

In February 2021, the Commission addressed a request to EIOPA, ESMA and EBA for Technical Advice on Digital Finance and related issues. The three ESAs were asked for advice on how to address the risks and opportunities arising out of digital finance, how to address the related prudential supervisory challenges arising from more fragmented and non-integrated value chains, from “platformisation” and bundling of financial services as well as from groups combining different activities. The ESAs’ Advice to the Commission aims to assist it to address the upcoming challenges and to propose, where relevant, changes to the existing legislative framework.

Following several consultations, to which BIPAR responded, the **three ESAs published in February 2022 their joint response to the Commission’s call for advice**. The response sets out the ESAs findings and their Advice to the Commission with regard to cross-sectoral and sector-specific market developments in the above-mentioned key areas identified in the Commission call for advice. It covers the risks posed by digitalisation in finance; risks to operational resilience, to consumers and to the integrity of financial markets as well as concerns regarding the provision of services on a cross-border basis via digital means. It also identifies opportunities arising out of digitalisation in finance; enhanced convenience for users, enhanced efficiency and flexibility at financial firms, greater competition and financial inclusion.

Furthermore, the **ESAs response includes ten cross-sectoral and two insurance-specific recommendations for actions to ensure the EU regulatory and supervisory framework remains fit for the digital age**. The recommendations focus, among others, on outsourcing, on disclosures, open data, social media, cross-selling and mis-selling and the Solvency II scope of insurance services.

#### Examples of some key recommendations for our sector:

**Recommendation 1b** that proposes that the European Commission consider an adequate minimum approach towards outsourcing in insurance and pensions sectoral rules, including the need to incorporate general and proportionate outsourcing rules in the IDD clarifying the responsibility of the insurance intermediaries when outsourcing is used.

**Recommendation 2a:** To ensure that disclosures are fit for the digital age, to allow informed decision-making and avoid mis-selling, the ESAs recommend that the Commission pay particular attention to specific points in any future review of the disclosure requirements in various legislations, such as the presentation and format of the disclosures, the definition of ‘durable medium’, the timing of disclosures, the use of behavioural insights and the need to explore the benefits of open data.

**Recommendation 4:** digital financial services are inherently borderless, which raises questions about when the obligation to notify of ‘cross-border provision of services’ is necessary and if so, how to classify these services under the “right of establishment” or “freedom of services”. This in turn creates supervisory challenges, but also difficulties for consumers in establishing which authority is the relevant authority e.g. in the event of a complaint or need for redress. Recommendation 4 calls on the Commission to provide further guidance on the definition of cross-border services in a digital context. This is also an issue of particular interest to BIPAR that has carried a lot of work on cross border activities of insurance intermediaries.

**Recommendation 10** acknowledges the growing use of social media in relation to financial services and the need to actively monitor this phenomenon. In securities markets in particular, the growth of digital trading platforms has coincided with new trends, such as ‘social trading’, or investment advice shared over social media—which brings new opportunities but risks as well.

**Insurance-specific Recommendation 1** covers the Solvency II restriction in the scope of (re)insurance activities, a topic which has often come up in light of digitalisation and which can be seen as related to all parts of the Call for Advice. EIOPA will consider further analysis of what is and is not considered as ‘activities directly related to insurance’ in different EU Member States to bring more clarity in this issue.

**Insurance-specific Recommendation 2** covers peer-to-peer (P2P) insurance. EIOPA has analysed P2P insurance in its previous work. Due to the current relatively low market penetration of P2P insurance business models, and the fact that most of the business models seem to fall under existing regulation, EIOPA does not see a pressing need for special regulatory approaches or changes in relation to P2P insurance, but will continue to monitor market developments.

The ESAs joint response has had a direct impact on the EIOPA advice on retail investor protection. It will also have an important impact on the revision of the IDD and the DMFSD and other key issues (AML, data protection etc.) for BIPAR. The Commission will now decide the way forward by the end of 2022/beginning 2023.

### ■ Commission's Expert Group on Financial Data Space

In the framework of its Digital Finance Strategy, the aim of which is, amongst others, to create a European financial data space to promote data sharing and open finance, including insurance, the European Commission has set up an Expert Group on European Financial Data Space.

The Expert Group consists of data experts and will provide advice on the technical aspects of establishing a common financial data space and on the preparation of policy initiatives in the field of data sharing in the financial sector (including open insurance). Within the Expert Group, a subgroup on open finance has also been set up. Insurance and financial intermediaries are represented in this Expert Group by a BIPAR representative.

BIPAR is closely following the EU work on Open Finance/ Insurance and requests that:

- Any EU framework on Open Finance/Insurance ensures a genuine level playing field among economic actors (equal access to data, same level of regulatory/supervisory oversight: "*same activities, same risks, same rules*" or "*activity-based principle*");
- Any EU framework on Open Finance/Insurance takes the specificities of the insurance sector into account. A mandatory model of data sharing like PSD2 may not be appropriate for the insurance sector because banking and insurance products and processes are different in content and variety;
- Any EU framework on Open Finance/Insurance is not too prescriptive to allow market players to be agile in providing their services in the interest of the consumers;
- Any EU framework on Open Finance/Insurance is sufficiently clear to prevent possible confusion arising from Level 2 texts;
- The role and rights of insurance intermediaries in an open insurance framework are clearly addressed.

### ■ Open Finance – Commission's consultations

As a follow up to its September 2020 Digital Finance Strategy, the Commission launched in May 2022 five new consultations on open finance and the review of the Payment Services Directive 2 (PSD2). The aim is to gather evidence for the PSD2 review and to inform the Commission's work on open finance. The results may also serve as input for impact assessments accompanying any possible legislative proposals revising the PSD2 or putting in place an open finance framework (end of 2022/early 2023).

Open finance refers to third-party service providers' access to customer (both business and consumer) data with customer agreement across a wide range of financial services.

The **five Commission's consultations** are the following:

- **Call for evidence on an "Open finance framework – enabling data sharing and third-party access in the financial sector"** - The Commission proposes different options for this initiative, including market-driver standardization or the establishment of data access rights for consumer data across the financial sector or in a specific number of areas.

The Commission explains that the problem this initiative aims to address is the difficult access to and reuse of customer data and their low interoperability in the financial sector. This affects both businesses and retail consumers. First, it hinders business innovation and, in some cases, constrains customer choice. Second, consumers may not sufficiently benefit from digitalisation without access to their data by third party providers, which has the potential to enable more tailored services and to facilitate their comparability, possibly leading to better consumer outcomes.

According to the Call, open finance would cover different sets of data (business-to-business and business-to-consumer data) across a range of financial areas (e.g. banking, insurance, investment, pensions). It could also include access to non-financial data sets.

- **Call for evidence on the review of the PSD2** - The Commission aims to ensure that the payment services rules are fit for purpose and future-proof. The Directive could be merged with the E-Money Directive.

- **One general and two targeted consultations on PSD2 and open finance** - To ensure alignment between the PSD2 review and the open finance framework, the Commission launched a joint public consultation on these two policy initiatives. It targets the public, and no in-depth knowledge of PSD2 or open finance is required. In addition, given the technical nature of IT solutions to implement data access and reuse rights, two dedicated targeted consultation on open finance and on PSD2 review have also been launched.

According to the Commission, open finance as a concept goes beyond the scope of payments account data in the revised PSD2, as it could cover a range of financial services, such as investment in securities, pensions and insurance.

The targeted consultation on open finance framework and data sharing in the financial sector includes users cases on mortgage brokerage, in-vehicle data, energy and climate footprint and pension tracking systems. The objective of this targeted consultation is to gather evidence and stakeholder views on various aspects related to the state of play and further development of open finance in the EU and effective customer protection. It also takes into account and complements the ongoing work of the Expert group on the European financial data space. In addition, the targeted consultation seeks stakeholder views on the use of aggregated supervisory data for research and innovation and on broader questions of data sharing among financial firms for risk monitoring or compliance purposes.

BIPAR will contribute to these Commission's consultations and will actively follow the EU policy developments on open finance. As the review of the PSD2 can have an impact on any open finance legislative framework, BIPAR intends to also respond to this specific consultation. BIPAR believes that any EU framework on Open Insurance should ensure a genuine level playing field among economic actors (equal access to data, same level of regulatory/supervisory oversight: "same activities, same risks, same rules" or "activity-based principle") and take the specificities of the insurance sector into account. A mandatory model of data sharing like PSD2 may not be appropriate for the insurance sector because banking and insurance products and processes are different in content and variety.

### ■ EU Digital Finance Platform

On 8 April 2022, the European Commission launched the EU Digital Finance Platform, a website designed to bring together industry and EU supervisory authorities in a joint effort to overcome fragmentation and to continue building the Single Market in digital finance. The Platform is open to the entire spectrum of market players, including start-ups and FinTechs/InsurTechs as well as incumbent actors (like insurance intermediaries), who are keen to test new ideas.

The EU Digital Finance Platform consists of two main features:

- 1) The **Digital Finance Observatory** including a **Fintech Map** – an interactive map showing registered Fintech entities in the EU Member States and a description of their businesses. Registered users will be able to share relevant research material.
- 2) A **European Forum for Innovation Facilitators Gateway**, which is designed to help connect entrepreneurs with the relevant national authorities. The Gateway will act as a single access point to supervisors, with information about national innovation hubs, regulatory sandboxes and licensing requirements. It also provides a platform for discussion between the authorities and businesses on several issues, such as the regulatory treatment of innovative products, services and business models.

This part of the Platform will also host functionalities linked to cross-border testing – enabling firms to involve multiple national authorities in the testing of new products or applications.

In a second phase, to be launched in 2023, new features will be added to the EU Digital Finance Platform. As announced by Commissioner McGuinness at the online launch event, there are discussions about **the creation of a Data Hub** intended to be a space where firms can get access to data enabling them to test innovative products and applications. For BIPAR, it is crucial that this Platform ensures a level playing field between incumbent and start-ups.