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Swiss Finance Council  
23 Square de Meeûs  
Brussels

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Dear Vice-President,

### **Public consultation on Fintech: a more competitive and innovative European financial sector**

The Swiss Finance Council (SFC) engages in dialogue around policy developments in finance at a European and international level. It represents the interests of internationally active Swiss financial institutions and provides a source of knowledge and experience in finance for policy-makers and the industry at large.

The SFC would like to thank the European Commission for the opportunity to comment on the consultative document on *'Fintech, towards a more competitive and innovative European financial sector'*. In addition, we are pleased that the Commission set up a cross-sectoral Fintech Task Force and would welcome opportunities to engage on this topic further, in order to contribute to the Commission's considerations regarding a policy approach towards technological innovation in financial services.

The SFC would like to express its full support for the responses provided to the consultation by the joint trade associations, BBA/Payments UK, AFME and EBF, as well as the letter submitted by the EFR. To complement these responses, we would like to take the opportunity to highlight a few aspects of particular relevance to our members.

We believe that digitalisation can play a pivotal role in transforming Europe into a more competitive ecosystem for innovation that contributes to stronger economic growth and creating new jobs. The financial sector is well placed to facilitate our vision of a 'global digital ecosystem' described in our recent Discussion Paper *'Banks and Investors in a Digital World'* (enclosed for your reference), provided technologies continue to develop and are regulated in a way that is technology-neutral, promotes interoperability and unfettered access across borders, whilst ensuring security for all participants.

It is essential that the different aspects covered in the Commission's consultation are considered not only from the perspective of the EU Single Market but also takes in to account the global dimension which characterises the digital transformation in financial services. We highlight this via concrete challenges in the cross-border context described in our letter.

For a successful EU Digital Single Market (DSM), we emphasise the need to reach out to other global financial centres to align regulatory approaches, possibly seek compatibility and jointly foster innovation.

Digitalisation has no borders, if we start to set up borders with varying degrees of regulations or standards on a country-by-country or region by region basis we will stifle the market, provide enough divergence for criminals to leverage and fail at the one of the basic tenants of innovation - competition in a global environment.

In this respect, we would like to make the following further comments:

### **Interoperability and portability of digital identification means**

If Europe wants to have a healthy, safe, transparent digital economy, it will need to have fully functioning digital identities (e-IDs). We therefore call for the appropriate standardisation to enable cross-border transactions and contractual agreements across EU borders, and beyond, through non-physical channels.

For consumers, the main benefit of an e-ID will be portability, i.e. having a digital identity which is readily verified and can be used by them across borders and multiple parties, for different regulatory requirements, and which results in a more seamless, faster, more secure and successful application journey.

For banks and other financial institutions, the creation of a digital identity that re-uses home State national digital ID schemes as well as other Member States' digital ID schemes developed under the EU eIDAS Regulation will facilitate client's online on-boarding and will thus contribute to significantly reduce costs, fraud and improve due diligence processing.

Client identification via digital channels is already in place for example in Switzerland, and is further facilitated by Qualified Electronic Signature (QES) which allows for fully digital, i.e. paperless, client on-boarding. In March 2016, the Swiss financial market authority FINMA introduced the legal foundations for online- and video-identification during the client on-boarding process in Switzerland<sup>1</sup>, with the view of enabling a seamless and fully electronic process. A subsequent change in the law regulating QES was pivotal in allowing banks to use the identification process during on-boarding to generate a QES which could be used to sign the electronic documents at the end of the process, thus removing paper from the process entirely and greatly improving the client experience.

Although the EU eIDAS Regulation creates an interoperability framework for the national e-ID systems, currently it remains up to individual Member States to define the terms of access to the online authentication of government e-IDs by the private sector. National e-ID systems should be made rapidly interoperable between Member States and with third countries and accessible for the private sector to verify the identity of customers at distance.

Moreover, the EU should engage with other jurisdictions worldwide with a view to ultimately develop a broad-based global standard on portable and interoperable e-IDs.

In the absence of a national e-ID compatibility framework, the current EU regulations on the prevention of money laundering and terrorism financing should be reviewed to allow for their cross-border application.

### **Coordination of national regulatory sandboxes**

Testing and experimenting innovative solutions that are otherwise subject to regulated activities will facilitate their further development and refinement. We therefore strongly encourage the use of regulatory sandboxes by various national regulators within and outside the EU to allow financial institutions, including banks, to pilot new solutions, and to test innovative products, services, business models and delivery mechanisms without immediately incurring all the normal regulatory consequences of engaging in the

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<sup>1</sup> FINMA Circular 2016/7 Video and online identification, entry into force 8 March 2016.

activity in question. We also support the establishment of platforms for open discussions about Fintech/Regtech issues which facilitate a closer engagement between software developers, financial institutions and the public sector.

We encourage the Commission and the ESAs to look into a coordinated EU-wide approach on sandboxes, based on the ongoing harmonisation of national frameworks, the adoption of guidelines or principles, and the identification of best practices, as we believe a combination of both national and European framework would work best. In this respect, we welcome the suggestion in the Commission's consultation to set up an "Innovation Academy" gathering industry experts, competent authorities (including data protection and cybersecurity authorities) and consumer organisations to share practices and discuss regulatory and supervisory concerns. Such a platform could help bring people together and enhance collaboration at a time when it is much needed but it cannot substitute more formal ways of cooperation nor should it restrain the Commission and the ESAs incorporating innovation at all levels of their competences.

The Commission and the ESAs should also work with other regulators and supervisors globally to ensure an internationally coordinated regulatory approach on sandboxes and more specifically towards alignment of the entry and exit criteria for the sandboxes. Sandboxes must be open to all innovators, with a minimum set of requirements established for all players to ensure a level playing field without stifling new players.

There are currently many sandboxes in use globally but we point specifically to the UK (FCA) and countries like Australia (ASIC), Singapore (MAS), Hong Kong (HKMA), South Korea (FSC) and Canada (Ontario Securities Commission) as good examples of the sandboxes themselves as well as the cooperation agreements and Fintech bridges set up to facilitate cross border (i.e. with third country) cooperation. The Swiss supervisor (FINMA) has also recently signed a cooperation agreement with the Monetary Authority of Singapore (MAS). New technologies from either start-ups or incumbents do not expect to only operate in their home countries- using Fintech bridges will give more access to ideas and developing a truly global Fintech ecosystem.

### **Enhanced cooperation on cybersecurity**

Security of assets and identity is fundamental for investors, banks' clients and more generally consumers of financial services to feel sufficiently confident to embark on the digital future. We understand that the Commission's Task Force on Fintech has made the issue of cybersecurity a priority in its forthcoming Action Plan. We would highlight that the current collaboration between the industry and regulators, and amongst the regulators themselves, including from outside the EU, needs improvement.

Cyber-threats and cyber-attacks are not confined to national or regional borders. They are global phenomena which require global solutions. Therefore, it is essential that the public sector works proactively with the private sector, across borders, to share information about threats and attacks, and exchanges best practices. We see a role for the EU to coordinate the development of standards and principles which are globally aligned (broadly building on those developed by GFMA/EBF/ISDA) and to continually improve security systems to deter cyber-criminals. In this respect, we encourage the Commission to consider the discussion and work of international standard-setting organisations like the FSB and IOSCO.

These standards must be flexible enough to be adapted swiftly as cyber-risks evolve at a fast-changing pace which regulation cannot follow. The IT formats and procedures to report incidents should be sufficiently harmonised to avoid overlaps and reporting to multiple competent authorities.

**Access to data and alignment of data protection rules**

Arguably, banks have some of the most relevant client data possible in terms of developing tailored services to client. At the same time, however, due to reasons of business philosophy and partially regulation, banks have been reluctant to embrace this opportunity, in the way other businesses with sensitive data have (e.g. health). Banks are in a unique position to provide a distinguished offering ensuring, above all, data protection and privacy and security due to their long experience of managing such data sensitively.

Additionally, portability of data is also an important element for consumers, as they would like to move data freely to wherever the data is needed. Therefore, clarity is required about the circumstances under which personal data can be transferred safely and securely, including to recipients located in other regions. In some cases, regulators are already taking steps to adjust the legal framework to clarify where and how such data is used. The EU General Data Protection Regulation (GDPR) is a significant piece of legislation that lays the foundation covering the rights of persons of their data and how to protect it, and outlines the cross-border aspects. It is of paramount importance that the Commission works quickly and transparently to grant adequacy to third countries if they are at the appropriate standard required under the GDPR or equivalent.

Governing bodies must ensure that the regulatory landscape does not become so fragmented with a lack of coherent and consistent implementation of GDPR and non-alignment of data protection rules at global level, which would impede the development of seamless digital financial services. To promote a global level playing field, an active international dialogue is required between the EU and its partners on the free flow of data and data protection to ensure that there is a globally aligned regulatory framework.

On behalf of our members, we would like to thank the Commission for considering our comments. We look forward to an ambitious Action Plan on Fintech, and we will continue to contribute to this debate in a constructive manner. We would be pleased to answer any questions you may have and to have the opportunity to discuss the issues in more detail with you.

Yours sincerely,



Judith Hardt  
Managing Director

Enclosed: SFC Discussion Paper 'Banks and Investors in a Digital World'.

Cc: Olivier Guersent, Director-General, DG FISMA, via email.