors. An example might be an aggregation tool with a free to use and easily accessible user interface that market participants can use to search for any European regulated disclosure made by different entities via the use of a LEI. Filters to allow documents to be sorted by type and date would also be useful. This would be similar to the U.S. SEC's EDGAR. This appears to be what is envisaged by the proposal for a "EU Single Access Point" in the final report of the High Level Forum on Capital Markets Union of 10 June 2020. However, it is not clear how this initiative would interact with the European Financial Transparency Gateway (EFTG) project.

Careful thought would need to be given to the purpose and related consequences of any additional user features that could conceivably be added to such tool from the perspective of both investor protection and issuer liability. Furthermore, the introduction of any new requirements related to the machine readable nature of securities market disclosures such as prospectuses could place a disproportionately high burden on market participants in the short-term. See further **ICMA RESPONSE to Q28.**

As part of the European Financial Transparency Gateway (EFTG) project, the Commission has been assessing since 2017 the prospects of using Distributed Ledger Technology to federate and provide a single point of access to information relevant to investors in European listed companies.

Question 28. In your opinion, what would be needed to make these data easily usable across the EU?

Please rate each proposal from 1 to 5:

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
Standardised (e.g. XML) and machine-readable format			X			
Further development of the European Financial Transparency Gateway, federating existing public databases with a Single EU access point				X		
Application Programming Interfaces to access databases				X		
Public EU databases				X		
Other				X		

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

ICMA response:

Key points:

- It is difficult to comment on which tools are needed to make data more easily usable across the EU without knowing the details of how the data is intended to be used. If the intention is to facilitate access to disclosures of European regulated information for investors, then it would seem that the only action required is further work on an aggregation tool as described in our response to Q27. If the intention is to allow authorities to have greater ability to process data for supervision and regulatory purposes, then it is conceivable that other tools may be needed.
- However, it would be premature to introduce any further requirements for companies issuing securities to produce securities information (eg prospectuses) in machine readable format in the short-term. Market solutions are developing and are likely to be adopted on a widespread basis, but introducing further legislative requirements now is likely to result in significant additional costs for companies, underwriting banks and their advisors in the short-term, which could disincentivize access to Europe's capital markets
- Some disclosures are more suited to being issued in a standardised, machine readable format than others. Any drive to standardise the terms and conditions of, or disclosure for, securities in prospectuses in order to facilitiate processing of securities market disclosure would be a significant disincentive for issuers to access Europe's capital markets. This would run counter the goals of CMU and be problematic in the context of the COVID-19 recovery.
- If any new measures are considered in this area, a thorough cost/benefit analysis would need to be undertaken.

Further information:

Facilitating access to securities documents is a worthwhile goal and could help to develop European capital markets generally (see further Q 27). It seems likely that this could be achieved with minimal additional cost or administrative burdens for companies issuing securities, underwriting banks and their advisors, which will be important in avoiding any disincentive to accessing European capital markets.

Further actions that may be designed for other purposes outside of facilitating access to data for investors would need careful consideration, particularly if they are to be introduced in the short-term.

There are currently well developed market initiatives aimed at allowing issuers to produce securities disclosure and contractual documentation in a machine readable format (albeit not XML) in a cost efficient manner. As those initiatives develop further, it is likely that there will be significant cost savings for market participants that adopt this technology. As such, there seems little need for a regulatory push towards it.

It would be very unfortunate if introducing regulation in this area now resulted in: (a) market-based initiatives being stifled (e.g. by requiring information to be produced in a certain format, such as XML, when market participants might find an alternative machine readable format that is being developed more efficient and cost effective); or (b) requirements for issuers to standardise their securities' terms or disclosure and contractual documentation (eg in prospectuses) in order to make the information more easy to process. Any such standardisation requirements would be a significant disincentive for issuers to use regulated markets in Europe.

To the extent that new measures relating to the machine readable nature of securities information are considered, a thorough cost/benefit analysis would need to be undertaken to determine whether the benefit of, for example, gains in the ability for regulators and supervisors to process securities information outweighs the very significant costs this could impose on companies trying to access capital markets to fund their recovery from the COVID-19 crisis and their real economy activities in the short term.

Support the uptake of Artificial intelligence in finance

Artificial intelligence (AI) can bring considerable benefits for EU citizens and businesses alike and the Commission is committed to support its uptake with appropriate frameworks and investment. The White Paper on Artificial intelligence details the Commission's vision on a European approach for AI in Europe.

In the financial sector, AI and machine learning solutions are increasingly applied throughout the entire value chain. This may benefit both firms and consumers. As regards firms, AI applications that enable better predictions can result in immediate cost savings due to improved risk analysis or better client segmentation and product price differentiation. Provided it can be achieved, this could in the medium term lead to better risk management and improved profitability. As an immediate effect, AI allows firms to save on costs, but as prediction technology becomes more accurate and reliable over time, it may also lead to more productive business models and entirely new ways to compete.

On the consumer side, the use of AI applications can result in an improved price-quality relationship of financial services, better personalisation and in some cases even in financial inclusion of previously excluded consumers. At the same time, AI may entail new risks such as opaque decision-making, biases, discrimination or loss of privacy.

The Commission is seeking stakeholders' views regarding the use of AI and machine learning solutions in finance, including the assessment of the overall opportunities and risks it could bring as well as the specificities of each sector, e.g. banking, insurance or investment services.

Question 38. In your opinion, what are the most promising areas for AI-applications in the financial sector in the medium term and what are the main benefits that these AI-applications can bring in the financial sector to consumers and firms?

ICMA response: Applications of AI/ML, big data analytics, DLT or cloud computing have significant potential to alter the lifecycle of bonds, from issuance, trading to settlement, and impact the functioning of financial markets.

Generally, adoption of AI/ML appears to be still nascent in the international debt capital markets, as outlined in the article "Big Data in Securities Markets" which was published in ICMA's Quarterly Report Issue No. 54 of the third quarter 2020 (https://www.icmagroup.org/assets/documents/Regulatory/Quarterly_Reports/Articles/Big-Data-in-securities-markets-Q32019.pdf).

It is worth noting that the use of large volumes of data and advanced analytics in capital markets is not new per se. In fixed income markets, electronification has created increasingly large volumes of data. Accessibility has improved significantly through the use of cloud networks, which has enabled firms that do not have the required capacity to access and make use of data. However, concentration of global (and potentially monopolistic) cloud-based service providers is considered to be a potential risk. While data is used for a range of key functions, cost is a limiting factor in fixed income markets. Challenges relate in particular to data normalisation and quality.

Predictive analytics based on machine-learning algorithms seem promising, but such applications are still in early stages. That said, Big Data analytics and data-driven trading strategies will certainly become more and more widespread in fixed income markets and ICMA will continue to monitor these developments closely.

An overview of new FinTech applications in bond markets can be found on ICMA's dedicated FinTech webpage: https://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/fintech/new-fintech-applications-in-bond-markets/

Harness the benefits data-driven innovation can bring in compliance and supervision

RegTech tools that are emerging across Europe can bring significant efficiencies for the financial industry. Besides, national and European supervisory authorities also acknowledge the benefits new technologies can bring in the data-intensive supervision area. Following on the findings of the Fitness Check of EU supervisory reporting, the Commission is already acting to develop a supervisory reporting that is fit for the future. Leveraging on machine learning technology, the Commission is mapping the concepts definitions and reporting obligations across the EU financial services legislation to identify the areas where further standardisation is needed. Standardised concept definitions and reporting obligations are a prerequisite for the use of more automated processes. Moreover, the Commission is assessing through a Proof of Concept the benefits and challenges recent innovation could bring in the reporting area such as machine-readable and machine executable legislation. Looking at these market trends and building on that work, the Commission is reflecting upon the need for additional initiatives at EU level to facilitate the uptake of RegTech and/or SupTech solutions.

Question 44. The Commission is working on standardising concept definitions and reporting obligations across the whole EU financial services legislation.

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

Please explain your reasoning and provide examples if needed:

ICMA response: ICMA welcomes standardization of concept definitions and reporting obligations across the EU financial services legislation and encourages close dialogue and coordination between the European Commission and the industry.

ICMA has been working with ISDA to extend the Common Domain Model (CDM) for derivatives to repos and bonds. The CDM provides a common digital standard for trade processing by creating common building blocks in machine-readable format that can be used by all businesses and processes within a firm, and across the entire industry. The benefit is to recreate and represent any individual securities transaction or lifecycle event in an entirely consistent and replicable way, deriving exactly the same cashflow outputs. This immediately facilitates the potential for interoperability not only between firms' various internal systems (quoting, transaction execution, reconciliations, settlement, risk management, regulatory reporting, data analysis), but also between different firms and market infrastructures (trading venues, OMS/EMS, CSDs, CCPs, Trade Repositories).

Further background can be found on ICMA's website: https://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/repo-and-collateral-markets/fintech/common-domain-model-cdm/

ICMA would welcome the opportunity to exchange views on standardization of concept definitions, reporting obligations and digital standards for trade processing.