

BVI Position on the European Commission's Consultation on a new Digital Finance Strategy

Digital technologies have the potential to bring about a massive upheaval in the financial sector over the next few years, even though asset management is already a largely digitised industry. Asset management will be significantly influenced by improved availability of data, algorithms, digitalisation of assets, new processes in custody and settlement, and reporting. BVI therefore welcomes the opportunity to provide comments on the European Commission's consultation on a new digital finance strategy.

1) Data-driven financial services sector

Quality data is a prerequisite for the provision of any service along the entire value chain in asset management, from research, portfolio and risk management, trading to clearing and settlement. Secure access to and availability of high-quality financial market data at all times is also indispensable in fund sales or in regulatory and customer reporting. In the future, more and more non-traditional data sources ("big data") will be integrated into the asset managers' business operations.

Financial market data are often offered by natural monopolies and oligopolies such as stock exchanges and companies with a dominant market position. These have great market power and can set one-sided conditions, since the users on the asset manager side rely on such data and any disruption would jeopardise their business. The use of financial market data has therefore for years been associated with regular, sometimes massive price increases and the conclusion of increasingly complex data licences for the asset managers. With increasing cost pressure and the change of business models to more quantitative or passive investment, data costs are becoming more and more a success factor for many asset managers. The BVI advocates a revision of the existing EU regulations for the provision and use of financial market data on appropriate commercial terms, e.g. in MiFID/MiFIR, CRA Regulation, and an implementation of data user effectively protective regulations, e.g. in the BMR and the various EU regulations on regulatory reporting. Data charges should be determined on the basis of the marginal cost of producing and disseminating the data.

Against this background, we call on the European Commission to **ensure that access to data is not unduly restricted and is provided in a reasonable and transparent manner.**

2) Artificial Intelligence

We recommend that additional requirements be carefully examined and internationally coordinated as we see the risk that different regions will be regulated to varying degrees. This means that a locational disadvantage could arise in highly regulated countries (keyword "regulatory arbitrage"). Furthermore, this could hamper innovation if regulation is applied to different degrees. With Luxembourg and Singapore, financial centres are already emerging that are very open to new technologies and provide a corresponding infrastructure (also in terms of regulation). A race should be avoided here.

Concerning classification of AI applications, we believe it should not be based on the function as such but rather on the share of the value chain within the company. A chatbot, for example, could be highly



critical if it is used as the primary medium for customer contact and for concluding contracts. Other areas of application of a chatbot could in turn be completely uncritical.

Another aspect relates to documentation. **We support the idea that there should be documentation of the algorithms beyond a mere rule-based scheme.** This is necessary for further development of the technology but should already be sufficiently regulated. AI applications sometimes make decisions based on several million data points, i.e. although the original algorithm can be documented, the characteristics depend on the data used to train the algorithm. A simple rule-based description of which decisions are made for which reason is then no longer possible (this is also obvious, if this were possible, a simple rule-based system could be used).

3) Technology-neutral and innovation-friendly EU regulatory framework

On a general note, we believe that EU regulation needs to treat providers of financial solutions by the principle of “same activity, same risk, same rules, same supervision” to ensure a level playing field, meaning that activities with similar levels of risk are subject to the same regulatory treatment regardless of who carries out those activities.

While technological innovation will be able to overcome current operational risks (e.g., distributed ledger technology mitigates counterparty risk by offering the possibility of delivery vs. payment / instant settlement), at the same time, specific regulatory challenges are created due to technology-driven threats (cyber resilience). **A comprehensive regulatory framework should therefore provide a level playing field between traditional and innovative business cases by requiring comparable obligations in terms of risk management for the benefit of investor protection.** On that note, we believe that, for instance, the promotion of regulatory sandboxes for specific players only increases competitive distortions and would therefore violate this principle. Thus, we do not support regulatory sandboxes for specific players. We believe that the same rules should apply for all market participants. However, we believe there is a merit in national regulatory authorities supporting start-ups, including FinTechs, following the regulatory requirements. Nevertheless, sandboxes could be envisaged for temporary relief from specific regulatory obligations in order to allow, for example, all regulated financial services players to test certain aspects or applications of DLT or AI technology which are not accommodated well by existing regulation.

The EU regulatory framework is widely technology neutral, but regarding mandatory information to retail clients, the transmission of information is by default paper-based, e.g., retail investors of UCITS have to expressly opt-out from paper-based information to be able to receive information on another durable (electronic) medium. Even technology friendly EU regulation, e.g., the eIDAS electronic certificate legislation, is often implemented in varying degrees in the Member States, thereby impeding a true European digital market.