



# U.S. CHAMBER OF COMMERCE

June 2020

## **Comments on the European Commission’s Consultation on a Digital Finance Strategy / FinTech Action Plan**

The U.S. Chamber of Commerce welcomes the opportunity to provide the European Commission with comments on its Digital Finance Strategy and FinTech Action Plan.

The U.S. Chamber of Commerce (“Chamber”) is the world’s largest business federation, representing the interests of more than three million enterprises of all sizes and sectors. The Chamber is a longtime advocate for stronger commercial ties between the United States and the European Union. According to a recent Chamber study jointly commissioned with AmCham EU, the United States and the EU are jointly responsible for more than one-third of global gross domestic product, and transatlantic trade and investment supports 16 million jobs on both sides of the Atlantic.<sup>1</sup> The Chamber is also a leading business voice on digital economy policy, including on issues of data privacy, cross-border data flows, cybersecurity, digital trade, artificial intelligence, and e-commerce. In the United States and globally, we support sound policy frameworks that promote data protection, support economic growth, and foster innovation.<sup>2</sup>

Data is the engine that drives the modern economy, no matter the geography or the industry. As the European Commission develops its Digital Finance Strategy and FinTech Action Plan, policymakers have a critical opportunity to craft an approach that boosts Europe’s digital and data-driven competitiveness and improves its attractiveness to foreign investors. By creating new and innovative ways to provide credit, boost the accessibility of financial markets to new consumers, and increase the availability of liquidity, digital finance will propel economic growth and job creation. The COVID-19 pandemic and economic crisis only magnify the importance of the choices the EU faces. Consumers need to be able to access their accounts from mobile phones, apply for new lines of credit over the Internet, and make contactless

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<sup>1</sup> U.S. Chamber of Commerce & AmCham EU, [The Transatlantic Economy 2020](#).

<sup>2</sup> U.S. Chamber of Commerce, [Data Privacy](#).

payments whether grocery shopping online or visiting a local coffee shop. It is essential that Europe encourage and enable development of digital financial tools that are key to the economic recovery.

### **Understanding Europe’s Push for “Technological Sovereignty”**

Before addressing the specific issues raised by the consultation, the Chamber would like to address the Commission’s broader push for “technological sovereignty.” Representing companies that are heavily invested in Europe and for whom the EU represents a major market, the Chamber shares the goal of advancing the European digital economy, building the digital skills of Europe’s workforce, and preparing Europe’s industrial base for a data-driven future.

At the same time, we are concerned about the intent behind “technological sovereignty.” We welcome a strategy that improves European capacity to compete and attract investment, provided the EU’s approach does not erect barriers or otherwise discriminate against foreign-headquartered companies in the name of promoting national champions. **The EU’s efforts to advance the use and development of digital finance must not shut it off from the rest of the world as its future competitiveness depends on the ability of all businesses, regardless of size or sector, to remain connected to the global economy.** Restrictions on the use of technology developed outside the EU risks disadvantaging Europe’s own digital capacity as many financial services providers benefit from partnerships with non-EU organizations, including those providing cloud capabilities, datasets, and software. **We therefore call on the Commission to explicitly disavow approaches to digital finance that could inhibit market access or disadvantage non-European providers of financial technologies and applications.**

### **Developing a Technology Neutral & Innovation Friendly Framework**

The Chamber welcomes a technology-neutral and innovation-friendly approach to digital finance. As a suite of diverse, complex, and rapidly developing tools, digital finance is not monolithic and, as such, the Commission should avoid prescriptive regulatory approaches. **In fact, the regulatory tools and bodies needed to ensure safe and efficient capital markets are already in place. They should be modernized to reflect the changing world of digital finance—rather than completely re-written, or worse, saddled with a new layer of complicated regulatory requirements.**

We further welcome the Commission’s commitment to a risk-based and proportionate regulatory approach for new technologies such as crypto-assets and for

cybersecurity in the financial sector. In both instances, close public-private cooperation will be essential to achieve outcomes that are in the mutual interest of governments, consumers and companies alike, as well as to protect the integrity of the financial markets.

Above all, the Digital Finance Strategy should recognize that the digitalization of the financial sector is a significant opportunity to be encouraged, rather than a challenge to be regulated. Through close engagement with stakeholders, the Commission can build a framework that will encourage development of a thriving digital financial market that removes market access barriers for start-ups and established market participants, regardless of their national origin. We encourage the Commission to review the U.S. Chamber's FinTech Principles, which we have included in the annex of this submission.

### **Promoting Regulatory Consistency in the Single Market**

We welcome the Commission's efforts to better integrate its Single Market for digital financial services.

#### *Data Privacy*

A sound approach to data protection is essential for fostering innovation in digital finance. Unfortunately, development and use of digital finance in the Single Market has been hindered by the inconsistent application of the *General Data Protection Regulation* ("GDPR"). As written, GDPR is meant to serve as a unified data protection framework equally applicable across the Single Market. In practice, however, derogations by member-states and divergent interpretations and enforcement by national data protection authorities (DPAs) have fragmented the EU's data protection landscape. We encourage the Commission to work closely with the business community and the European Data Protection Board to identify areas where greater clarification and more consistent application of GDPR can advance financial innovation and reduce uncertainty for investors. The legal basis for handling data is one area in need of such attention. As highly regulated entities, financial services providers have, in many instances, a legitimate interest in collecting and processing personal data. Divergent and narrow interpretations of GDPR by DPAs has undermined the potential of legitimate interest as an equally valid basis for processing, with adverse consequences for businesses, including those in the financial services sector, to innovate.

#### *Artificial Intelligence*

The Chamber believes in artificial intelligence’s (AI) potential as a force for good to raise human productivity and expand economic opportunity to benefit consumers, businesses, and all of society. In a separate response to the Commission’s AI White Paper, we urged policymakers to undertake a thorough and comprehensive review of EU and member-state laws and regulations that already provide an AI governance framework across different sectors. Likewise, the Chamber recommended that the Commission integrate existing regulatory structures as much as possible, including those in the financial services sector, when contemplating a future AI governance framework. Financial authorities are best positioned to consider how risk-management frameworks and practices apply to specific AI use cases in their sector. We encourage the Commission to review the Chamber’s complete response to the consultation on its AI White Paper in the context of formulating the Digital Finance Strategy (which is attached to this submission).

### *Data Sharing & the Financial Data Space*

The financial services sector has a history of innovation—seizing technological advances to catalyze growth and increase access to the services needed most by consumers. Regulators must keep pace in understanding the fundamentals of new technologies, their impact on consumers, and the growth of the industry. In 2018, the Chamber established a FinTech Advisory Group to inform policymakers about the new products and services that have the opportunity to better serve consumers, investors, small businesses, and indeed society as a whole. The Chamber seeks to ensure safe innovation is promoted domestically and internationally and that the regulatory framework is simple, clear and transparent.

The creation of a financial sector “data space” will encourage innovative uses of data and economic dynamism, provided that they are used efficiently and enable data sharing in a manner that does not undermine intellectual property rights or deter investment. We recommend that the Commission’s future proposals on digital finance, as well as those in the broader *European Strategy for Data*, incorporate principles of contractual freedom, voluntary data sharing, and non-discriminatory approaches for data transfers, rather than policies such as mandatory participation in data pools.

### **International Data Transfers**

Given the global nature of the financial services industry, we encourage the Commission to recognize the central importance of cross-border data flows in its Digital Finance Strategy. Financial services institutions use international data flows to access customers, manage cybersecurity risks, and leverage information technology

solutions at scale. Policies that would restrict these data flows constitute market access barriers that diminish businesses' ability to innovate and adopt digital technologies—and, by extension, limit consumer choice. We encourage the Commission to embrace high-standard provisions on digital trade and financial services, such as those outlined in the *United States-Mexico-Canada Agreement* and the *United States-Japan Digital Trade Agreement*, as it strives to promote the use and development of digital finance. These agreements recognize the importance of financial services data connectivity with provisions on the transfer of financial information and the location of computing facilities in the financial services sector. We also refer the Commission to the joint statement issued earlier this year by the U.S. Treasury Department and the Monetary Authority of Singapore on this matter.<sup>3</sup>

## **Conclusion**

As two of the world's preeminent financial centers, the United States and European Union should work closely together to promote development of a robust digital financial system. Creating new regulatory barriers between our two markets—however unintentionally—will inhibit the ability of European companies to succeed at a global scale and will undermine consumers' opportunity to avail themselves of the world's most innovative digital financial products.

The EU Digital Finance Strategy should be consistent with other related regulatory frameworks. Nothing in the Strategy should impede GDPR-compliant companies' ability to transfer data internationally. The Strategy should also encourage and enable the use of artificial intelligence in digital finance and promote voluntary opportunities for data sharing to enable better and faster decision making. Further, by insisting on a technology-neutral regulatory approach, the EU can foster innovative start-ups, without undermining the competitiveness of its existing financial sector. Finally, the Strategy should be designed to remove internal barriers to the Single Market, allowing companies to scale quickly, thereby offering consumers increased choice and lower costs. Importantly, the Commission should aim to incorporate best practices from existing national rules to encourage innovative approaches to digital finance, while preventing divergent regulatory approaches between member-states.

The Chamber looks forward to working closely with the Commission as it further develops its Digital Finance Strategy and FinTech Action Plan. We are ready to contribute to an active dialogue between policymakers and stakeholders to ensure that the Strategy and Action Plan encourage adoption of innovative financial tools that will enhance Europe's economic competitiveness.

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<sup>3</sup> [Press Release](#), United States-Singapore Joint Statement on Financial Services Data Connectivity.

## **Annexes**

### ***U.S. Chamber FinTech Principles<sup>4</sup>***

While designed for the U.S. domestic context, these principles provide useful ground rules that all governments should consider when updating their regulatory frameworks to account for innovative advances in the digital finance sector.

1. Encourage safe innovation in the financial sector, whether by a new entrant, traditional financial institution, or by a joint initiative by both.
2. Streamline the fragmented regulatory structure so any financial service provider that serves a national, multi-state market has one set of rules to abide by, instead of the complex state rules and multiple federal agencies.
3. Foster partnerships between new entrants and incumbent financial institutions, while minimizing the burden of “vendor management” requirements.
4. Support policies that promote expanded financial access to affordable and accessible credit for underserved communities for both households and small businesses.
5. Enrich financial literacy through multiple platforms to reach the consumers, investors, and small business owners who need it most.
6. Educate policymakers about the benefits of financial innovation and the opportunities to serve the consumers and small business owners who may not have affordable access to credit.
7. Protect consumer privacy, create best practices for cyber security protections, and develop safe ways for consumers to manage their digital identity.
8. Promote new and innovative ways to access capital, such as initial coin offerings (ICOs), while advocating for tailored oversight and strong consumer and investor protections.

### ***U.S. Chamber Principles on Artificial Intelligence<sup>5</sup>***

To realize the full economic potential of AI, the Chamber offers the following ten principles for policymakers.

1. Recognize Trustworthy AI is a Partnership
2. Be Mindful of Existing Rules and Regulations
3. Adopt Risk-Based Approaches to AI Governance
4. Support Private and Public Investment in AI Research and Development

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<sup>4</sup> U.S. Chamber of Commerce, [FinTech Innovation Initiative: Bridging the Gap between Tech and DC](#)

<sup>5</sup> U.S. Chamber of Commerce, [Principles on Artificial Intelligence](#)

5. Build an AI-Ready Workforce
6. Promote Open and Accessible Government Data
7. Pursue Robust and Flexible Privacy Regimes
8. Advance Intellectual Property Frameworks that Protect and Promote Innovation
9. Commit to Cross-Border Data Flows
10. Abide by International Standards

### ***U.S. Chamber Data Privacy Principles***<sup>6</sup>

The Chamber offers the following principles to guide policymaker seeking to achieve a balanced approach to data protection and innovation.

1. A comprehensive framework of regulation that ensures certainty and consistency
2. Risk-focused and contextual privacy protections
3. Transparency in the collection, use, and sharing of consumer data
4. Industry neutrality
5. Flexibility to develop adaptable, consumer-friendly privacy programs
6. Harm-focused enforcement
7. Enforcement that promotes efficient and collaborative compliance
8. International leadership that promotes the free flow of data and interoperability between global frameworks
9. Encouragement for privacy innovation
10. Risk-based approaches to data security and breach notification

### **Attachments**

- U.S. Chamber Position Papers on the European Data Strategy & EU AI White Paper

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<sup>6</sup> U.S. Chamber of Commerce, [Privacy Principles](#)