

Digital Finance for Europe

To compete globally, Europe must make sure that European companies can compete fairly at home

As we set the rules for the digital economy, we need to make sure that European companies are able to compete fairly right across the EU. Without a single market, they will never be able to scale up and compete on equal terms with the biggest global players.

In finance, however, progress towards the single market is hindered by fragmented rules on issues ranging from consumer credit to information to customers, to anti-money laundering legislation.

Given the speed with which technology continues to evolve, we also think it is vital that regulators take a principles-based approach to regulation rather than trying to specify everything in detail: otherwise we risk choking off the very innovation that we should be seeking to encourage.

EU Directives which allow widely different implementation (and national gold-plating) clearly lead to market fragmentation. We therefore encourage the Commission to reduce national divergence as far as possible by prioritising the use of maximum harmonisation instruments and by widening the remit of the European Supervisory Authorities.

Ensuring companies have fair access to crucial infrastructure will foster competition and strengthen customers' choice by avoiding innovative solutions are filtered by the infrastructure provider. If we want financial firms to embrace digitalisation, they will need to be regulated proportionately. If we want to foster competition and inclusion, we also need to strengthen the control that citizens and SMEs have over their data.

- **We support the European Commission's ambition to reduce regulatory barriers, ensure European technological and digital sovereignty and develop a data-sharing framework with the citizen at its centre**
- **Banks' Fintech activities should be regulated just like non-bank Fintech activities**, so long as they do not put core banking at risk. We hope that the European Commission will take this opportunity to reconsider its approach to banking regulations which hinder European banks from becoming true digital champions, by allowing more proportionality in the way that fintech business is governed when developed by banks.
- **Data access should be mandated at a consistent speed across sectors**, to provide citizens' and SMEs' with powerful tools to control their data while ensuring a level playing field. The Commission should not impose additional requirements on banks while their main tech competitors remain out of scope (even as they become increasingly important players in the financial sector).

- **Ensuring European scale can be attained is critical for European digitalisation.** As a bank, we spend too much time adapting to national regulatory requirements for the provision of financial services. **Cross-border business needs to be facilitated with an urgent effort to harmonise rules across the EU.**
- **Fair access to infrastructure is required to address issues raised by “gatekeeping platforms”.** These platforms today have the power to set the rules on vital digital infrastructures which their potential competitors simply have to accept and which impose technologies and business models, and affect how products can be delivered to customers. This crushes market contestability and customer choice, which clearly connects the dynamics already established in financial markets with the Commissions’ Digital Services Act and New Competition Tool initiatives.

Digitalisation is blurring **boundaries between sectors, but prudential regulation has not kept up with the rate of change. A fintech subsidiary of a bank, for example, has the same** prudential regulation applied to it as though it were a traditional bank, even though its activities do not pose a significant risk to the core bank. This not only means that big techs have a lighter regulatory regime when running a fintech than a bank; it makes it harder for banks to innovate, meaning that they suffer a double disadvantage.

Core banking activities are highly regulated for good reasons. However, it is not proportionate to apply this level of regulation to everything within the perimeter of a bank group. If banks are to innovate effectively and competitively, then governance requirements should be applied proportionately, taking into account what precise role an operating unit within a banking Group performs, as well as the law and regulation applicable to competitors (which may be payment, international trade, software or other solutions which pose little material risk to the bank).

We need a regulatory framework that **fosters innovation and technology uptake in the financial sector.** **Cloud** for example provides the flexibility required to compete in a digital environment, while also facilitates the use of other technologies such as Big Data and AI. However the EBA guidelines on outsourcing -which apply to cloud- have set a demanding framework for financial institutions, requiring extra resources to meet all these obligations which non-regulated competitors don’t have to comply with. The lack of clarity of the Guidelines leave room for interpretation and for national “gold-plating, creating national divergences which in the end increase operating costs and hinders the scalability of services across Europe. In addition, some requirements such as e.g. introducing access and audit rights in cloud arrangements, become also difficult to negotiate with CSPs which provide the same standardized services globally and leave therefore little room for negotiating contracts. Introducing specific clauses for the financial sector might end up limiting our access to some of these providers (e.g. SaaS). Reducing fragmentation at EU-level requires establishing minimum baseline requirements consistently harmonizing supervisory practices across jurisdictions. Besides, those requirements that hamper outsourcing and the use of cloud should also be amended.

Fair access to platform infrastructure

Critical aspect of financial services' digital infrastructure is provided by technology firms with significant market power, who can then **set the rules for how a financial service is provided by the banks – with whom the technology companies themselves are competing.**

Infrastructure providers can use their power to their competitive advantage. They can cross-subsidise their services, collect and analyse huge volumes of data, and tie and bundle financial and non-financial services.

When an infrastructure provider practically sets the rules for a financial activity, **FISMA should consider holding them to the regulatory and supervisory standards for that activity** at minimum. A company which profits by setting the rules for a significant part of the payments market should at least be regulated as a payment institution.

An example is Near-Field Communication (NFC) technology , essential to allow data exchanges among devices (used for mobile payments, for instance), under investigation by DG COMP. Germany has recently introduced a legal amendment that obliges NFC providers to provide fair access to this technical infrastructure. We are highly supportive of this measure and believe it will help foster competition in this space. We **call upon the European Commission to follow the German example in a harmonised manner across Europe**, not only for NFC antennas but as a broader response to the growing reliance upon digital infrastructure providers.

Other examples of the importance of platform behaviour include e-commerce companies imposing specific means of payments; control of operating systems; search engine ranking; and financial products being integrated into broader offerings such as comparison websites (which can create conflicts of interest).

The conditions for access to vital technological infrastructure should be:

- **Contestable:** An infrastructure provider should have a procedure to contest the decision.
- **Objective:** There should be clear, non-discriminatory, and transparent criteria for access.
- **Reasonable:** At a fair cost which does not hinder competition with the provider itself.

These would be some of the ex-ante measures that could be integrated in the discussion about ex-ante regulation for competition in the digital context under the Digital Services Act.

Cross-sector data sharing supports citizens and competition

We welcome the European Commission's strategy on data. **Cross-sector data access is vital to the success of data sharing for citizens and for businesses.** We strongly support the Commission's clear statement that citizens' must be at the heart of future data sharing initiatives.

However, we are very concerned that **the practical implementation of the Commission's strategy could result in major competitive distortions.** Developing Europe's data framework through sectoral "data spaces" could easily lead to different requirements for different players; different sectors moving at different speeds; and a proliferation of different standards.

The report from the high-level forum on capital markets union recommends to introduce a harmonised open finance regulatory framework covering financial **and non-financial** information. Given this, we encourage the Commission to create a level playing field when rolling out its data strategy. Indeed, the difficulty of classifying such platforms in any of the sectors mentioned, even within the Data strategy, highlights the need for a truly cross-sectorial approach to data access.

As regards data in financial services per se, the **financial sector should not be required to provide additional access to data before similar requirements exist for other sectors. In particular this should apply to the digital giants, which already have huge amounts of data which could be put at the service of consumers and businesses across Europe.**

Data access requirements should provide citizens and SMEs with genuine control over all of their data and should foster competition across the market. They should not be a niche response to market failures (which can often take years to determine).

The data framework should be:

- **Citizen-centric:** Consumer and SMEs should have the power to decide which data about them to share and with whom, which fully complies with GDPR.
- **Horizontal:** Users should be able to move their data across sectors as a rule rather than as an exceptional circumstance.
- **Mandatory:** Access requirements should be obligatory to ensure a fair and standardised market.
- **Secure:** The data access framework should include effective security protocols.
- **Standardised:** Data should be shared in a standard manner through common interfaces (APIs).

Of course, it is also important that the data framework preserves the incentives to create value around data. The framework should therefore distinguish between raw data and inferred data. Companies should not be required to share their elaborated data.

Our vision of the digital future

The digital revolution presents Europe with a window of opportunity to develop an integrated and competitive single market; to ensure that European companies can scale and compete globally; and to empower European citizens and companies with practical digital rights.

We firmly believe that these are not competing objectives but fit together.

Ensuring companies have fair access to crucial infrastructure will foster competition and strengthen customers' choice. Ensuring that financial firms are regulated proportionately will ensure that they can embrace digitalisation and provide innovative solutions to consumers, while being ready to support the European recovery from COVID. Strengthening citizens' and SMEs' control over their data will foster competition and inclusion.

However, the digital revolution is also a pressing challenge which has brought new market dynamics. Financial sector firms are increasingly competing with non-financial firms, and policymakers must have a careful eye to competition dynamics when considering any new measures in this space. This is especially important for the successful development of Europe's data framework.