

On behalf of the governments and financial services regulators of the Channel Islands of Guernsey and Jersey

Response to the European Commission Consultation

Document:

FinTech: A More Competitive and Innovative European Financial Sector – 15 June 2017

Contents

| | |
|---|---|
| About the Channel Islands | 3 |
| About the Channel Islands Brussels Office (CIBO) | 3 |
| Opening remarks / summary position..... | 4 |
| Consultation Response to short form questionnaire | 5 |

About the Channel Islands

The Channel Islands (the Islands) consist of the Bailiwicks of Guernsey and Jersey. They are British Crown Dependencies. They are not part of the United Kingdom, but the UK has ultimate responsibility for their external affairs and defence. The Islands enjoy a high degree of autonomy, including their own fiscal and judicial systems, and receive no financial subsidy from the UK or the EU. By virtue of Protocol 3 of the UK's Accession Treaty, the Islands are part of the Customs Union and within the Single Market for the purposes of trade in goods, but not services and as such are treated as "third countries" in financial services regulation. The Islands are part of the Sterling Zone and by virtue of equivalence under the EU's Wire Transfer Regulation are part of the UK's payment and clearing system.

The OECD Convention was extended to Guernsey and Jersey in 1990 and they are part of the UK for the purposes of its membership of the OECD. OECD Decisions and Recommendations apply to Guernsey and Jersey to the same extent as they do to the UK unless the contrary is specifically stated in a particular case – further details can be found on the OECD's website.

About the Channel Islands Brussels Office (CIBO)

The Channel Islands Brussels Office (CIBO) was established in 2011 as the joint office of the Governments of Guernsey and Jersey to promote and protect the interests of the Channel Islands in Europe. CIBO has three permanent staff, employed under Belgian employment law. Its legal status is as a Belgian not-for-profit association (fondation privée). It is accountable to, and governed by, a Board of Directors (two Directors from each Bailiwick). It takes political direction from Ministers.

Opening remarks / summary position

The Channel Islands are home to a significant and sizable finance sector whose success is founded on professionalism, innovation, regulatory leadership and a commitment to meeting international standards and co-operation. The development and application of technology in financial services will fundamentally alter the way in which financial services are provided to the consumer and in how the finance sector interact with Governments, regulators and other counterparties. The Channel Islands are of the view that significant potential exists for the effective application of FinTech and RegTech solutions across the EU and the international community more generally. The Channel Islands therefore welcome the engagement of the EU with this topic through this consultation and hope to provide responses that allow the EU to further its FinTech agenda inside the EU and also with third countries, such as the Channel Islands.

The Channel Islands have a demonstrable track record in the application of equivalent regulatory approaches to the European Union where there is a relevant contribution by the Channel Islands to the EU markets. In the summer of 2015 and again in the summer of 2016 ESMA's public opinion was that both Islands' funds regimes were effectively equivalent under AIFMD and that there were no grounds preventing extension of the passport to the islands.

Capital Markets Union (CMU) was launched with one of its objectives to make the EU attractive to international investors. This is an objective that the Channel Islands strongly support. We hope that, as CMU develops further, the EU recognises more clearly than it has done so to date, the important role foreign investment has in helping the EU to achieve its overall jobs and growth objectives. We believe that we have a valuable perspective as third country jurisdictions to provide to the European Commission to assist in achieving success in its objective. This is particularly the case in the area of FinTech where the use of technology naturally results in a lack of restriction by territorial borders, we therefore consider that FinTech presents global opportunities for the financial services industry and cannot be simply considered in any single defined geographical area.

We have engaged actively with the European Commission on CMU since its launch in 2015. Both Islands were pleased to be able to contribute to the original Green Paper consultation (May 2015), the call for evidence on the EU Regulatory Framework (January 2016) and the EuVECA/EuSEF consultation (January 2016), and the CMU Mid-Term Review in 2017 (March 2017). We also participated in the EuVECA workshop held by DG FISMA in January 2016 and, in this spirit, we stand ready to provide whatever further contribution to this work the European Commission might find helpful, including attending further workshops and meetings and contributing additional materials in writing.

The Channel Islands look forward to working in partnership with the EU in the development of the EU FinTech agenda over the coming years.

Consultation Response to short form questionnaire

European Commission – FinTech Consultation Document – Channel Islands Response

| Question | Response |
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| <p>1.1 What type of FinTech applications do you use, how often and why? In which area of the financial services would you like to see more FinTech solutions and why?</p> | <p>Guernsey and Jersey (the Channel Islands) consider that significant potential exists for effective application of FinTech and RegTech solutions across the EU and internationally. The Channel Islands therefore welcome the engagement of the EU with this topic through this consultation and trust that our responses will assist the EU to develop its thinking on FinTech, in particular cooperation with third countries, such as the Channel Islands.</p> <p>One area that the Channel Islands would place particular focus on is the use of FinTech solutions to securely and efficiently verify individuals’ identity. The use of biometrics, shared ledgers, direct database verification and other technologies have the potential to increase standards in identity verification, and assist consumers to submit verifiable identity credentials. The Channel Islands support developments in such innovative technology and cautions against restricting the potential for its use. The Channel Islands wish to see greater secure sharing of identity credentials within the EU and with third countries such as the Channel Islands, and would support greater consideration of this in EU initiatives (e.g. eIDAS).</p> <p>In the case of Jersey, there has been an ongoing project on electronic verified ID, called “Jersey eVID”. This project is looking to work towards a facility to enhance customer on-boarding through the intelligent use of technology. The concept proposes the adoption of a centralised database where ID information is submitted, verified, maintained and stored, and then, with the permission of the user, it can be shared with financial and professional services firms to fulfil specific elements of Customer Due Diligence (CDD) requirements.</p> |

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| <p>1.1 (continued)</p> | <p>A major barrier to adoption of shared CDD facilities so far has been a lack of confidence from the marketplace in using these facilities as opposed to their own established processes. Jersey is therefore considering whether its facility can be run in a jurisdictional authority to achieve a greater and faster rate of adoption. Jersey remains keen to explore these solutions in the wider European and Global fora so that they can be most effective in their potential future application.</p> <p>A number of private sector providers of shared CDD products already exist in Jersey and Guernsey equally has seen similar CDD products developed and which are now operational. These products use IT solutions to assist with CDD to enable centralised reporting. This increases efficiencies, reduces costs, makes compliance more consistent and assists both the consumer and industry.</p> <p>Generally, the Channel Islands are already supporting FinTech initiatives in the areas of insurance, financial markets, financial modelling, payment service providers, wealth management, platform investors and peer to peer and private investors. The Channel Islands would suggest that the above areas represent potential areas for growth and development across the EU and internationally.</p> |
| <p>1.2 Is there evidence that automated financial advice reaches more consumers, firms, and investors in the different areas of financial services (investment services, insurance, etc.) and at what pace? Are these services better adapted to user needs? Please explain.</p> | |
| <p>1.3. Is enhanced oversight of the use of artificial intelligence (and its underpinning algorithmic infrastructure) required? For instance, should a system of initial and ongoing review of the technological architecture, including transparency and reliability of the algorithms, be put in place? What could be effective alternatives to such a system?</p> | <p>The Channel Islands consider that the technical architecture should include suitable risk controls and measures that are, as a minimum, equal to manual processes and procedures.</p> |

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| <p>1.4. What minimum characteristics and amount of information about the service user and the product portfolio (if any) should be included in algorithms used by the service providers (e.g. as regards risk profile)?</p> | <p>The Channel Islands consider that any algorithm that delivers a proposal should have inbuilt criteria that treats the user fairly.</p> |
| <p>1.5. What consumer protection challenges/risks have you identified with regard to artificial intelligence and big data analytics (e.g. robo-advice)? What measures, do you think, should be taken to address these risks/challenges?</p> | <p>The Channel Islands consider that we live and work in a digitally connected society, where personal access to the Internet has become a feature of everyday life and where businesses and consumers rely on the ability to share and access personal information online, with confidence and clarity. The protection of personal data is, after all, essential for the protection of our human rights, particularly those accorded by Article 8 of the ECHR (i.e. the rights to private and family life, home and correspondence).</p> <p>While officials have not identified any specific challenges/risks to consumer protection with regard to artificial intelligence and big data analytics, both the Government of Jersey and the Government of Guernsey views their commitments to the highest standards of protection for personal data generally as a priority: particularly as the use of sophisticated technology such as A.I. and Big Data analytics becomes more ubiquitous.</p> <p>Current data protection law in the EU (as transposed into each Island's domestic law) was introduced at a time when the Internet was in its infancy, and prior to the widespread adoption of email and social media, or the rise of cloud computing or big data analytics. Therefore, we welcome the implementation of the General Data Protection Regulation (GDPR) and the law enforcement Directive and both Islands currently plan to be implementing new domestic legislation and a new regulatory regime that provides an equivalent standard of protection for personal data.</p> |
| <p>1.6. Are national regulatory regimes for crowdfunding in Europe impacting on the development of crowdfunding? In what way? What are the critical components of those regimes?</p> | |
| <p>1.7. How can the Commission support further development of FinTech solutions in the field</p> | <p>The Channel Islands have identified three key areas in which the Commission may be able to support these sectors: (i) harmonising legislative and regulatory requirements, (ii) enabling</p> |

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| <p>of non-bank financing, i.e. peer-to-peer/marketplace lending, crowdfunding, invoice and supply chain finance?</p> | <p>further securitisation in appropriate circumstances, and (iii) ensuring that FinTech start-ups have access to appropriate funding at all stages of their growth cycle.</p> <p>In our experience, we have found that firms in these sectors find it very difficult to operate on a cross-border basis, primarily because of the heterogeneity of relevant legal and regulatory requirements across jurisdictions. As such, we believe that the Commission, through harmonisation of such requirements, could play a key role in enabling firms in these sectors to scale-up internationally and realise economies of scale. Many of the necessary actions are already being progressed as part of the CMU project. We believe that, in order to ensure EU citizens have access to the most appropriate FinTech products and services for their needs, the harmonisation should provide for an appropriate regime for third country access.</p> <p>There is a desire from some firms in this sector to reach a wider audience of investors (i.e. wider than direct peer-to-peer investors) by offering participation in the loans that they originate through securitisation. We welcome the Commission's efforts to grow securitisation in the EU in a manner that addresses the risks associated with some securitisation activity in the past. However, as we have noted in our feedback on the CMU initiative more broadly, we consider that the political agreement on STS securitisation will not facilitate optimal growth in this area because of the restrictions imposed on third countries, which is likely to limit growth in this area. A significant number of providers will not be able to contribute their skills, expertise and, above all, capital to the initiative.</p> <p>It is well understood that many FinTech firms are small start-up businesses that require early stage funding. Enabling access to this funding will be a key determinant in the supply of FinTech products and services. We support the EU's efforts to enable access to this funding through the CMU initiatives. However, reiterating the point we made in previous consultations on the CMU, we believe that the restrictions on third country activity contained or proposed within many of the CMU initiatives (e.g. the proposals to develop the venture capital markets) will unnecessarily inhibit the flow of funds to European start-ups.</p> |
| <p>1.8. What minimum level of transparency should be imposed on fund-raisers and platforms? Are self-regulatory initiatives (as promoted by some industry associations and</p> | |

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| <p>individual platforms) sufficient?</p> | |
| <p>1.9. Can you give examples of how sensor data analytics and other technologies are changing the provision of insurance and other financial services? What are the challenges to the widespread use of new technologies in insurance services?</p> | <p>A source of information for this question is the IAIS paper, "Report on FinTech Development in the Insurance Industry", 21 February 2017.</p> <p>https://www.iaisweb.org/page/news/other-papers-and-reports</p> |
| <p>1.10. Are there already examples of price discrimination of users through the use of big data? Can you please provide examples of what are the criteria used to discriminate on price (e.g. sensor analytics, requests for information, etc.)?</p> | |
| <p>1.11. Can you please provide further examples of other technological applications that improve access to existing specific financial services or offer new services and of the related challenges? Are there combinations of existing and new technologies that you consider particularly innovative?</p> | <p>The Channel Islands consider that technology which enables more efficient on-boarding of financial services clients may potentially increasing access to financial services. In particular, we refer to secure identity verification initiatives.</p> <p>Currently the individual on-boarding process can be heavily paper based, labour and document intensive, and therefore Channel Islands consider that the use of technology to provide identity documentation and the use of technology such as biometrics to verify such information has the potential to greatly increase efficiency and effectiveness. The ability to then share (with user permission) verified ID information between financial services providers cuts down friction on the customer dramatically and should assist in the on-boarding process generally. If the concept could also work cross-border, the possibilities are far greater. The concept of allowing third country equivalence with eIDAS in this regard should be considered in the work of the Commission on FinTech.</p> <p>Further examples may include:</p> <ul style="list-style-type: none"> • Use of technology to create new markets or methods of processing electronic payments, e.g. card issuing and e-wallets. • Use of technology to improve the efficiency and effectiveness of existing financial services, including |

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| | <p>business processes, regulation trading and data, e.g. fund administration and business intelligence/ analysis.</p> <ul style="list-style-type: none"> • Use of technology to deliver financial services to customers (often involving streamlining or by-passing existing financial institutions), e.g. identity management and telematics. |
| <p>2.1 What are the most promising use cases of FinTech to reduce costs and improve processes at your company? Does this involve collaboration with other market players?</p> | <p>The Channel Islands consider that there are significant promising uses or test cases of Fintech in the area of CDD and client onboarding through the use of shared CDD facilities in order to improve processes and efficiency in both the financial services industry and jurisdictional authorities. The detail of these use cases are discussed specifically under Question 2.4.</p> |
| <p>2.2. What measures (if any) should be taken at EU level to facilitate the development and implementation of the most promising use cases? How can the EU play its role in developing the infrastructure underpinning FinTech innovation for the public good in Europe, be it through cloud computing infrastructure, distributed ledger technology, social media, mobile or security technology?</p> | <p>As noted in our response to Question 1.7, there are number of structural areas where the EU could contribute to the development and implementation of FinTech products and services. In terms of more direct measures, we would make the following suggestions:</p> <ul style="list-style-type: none"> - sufficient flexibility to enable competent authorities to adopt jurisdictional-level sandbox arrangements - ensuring that both EU and third country firms with promising use cases are provided with appropriate access to EU markets - continued support for cyber-security, and considering how best to target cyber-security improvements in key service providers outside of the EU - ensuring that, in terms of AML/CFT, customer identification requirements are appropriately tailored (and future-proofed) to the rise of digital identification and do not impose measures that unnecessarily restrict or slow access to new products and services |
| <p>2.3. What kind of impact on employment do you expect as a result of implementing FinTech solutions? What skills are required to accompany such change?</p> | <p>The Channel Islands consider that FinTech impacts existing employment in financial services. As new FinTech solutions disrupt traditional business models there will likely be a degree of consolidation. As businesses seek to respond to the threats posed by FinTech start-ups there may be a drive towards automation, particularly for labour intensive, low complexity roles. Whilst this could lead to a reduction in employment, there is likely to be a concurrent increase in technology-oriented roles. FinTech start-ups will themselves create new jobs as will incumbent firms as they seek to develop their own systems.</p> <p>Many FinTech providers in recent years have focused on consumer banking and payment services. However, new solutions are expected to disrupt other industries: from investment management to insurance providers. A key to this expansion will be the increased use of artificial intelligence to aid,</p> |

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| | <p>or in some instances, replace human decision-makers. Equally the increasing importance and availability of data on customers and business performance will drive growth in a variety of new roles in data analytics.</p> <p>Both to facilitate continued developments in FinTech and to ensure that our economies are able to fully benefit from the changes that may take place, it will be necessary to ensure we are producing the right digital skills within the local population. From software development, data analytics and artificial intelligence to digital marketing and the skills to develop and maintain our digital infrastructure.</p> <p>In the areas where FinTech solutions could improve the CDD and client on-boarding processes there will inevitably be a certain amount of automation of routine and lower skilled tasks. This will impact job profiles and is a global trend. The Channel Islands consider that this will result in progressive change in job profiles (e.g. in Compliance Departments) in financial institutions as FinTech solutions become more prevalent. Where appropriately managed, this does not necessarily reduce employment, rather an upskilling of the workforce and a renewed focus on added-value tasks.</p> <p>It is considered that if standardised processes (for example, the verification of identity documents – such as passports) can be automated through FinTech solutions, compliance staff can focus their attention on areas that provide greater value to mitigating against the risk of financial crime, for example, conducting client based risk assessments. This assumption is supported by organisations such as the Wolfsberg Group which takes the view that a large majority of staff time in compliance departments is taken up by completing processes that could be automated, and comparatively little time is focused on risk assessment – where real value can be found in mitigating against financial crime.</p> <p>The Channel Islands experience in banking recognises that as routine and lower skilled tasks are incorporated into automated products, job profiles change. Risk assessment, for instance, requires a high level of skill. We are starting to address the change in profiles in our own industry, and are confident that managed appropriately, this will lead to up-skilling in the work force and not necessarily job losses in the sector.</p> |
| <p>2.4. What are the most promising use cases of technologies for compliance purposes (RegTech)? What are the challenges and what (if any)</p> | <p>RegTech is gathering momentum but there is still a reluctance to progress further in respect of the development of many solutions without Government or Regulatory approval.</p> |

are the measures that could be taken at EU level to facilitate their development and implementation?

There appears to be some reluctance by financial institutions to use certain technology solutions that, while more efficient and effective, are not yet considered mainstream by other institutions or regulators. Instead there is evidence firms continue to use their existing legacy systems because they have a certain degree of confidence in them or they have been considered from a regulatory perspective in the past. It is, however, important to note that some areas of RegTech, such as the use of technology for transaction monitoring has received some positive uptake and firms have a strong track record of applying technology to meet regulatory commitments in this regard.

In order for the current situation to change, the Channel Islands consider that there needs to be action taken by International Bodies, including the EU, to actively encourage national Governments and Regulators to support and adopt RegTech solutions, which will provide the industry with confidence to use those solutions. Without such encouragement and support, a fragmented system will exist, with a number of financial services businesses unwilling to move away from already established processes and procedures.

Jurisdictions would benefit from clear statements on acceptable technology use in a variety of areas of RegTech. The Channel Islands have already taken the opportunity to make these statements in respect of the use of the privately run eID facilities in the CDD and on-boarding area of financial services.

The Jersey Financial Services Commission issued guidance on eID at paragraph 4.2 of its AML/CFT Handbook: <http://www.jerseyfsc.org/pdf/Part-4-Section-4.2-Guidance-on-Products-and-Services-E-ID-20151218.pdf>

The Guernsey Financial Services Commission also issued annexes to the Handbooks for Financial Services Businesses and Prescribed Business on Countering Financial Crime and Terrorist Financing on the use of technology in the customer due diligence process: <https://www.gfsc.gg/news/article/use-technology-due-diligence-process>

A possible option to facilitating implementation at a more effective rate would be pro-active work and statements or policy work regarding the use of technology from international bodies who set standards and provide guidance in the area of financial regulation and financial market stability e.g. the FATF, the OECD, the IMF & World Bank. The Channel Islands would support these international bodies considering conducting work in this area,

which would match the interest of the EU demonstrated by this consultation.

It is encouraging that the FATF has a standing agenda on the FATF Plenary for FinTech. During 2017, the FATF is holding three separate events for engagement with the private sector on FinTech and RegTech. The continuation of this work with both national authorities and the private sector is critical to more general acceptance of FinTech and RegTech solutions in financial services.

The EU also has an important role to play in furthering the discussion and implementation of FinTech and RegTech solutions across the Member States and with third countries which have trading relationships with the EU.

As outlined in Q1.1, Jersey has an ongoing project on electronic verified ID, called "Jersey eVID". It is testing a solution to enhance customer on-boarding through the intelligent use of technology. The concept proposes the adoption of a centralised database where ID information is submitted, verified and stored, and then with the permission of the user, it can be shared with financial and professional services firms to assist in fulfilling CDD requirements. Jersey remains keen to explore these solutions in the wider European and Global fora so that they can be most effective in their application. Jersey is examining the possibility of hosting such a centralised database within an insular authority, in order to achieve greater confidence in adoption. Equally, another option under consideration is to require the use of the facility by all customers of the jurisdiction, so as to achieve a "level playing field" as to verification of identity and ensure adoption across the financial and professional services sector. A Jersey consultation is underway and the final outcome remains subject to decision.

In order for such a solution to be truly effective, there must be a willingness for recognition of such a system outside of the jurisdiction. In the context of the EU, the foundations that have been laid down for eID through the Digital Single Market (DSM) are important in this regard. Regulation EU 910/2014 on electronic identification and trust services for electronic transactions in the internal market (eIDAS) should consider a significant third country element to ease business and attract capital from around the world. This aim aligns closely with the EU CMU.

The Channel Islands would therefore encourage the EU to consider progressing the implementation of eIDAS as a priority matter, and considering a significant third country element to eIDAS. This would allow, for example, eID issued in the Channel

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| | <p>Islands to be usable for access to services in the EU (and vice versa) thereby creating a pathway through the use of intelligent technology for further and more efficient investment into the EU.</p> <p>The suggestions made here for the adoption of RegTech aim to increase the stated aims of the EU in relation to CMU and the DSM.</p> |
| 2.5. What are the regulatory or supervisory obstacles preventing financial services firms from using cloud computing services? Does this warrant measures at EU level? | The Channel Islands consider that there is a potential obstacle regarding the ownership of cloud data and requirements for data security, data retention etc. |
| 2.6. Do commercially available cloud solutions meet the minimum requirements that financial service providers need to comply with? Should commercially available cloud solutions include any specific contractual obligations to this end? | |
| 2.7. Which DLT applications are likely to offer practical and readily applicable opportunities to enhance access to finance for enterprises, notably SMEs? | <p>The Channel Islands consider that although DLT is gaining interest and market commentators expect a rise in use, it is difficult to predict which applications may enhance access to finance. DLT/Block chain is currently unregulated but is increasingly of interest for regulators*, suggesting controls may be introduced.</p> <p><i>*We note, in particular, the FCA Discussion Paper on Distributed Ledger Technology April 2017. The ESAs and the European Parliament are also monitoring developments.</i></p> <p>In Guernsey, in collaboration with other key stakeholders, the first commercial deployment of block chain technology for the private equity market has been launched.</p> |
| 2.8. What are the main challenges for the implementation of DLT solutions (e.g. technological challenges, data standardisation and interoperability of DLT systems)? | |
| 2.9. What are the main regulatory or supervisory obstacles (stemming from EU regulation or national laws) to | |

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| <p>the deployment of DLT solutions (and the use of smart contracts) in the financial sector?</p> | |
| <p>2.10. Is the current regulatory and supervisory framework governing outsourcing an obstacle to taking full advantage of any such opportunities?</p> | |
| <p>2.11. Are the existing outsourcing requirements in financial services legislation sufficient? Who is responsible for the activity of external providers and how are they supervised? Please specify, in which areas further action is needed and what such action should be.</p> | |
| <p>2.12. Can you provide further examples of financial innovations that have the potential to reduce operational costs for financial service providers and/or increase their efficiency and of the related challenges?</p> | <p>The Channel Islands consider that key areas may include data management, peer to peer investors and payments solutions.</p> |
| <p>3.1. Which specific pieces of existing EU and/or Member State financial services legislation or supervisory practices (if any), and how (if at all), need to be adapted to facilitate implementation of FinTech solutions?</p> | <p>As noted in the response to Question 1.7, the Channel Islands believe that the development of FinTech products and services available to consumers in EU Member States could be improved by enhancing third country access. The specific pieces of legislation that we believe could be improved in this regard include the following:</p> <ul style="list-style-type: none"> - MiFID II – the current equivalence regime is very limited from a FinTech perspective (given that the majority of FinTech products and services are aimed at retail clients). Third country firms that provide investment services to retail clients currently have very limited avenues to offer these services within the EU, despite the effectiveness and efficiency of the third country regulatory regime. This limits the range of FinTech products and services available to EU citizens. - EuVECA and EuSEF – see comments in Q1.7 - Regulation on simple, transparent and standardised securitisation (STS) – see comments in Q1.7 |

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| | <ul style="list-style-type: none"> - Regulation EU 910/2014 on electronic identification and trust services for electronic transactions in the internal market (eIDAS) should include a significant third country element to ease business and attract capital from around the world. FinTech and RegTech solutions will inevitably be the route for many Member States and third countries to issue digital IDs for access to services. The EU should consider a third country element to eIDAS to allow electronic IDs issued by third countries, that meet the eIDAS standards, to be used inside the EU for service provision. |
| <p>3.2. What is the most efficient path for FinTech innovation and uptake in the EU? Is active involvement of regulators and/or supervisors desirable to foster competition or collaboration, as appropriate, between different market actors and new entrants? If so, at what level?</p> | <p>Interaction with regulatory agencies is of vital importance to FinTech firms, who often may not have the level of regulatory knowledge of existing financial services firms and / or who have developed a product or service that does not fit easily within the current legal or regulatory framework.</p> <p>The Channel Islands believe that the key interaction between FinTech firms and regulatory agencies should involve open discussions on the legal and regulatory implications for products and services, and perhaps even some limited form of access to separate legal advice to clarify interpretations and the practical application of relevant requirements. However, we would expect that, in most areas, it would be for the relevant Member State to determine what level of support to provide.</p> <p>In our experience, it is a careful balancing act for regulators in knowing how and when to act. In some cases, regulatory action at an early stage can act to stifle or distort innovation, but conversely it can also serve to legitimise a concept or business.</p> <p>It should be for each jurisdiction to implement a path for innovation in order to ensure observance and compliance with local legislative and regulatory controls.</p> |
| <p>3.3. What are the existing regulatory barriers that prevent FinTech firms from scaling up and providing services across Europe? What licensing requirements, if any, are subject to divergence across Member States and what are the consequences? Please provide details.</p> | <p>See responses to Q1.7 and 3.1</p> |
| <p>3.4. Should the EU introduce new licensing categories for FinTech activities with</p> | <p>Where new products or services are developed that do not fit well with current regulatory requirements, it may be appropriate to develop specific licensing categories although whether this</p> |

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| <p>harmonised and proportionate regulatory and supervisory requirements, including passporting of such activities across the EU Single Market? If yes, please specify in which specific areas you think this should happen and what role the ESAs should play in this. For instance, should the ESAs play a role in pan-EU registration and supervision of FinTech firms?</p> | <p>should be done at the European or Member State-level would depend on detailed consideration of a range of matters.</p> <p>As noted in response to Q 1.7 and 3.1, the Channel Islands believe that there is considerable scope for harmonising certain regulatory requirements and providing for passporting by both EU Member States and third country jurisdictions that provide for equivalent levels of protection.</p> <p>We do not necessarily see an argument for blanket regulation of FinTech firms by ESAs, and it would seem that this would need to be considered on a case-by-case basis and be consistent with the current allocation of supervisory responsibilities.</p> |
| <p>3.5. Do you consider that further action is required from the Commission to make the regulatory framework more proportionate so that it can support innovation in financial services within the Single Market? If so, please explain in which areas and how should the Commission intervene.</p> | <p>Yes, see response to questions 1.7, 3.1 and 3.7.</p> |
| <p>3.6. Are there issues specific to the needs of financial services to be taken into account when implementing free flow of data in the Digital Single Market? To what extent regulations on data localisation or restrictions on data movement constitute an obstacle to cross-border financial transactions?</p> | <p>Yes, see response to 4.1</p> |
| <p>3.7. Are the three principles of technological neutrality, proportionality and integrity appropriate to guide the regulatory approach to the FinTech activities?</p> | <p>In our experience, the Channel Islands have found that the majority of FinTech products and services are customer-centric and therefore we believe that it would be beneficial to widen the principles to include a focus on protecting and empowering EU consumers. A focus on the consumer will help in the formulation of policy which is seen as beneficial by the majority of EU citizens (much like the mobile roaming regulation). Such a focus would provide consumers access to products and services, regardless of the location that they are provided from, subject to appropriate levels of protection.</p> |
| <p>3.8. How can the Commission or the European Supervisory Authorities best coordinate, complement or combine the</p> | <p>The Channel Islands believe that the Commission and ESAs can play a useful role in co-ordinating those practices and initiatives, and can be instrumental in sharing best practice and co-operation. In order to develop a successful EU “Hub” it will be</p> |

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| <p>various practices and initiatives taken by national authorities in support of FinTech (e.g. innovation hubs, accelerators or sandboxes) and make the EU as a whole a hub for FinTech innovation? Would there be merits in pooling expertise in the ESAs?</p> | <p>important to engage internationally, for example with international standard setters such as the FATF, the OECD, IOSCO and BCBS, and third countries.</p> <p>The Channel Islands support the initiatives taken by global standard setters such as FATF, and would support the EU taking a similar approach. The Commission and/or the ESAs could organise FinTech and RegTech forums involving both EU and third country participants, for exchange of information and good practice. As technology is not restricted by geographic barriers, and many FinTech and RegTech solutions are intended for global operators, it would be important to include third country regulatory and supervisory authorities and industry in any EU initiative. An EU-centric approach would risk diminishing the potential value of any EU initiative.</p> |
| <p>3.9. Should the Commission set up or support 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? If yes, please specify how these programs should be organised?</p> | <p>See answer to 3.8.</p> |
| <p>3.10. Are guidelines or regulation needed at the European level to harmonise regulatory sandbox approaches in the MS? Would you see merits in developing a European regulatory sandbox targeted specifically at FinTechs wanting to operate cross-border? If so, who should run the sandbox and what should be its main objective?</p> | <p>The Channel Islands would not support an EU initiative to harmonize regulatory sandboxes. Given the very diverse national approaches across the globe, this would be a very complex exercise which risks inhibiting innovation and growth. Rather, the Channel Islands would support an opportunity, possibly initiated by the EU, to exchange information and experiences between jurisdictions that operate or are considering setting up a sandbox.</p> |
| <p>3.11. What other measures could the Commission consider to support innovative firms or their supervisors that are not mentioned above? If yes, please specify which measures and why.</p> | <p>See response to Q3.2</p> |

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| <p>3.12. Is the development of technical standards and interoperability for FinTech in the EU sufficiently addressed as part of the European System of Financial Supervision? Is the current level of data standardisation and interoperability an obstacle to taking full advantage of outsourcing opportunities?</p> | |
| <p>3.13. In which areas could EU or global level standards facilitate the efficiency and interoperability of FinTech solutions? What would be the most effective and competition-friendly approach to develop these standards?</p> | <p>As mentioned in our response to Q3.7, the Channel Islands consider that it is necessary to empower and protect consumers so that firms remain competitive, and in particular, consumers can access the right product and service for them, regardless of its geographic location.</p> <p>As noted in our response to Q1.7, we believe that there is considerable scope for increased efficiency and interoperability in peer-to-peer lending / investing activity.</p> <p>A global standard adopted in relation to digital ID could be a significant enabler to allow interoperability of digital IDs for access to financial and professional services.</p> |
| <p>3.14 Should the EU institutions promote an open source model where libraries of open source solutions are available to developers and innovators to develop new products and services under specific open sources licenses? What other specific measures should be taken at EU level?</p> | |
| <p>3.15. How big is the impact of FinTech on the safety and soundness of incumbent firms? What are the efficiencies that FinTech solutions could bring to incumbents? Please explain.</p> | <p>FinTech has potential to have significant impact on incumbent firms. The Channel Islands has considered, by way of example: Crowdfunding – the possibility of new lending channels which could challenge banks’ existing consumer lending base; The impact of big data on provision of investment advice; and The role of emerging technology, in particular decentralized networks, which may redefine trade, global payments etc.</p> |
| <p>4.1. How important is the free flow of data for the development of a Digital Single Market in financial services? Should service users (i.e. consumers and businesses</p> | <p>The Channel Islands consider free flow of data as crucial to a successful DSM.</p> <p>As technology develops and becomes more ubiquitous; as the uses for personal data become more sophisticated; and as the scale of processing activities increases globally, the ability to offer</p> |

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| <p>generating the data) be entitled to fair compensation when their data is processed by service providers for commercial purposes that go beyond their direct relationship?</p> | <p>free-flowing data within a DSM is likely to be viewed as increasingly important to financial services organisations. Personal data is the lifeblood of the FS industry, and restrictions could result in a significant barrier to entry.</p> <p>The free flow of data however, is only possible if throughout the DSM individual data subjects/consumers can be assured of the same levels of protection; can exercise the same level of control over their data; and feel confident knowing how, why and by whom their data are being processed. We welcome therefore, the introduction of appropriate regulation to harmonise personal data protection across Member States and set common standards to provide clarity and certainty for individuals and businesses.</p> <p>As explained in answer to Q1.5, the Channel Islands currently plan to implement domestic legislation that provides the same standards of protection for personal data as the GDPR and the Law Enforcement Directive. Our aim is to enable growth while protecting data subjects.</p> <p>Regarding compensation, the Channel Islands considers that the GDPR already provides clarity on what constitutes lawful processing activities; the principles that should be followed by controllers/processors when processing personal data; and the circumstances in which steps should be taken to inform data subjects when their personal data are being processed beyond a 'direct relationship'. We also trust the GDPR provides an adequate framework for individuals to seek recourse for any breaches of their rights as data subjects through civil litigation. Similarly, we expect that the new penalties regime will act as a strong incentive for organisations to process data appropriately.</p> |
| <p>4.2 To what extent could DLT solutions provide a reliable tool for financial information storing and sharing? Are there alternative technological solutions?</p> | <p>The Channel Islands consider that DLT solutions may provide a reliable tool for financial information storing and sharing.</p> |
| <p>4.3. Are digital identity frameworks sufficiently developed to be used with DLT or other technological solutions in financial services?</p> | <p>The Channel Islands consider that the use of DLT in digital identity technology is still developing and there may be reticence in both industry and the general public to use it for this purpose. There will need to be further development and analysis of the use of DLT for digital identity technology for confidence to be gained to achieve a "use case" for mass adoption.</p> |
| <p>4.4. What are the challenges for using DLT with regard to</p> | |

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| <p>personal data protection and how could they be overcome?</p> | |
| <p>4.5 How can information systems and technology-based solutions improve the risk profiling of SMEs (including start-up and scale-up companies) and other users?</p> | |
| <p>4.6. How can counterparties that hold credit and financial data on SMEs and other users be incentivised to share information with alternative funding providers? What kind of policy action could enable this interaction? What are the risks, if any, for SMEs?</p> | |
| <p>4.7 What additional (minimum) cybersecurity requirements for financial service providers and market infrastructures should be included as a complement to the existing requirements (if any)? What kind of proportionality should apply to this regime?</p> | |
| <p>4.8. What regulatory barriers or other possible hurdles of different nature impede or prevent cyber threat information sharing among financial services providers and with public authorities? How can they be addressed?</p> | <p>Firms face a number of challenges in sharing cyber threat information. These include:</p> <ul style="list-style-type: none"> - concerns about potential regulatory action; - uncertainty about who to share information with and when to share; - an expanding range of information sharing networks that are both domestic and international, public and private, formal and informal; and - reputational / financial / insurance concerns. <p>Arrangements to address many of the above issues are already in place, e.g. the ability to share anonymously and undertakings regarding regulatory action. However, there remains a reluctance to report or share in many cases.</p> <p>Related to the above point, the Channel Islands note that regulatory agencies also face some of the same considerations when notified about cyber threats. In particular, regulatory agencies may be in possession of information about imminent potential threats but there are legal or communication problems</p> |

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| | <p>in sharing the information, or they are unclear whether the information has already been shared appropriately.</p> <p>The Channel Islands believe that there is room to significantly clarify and harmonise cyber threat reporting requirements for firms. One option could be for regulators to take a more proactive role in either setting mandatory reporting / sharing requirements, or mandating regulatory reporting which is then shared through an appropriate mechanism. Regulatory authorities may currently be lacking in the resources available to manage this function.</p> <p>Cyber security is a global problem that does not respect national or supranational borders. Threats arising outside of the EU will migrate beyond the EU, and vice versa. An efficient alert / information sharing system that covers all relevant threats and operates beyond such borders would be an important step in mitigating cyber security risks. As a third country with a significant financial services sector, the Channel Islands would stand ready to contribute to, and benefit from, such an initiative.</p> |
| <p>4.9. What cybersecurity penetration and resilience testing in financial services should be implemented? What is the case for coordination at EU level? What specific elements should be addressed (e.g. common minimum requirements, tests, testing scenarios, mutual recognition among regulators across jurisdictions of resilience testing)?</p> | <p>The Channel Islands believe that there is a case for greater EU coordination, primarily to provide for economies of scale and consistency. Any such testing should take account of the constantly evolving nature of the threat and it will be important to ensure that, where appropriate, the testing is tailored to the particular circumstances of the firm.</p> <p>Similar to our responses on Q4.8, we would note that the agencies that are party to the findings may find themselves experiencing a conflict between consumer protection (i.e. warning customers about weaknesses in a particular firm / sector) and financial stability / legal challenge considerations.</p> |
| <p>4.10. What other applications of new technologies to financial services, beyond those above mentioned, can improve access to finance, mitigate information barriers and/or improve quality of information channels and sharing? Are there any regulatory requirements impeding them?</p> | <p>The Channel Islands consider that new technologies may support financial services in the areas of insurance, financial markets, financial modelling, payment service providers, wealth management, platform investors and peer to peer and private investors.</p> |