



EUROPEAN COMMISSION

*Brussels, 27.7.2021  
C(2021) 5696 final*

*Dear President,*

*The Commission would like to thank the Senat for its Opinion on the digital finance package, which includes the Digital Finance Strategy {COM(2020) 591 final}, proposals for regulations on markets in crypto-assets {COM(2020) 593 final} and on digital operational resilience {COM(2020) 595 final}. A Europe fit for the digital age is one of the six political priorities of this Commission and the digital finance package is a way to implement this priority in the EU financial sector.*

*The aim of the Digital Finance strategy is to make Europe's financial services more digital-friendly and to stimulate responsible innovation and competition among financial service providers in the EU. It will reduce fragmentation in the digital single market, so that consumers can have access to financial products across borders and that Fintech start-ups scale up and grow. It will ensure that EU financial services rules are fit for the digital age, for applications such as artificial intelligence and blockchain. Data management is also at the heart of today's strategy. In keeping with the Commission's broader Data Strategy, the objective of the above measures is to promote data sharing and open finance, while maintaining the EU's very high standards on privacy and data protection. Finally, the strategy aims to ensure a level playing field among providers of financial services, be they traditional banks or technology companies: same activity, same risks, and same rules.*

*The Retail Payments Strategy aims to bring safe, fast and reliable payment services to European citizens and businesses. It will make it easier for consumers to pay in shops and make e-commerce transactions safe and convenient. It seeks to achieve a fully integrated retail payments system in the EU, including instant cross-border payment solutions. This will facilitate payments in euro between the EU and other jurisdictions. It will promote the emergence of home-grown and pan-European payment solutions.*

*Ms. Anca Dana DRAGU  
President of the Senat  
Calea 13 Septembrie nr. 1-3, sector 5  
RO – 050711 BUCHAREST*

*The proposed Regulation on markets in crypto- assets is expected to boost innovation while preserving financial stability and protecting investors from risks. It will provide legal clarity and certainty for crypto-asset issuers and providers. The new rules will allow operators authorised in one Member State to provide their services across the EU (“passporting”). Safeguards include capital requirements, custody of assets, a mandatory complaint holder procedure available to investors, and rights of the investor against the issuer. Issuers of significant asset-backed crypto-assets (so-called global ‘stablecoins’) would be subject to more stringent requirements (e.g. in terms of capital, investor rights and supervision).*

*The Commission also proposed a pilot regime for market infrastructures that wish to try to trade and settle transactions in financial instruments in crypto-asset form. The pilot regime represents a so-called ‘sandbox’ approach – or controlled environment – which allows temporary derogations from existing rules so that regulators can gain experience on the use of distributed ledger technology in market infrastructures, while ensuring that they can deal with risks to investor protection, market integrity and financial stability. The intention is to allow companies to test and learn more about how existing rules fare in practice.*

*Technology companies are becoming more and more important in the area of finance, both as IT providers for financial firms, as well as providers of financial services themselves. The proposed Regulation on digital operational resilience in the financial sector aims to ensure that all participants in the financial system have the necessary safeguards in place to mitigate cyber-attacks and other risks. The proposed legislation will require all firms to ensure that they can withstand all types of disruptions and threats related to information and communication technology (ICT). The proposal also introduces an oversight framework for ICT providers, such as cloud computing service providers.*

*The Commission welcomes the acknowledgments in the Senat’ Opinion, notably as regards the respect of the principles of subsidiarity and proportionality, as well as regarding the potential of this package concerning risk-sharing in the EU single market and diversification of funding sources for small and innovative companies. At the same time, the Commission takes note of the reservations and requests that the Senat makes with respect to the contents of this package. In this context, the Commission is pleased to have this opportunity to provide a number of clarifications regarding this package and trusts that these will respond satisfactorily to the reservations expressed by the Senat. In response to the technical comments expressed in the Opinion, the Commission would like to refer to the enclosed annex.*

*Negotiations between the Commission and the co-legislators concerning the legislative proposals included in the package are already underway and the Commission remains hopeful that an agreement will be reached in the near future. The Opinion of the Senat is available to the Commission's representatives assisting in these negotiations and will inform these discussions.*

*The Commission hopes that these clarifications address the issues raised by the Senat and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*

*Mairead McGuinness  
Member of the Commission*

*The Commission has carefully considered the issues raised by the Senat in its Opinion and would like to offer the following observations grouped by topic.*

*As far as the review of the current securitisation framework is concerned, the Commission has already announced such a review in its Capital Markets Union Action Plan of 2020, with the objective to enhance banks' credit provision to EU companies, in particular SMEs. In addition to strengthening the securitisation market, the Commission will continue to assess the possibility of introducing a dual-recourse instrument named European Secured Notes.*

*As for clearer definitions in the context of the proposal for a Regulation on markets in crypto-assets, the Commission understands the need to avoid an unduly broad scope beyond financial markets. However, it is also important to limit the risk of circumvention. For that reason, most rules in the proposal cover fungible tokens only, which have the potential to become tradable and thereby financial in nature.*

*As far as the identification of specific risks posed by cryptocurrencies and implications for the Capital Requirements Regulation and Capital Requirements Directive (CRR/CRD) are concerned, the Basel Committee on Banking Supervision is currently working on these issues and the Commission is taking part in that work. As for the alignment of publication and entry into force of the relevant CRR/CRD provisions and the Regulation on markets in crypto-assets, the Commission would like to emphasise that the latter Regulation is a self-standing piece of legislation. As such, it addresses many actors also beyond credit institutions. When it comes to credit institutions, financial supervisors have all the powers to ensure that risks are being kept in check.*

*As for the application of the principle of proportionality in the context of the proposal for a Regulation on digital operational resilience in the financial sector, the Commission has attached the highest importance to this point. Indeed, there are numerous exemptions for micro enterprises from various requirements. However, as smaller firms may also be linked to significant cyber risks for the financial system, the Commission does not consider it appropriate to fully exempt firms based on their size. Payment systems on the other hand are currently not subject to EU financial services legislation, but in various cases subject to central bank oversight. As the proposal is dependent on the scope of the legislation on central bank oversight, payment systems are not covered.*

*To conclude, the Commission takes note of the need to pay increased attention to precise translation of technical terms.*

\*\*\*