EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Camera dei Deputati for its Opinion on the Communication on a Digital Finance Strategy {COM (2020)591 final}, and on the proposals for a Regulation on digital operational resilience of the financial sector (DORA), {COM (2020)595 final}, for a Directive {COM(2020)596 final}, for a Regulation on markets in crypto-assets (MiCA) {COM (2020)593 final}, and for a Regulation on a pilot scheme for market infrastructures based on distributed ledger technology (DLT Pilot)/Council code 11055/20 {COM(2020)594 final}.

On 24 September 2020, the Commission adopted the digital finance package, setting out how Europe can take advantage of digitalisation in the recovery, as well as a strategy for modern and safe retail payments. These were accompanied by concrete legislative proposals: a proposal on markets in crypto-assets – MiCA – and a digital operational resilience act for the EU financial system –DORA.

With MiCA, the Commission proposed a framework on crypto-assets to allow for innovation while instilling market integrity and appropriate levels of consumer protection – also in relation to so-called 'stablecoins'. With DORA, the Commission proposes that financial firms ensure they can withstand all types of disruptions and threats related to information and communication technology (ICT), and ensure a better protection from cyber-attacks.

The Commission welcomes the favourable opinion of the Camera dei Deputati on EU level action on a digital finance framework and its general objectives and priorities. We would like to confirm that the proposed legislative measures are based on the Treaty on the Functioning of the European Union (TFEU), which authorises the European institutions to lay down appropriate provisions which have as their object the establishment and functioning of the internal market (Article 114 TFEU). The proposed legislation took these elements into account and aims to improve the functioning of digital finance as part of the general legislation on the functioning of financial markets.

Mr. Roberto FICO
President of the Camera dei Deputati
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The Commission is pleased that the Camera dei Deputati shares the view that action at EU level, as envisaged in the proposals, is required for a deeper integration of the internal market through the harmonisation of legislation at EU level. It reconfirms the importance of national regulation in certain areas as well as the need to align the decision-making process with the activity of different stakeholders.

The Commission would also like to respond to a number of specific points in the Annex.

The Commission has taken due note of the views expressed by the Camera dei Deputati in its Opinion. It looks forward to the involvement of the Camera dei Deputati on these topics and to continuing our political dialogue in the future.

Yours faithfully,

Maroš Šefčovič
Vice-President

Mairead McGuinness
Member of the Commission

Annex

In relation to the scope of application of the Markets in Crypto-assets (MiCA) regulation, the Commission points out that it has evolved throughout the negotiations with the co-legislators. For example, there is a more explicit mandate for the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) to provide a template to promote convergence among Member States when determining whether a crypto-asset is a financial instrument or not, including the possibility to ask the European supervisory authorities (ESAs) for an opinion on their assessment. The notion of a financial instrument is not harmonised at EU level, which implies that the ESAs (namely ESMA) are not competent to determine alone whether or not a crypto-asset has to be considered a financial instrument. In such a case, the legal nature of the crypto-asset depends on the national transposition of the Markets in Financial Instruments Directive (MiFID). The distinction between the different crypto-assets falling within MiCA's remit was clarified further during the legislative negotiations.

As regards the need to identify measures for the tax treatment of virtual currencies, the Commission would like to point out that such measures cannot be adopted using the same legal basis as the present proposals. In addition, the Commission confirms that it is also working on better information sharing between tax authorities as to both e-money and crypto-assets.

The Commission fully agrees that the supervisory setup in MiCA requires considerable coordination and therefore attributes different roles to different supervisors, which could be for example securities, or banking supervisors, aligning it within different areas in European financial services legislation. Moreover, the text has been updated as regards the colleges of supervisors and the coordination between relevant authorities in situations of supervisory overlap.

As regards the transitional measures referred to in Article 123(1) of MICA, the Commission acknowledges that these have been carefully assessed.. The 'grandfathering clause' only exempts crypto-assets issuers that have a white paper approved when the crypto-assets were in circulation before the entry into force of MiCA. Crypto-assets qualifying as either asset-referenced tokens (ARTs) or electronic money tokens (EMTs) would always need to be authorised after the application of MiCA, even if they were in circulation before, just as crypto-asset service providers – which is where most of the consumer/investor protection risk lies – will always have to be authorised.

Regarding the suggestion of the Chamber of Deputies to give further consideration to the introduction of a specific provision prohibiting the dissemination of marketing communications in the absence of publication of a White Paper, the Commission points out that if a crypto-asset is exempted from white-paper requirements and thus out of scope of MiCA, MiCA cannot grant additional powers to competent authorities to limit the marketing done for these products. If a crypto-asset which does not fall within one of the exemptions is put on the market without submitting a white paper or having their white paper approved in the case of an ART or EMT, the competent authorities should

treat this as unauthorised provision of financial services and take enforcement action as necessary.

The Commission is pleased that the Camera dei Deputati shares the view that financial education initiatives are indeed an important issue. In the Digital Finance Strategy published at the same time as the MiCA regulation, there is a specific reference to financial literacy. The Commission intends to continue to support (digital) financial education at national level, for example by developing a competence framework for financial education.

As regards the further coordination between the proposed MiCA Regulation and the pilot regime with reference to the relationship between the Distributed ledger technology multilateral trading facility (DLT MTF) and the crypto-asset trading platforms, the Commission acknowledges that this refers to the qualification of crypto-assets. MiCA covers only those crypto-assets that are not covered elsewhere in existing financial services legislation. This entails that crypto-assets qualifying as transferable financial instruments under MiFID for example, will be treated as such. The DLT Pilot regime, on the other hand, is specific to financial markets infrastructures (dealing with financial instruments), in trying to ensure that European financial market infrastructures have the possibility to apply and gain experience with the use of DLT. To make use of the DLT Pilot regime, a MTF or a Central Securities Depositories (CSD) must be authorised, or seek authorisation, at the time of seeking a permission under the DLT pilot. As MiFID or the Central Securities Depository Regulation (CSDR) are not applicable to trading platforms under MiCA (as they are not allowed to deal in financial instruments), they do not need such exemptions.

Regarding the proposal of reducing the test phase of the pilot regime for DLT market infrastructure to less than five years, the Commission points out that a shorter period of the DLT Pilot Regime may make it very challenging for firms to recoup the investment necessary in order for entities to set up a DLT-based infrastructure. The DLT pilot will require substantial investments on the side of the entities using it and they should have appropriate time to obtain knowledge and become profitable. The DLT Pilot regime has a narrow scope, but does not imply that other technological developments should not be monitored closely. When reviewing specific legislation, it would be important to keep in mind potential obstacles to the application of new technologies; this is also one of the four pillars underpinning the Digital Finance Strategy.

With reference to the view of the Camera dei Deputati to consider extending the scope of the pilot regime, the Commission assures the Chamber of Deputies that this issue has been extensively analysed and discussed during the negotiations. The scope of the DLT Pilot regime focusses on exploring the potential of DLT for trading and post-trading, which is why it is open to entities authorised as either MTFs or CSDs.

However, an entity may ask at the same time for such authorisation and for the DLT pilot. Due consideration was also given to the instruments that could be used in the DLT Pilot regime based on their characteristics. The instruments in scope represent simple

products that can be easily understood by investors. In addition, the management of post-trading related processes is simpler concerning these types of instruments.

Finally, beyond the experience to be obtained through the DLT Pilot regime as regards the application of DLT and the suitability of existing financial services legislation, supervisors and legislators will of course also assess the usefulness of the DLT Pilot regime as a legal instrument that allows for derogations from EU law and whether this idea could be expanded to other areas.

The proposal for a digital operational resilience act (DORA) establishes a single framework for all parts and components of our financial system to be resilient against information and communication technology (ICT risks), including severe malicious attacks.

As regards the application of DORA, the Commission shares the opinion of the Camera dei Deputati on the need to ensure the right balance between reinforcing the security of IT systems and the need to reduce costs as well as administrative burdens for financial operators, especially smaller ones. The Commission is currently working with the European Parliament and the Council to improve further the text on this matter.

The Commission also agrees on the importance of coordination with Directive (EU) 2016/1148 concerning measures for a high common level of security of network and information systems across the Union (the Network and Information Security (NIS) Directive), and cooperation between the competent authorities in the context of the DORA Regulation and the existing bodies in the NIS ecosystem. The Commission is currently working with the European Parliament and the Council to clarify and enhance coordination and cooperation in this respect.

The Commission shares the objective of ensuring that a clear and simple oversight function is in place. The Commission is currently working with the European Parliament and the Council to clarify the role of national authorities.

Our overall objective on ICT third parties is to bring clarity, awareness and visibility in relation to reliance on ICT third-party providers, so that financial institutions can better understand, appraise and manage their dependency on ICT third parties.

The Commission will reinforce (via the oversight framework) regulators' ability to assess the impact of certain critical ICT providers on the Union financial systems so that the angle of financial stability is duly preserved from operational outages and failures.

Regarding the coordination of DORA with Directive (EU) 2016/1148 concerning measures for a high common level of security of network and information systems across the Union (the NIS Directive), for financial entities, DORA shall remain lex specialis to NIS 2.0. This is the general principle established by the DORA and NIS 2.0 proposals. Where necessary, DORA sets out in more detail how this would work. The Commission is working with the co-legislators to further clarify this, while continuing to draw benefits from remaining associated with the broader horizontal framework in terms of e.g. information exchange.

As regards critical ICT third-party service providers (CTPPs) NIS 2.0 and DORA are complementary and work together. NIS 2.0 lays down rules and supervision of digital infrastructures. DORA covers the use of critical ICT third-party service providers (potentially qualifying as digital infrastructures under NIS) by financial entities and has the purpose of facilitating the supervision of financial entities by financial supervisors. In order to ensure proper coordination, the European Union Agency for Cybersecurity (ENISA) would be part of the DORA Oversight Forum. Based on the same principle, in addition, a further involvement of the NIS relevant authority in the DORA Oversight framework may avoid the risk of tension or conflict of solutions in respect to such CTPPs.