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### DFS – striking a balance between fostering innovation and a level playing field

“The future of finance is digital” are the introductory remarks of the Digital Finance Strategy put forward by the Commission in September 2020. The Covid-19 pandemic has shown that this is a matter of fact, nowadays more than ever. Digital financial services played a key role to avoid even more social and economic damage across the globe in the current crisis. There is no doubt that fostering digital finance will support Europe’s economic resilience and recovery. Therefore, **the acceleration of digitalisation across sectors is vital in the upcoming Digital Decade.** Strengthening our strategic autonomy in digital financial services will support Europe’s position in the worldwide economy and avoid dependencies which in turn contributes to European democracy.

The proposed priorities in the Digital Finance Strategy hit the bullseye. Avoiding fragmentation in the Digital Market and creating a European financial data space in the financial sector is paramount. This will facilitate the upscaling of Europe’s vibrant FinTechs and promote data protection which is a prevailing topic due to uprising cloud service providers. Therefore, we welcome the Commission proposals put forward in the Digital Finance Package. Yet, the future regulatory frameworks need to be technology neutral and future proof as the pace is high in the digital sector and new technologies are emerging on a constant basis. Especially, DORA will contribute to a safe environment for digital services around financial institutions. MiCA on the other hand is already internationally rewarded as a standard setting framework in the sphere of crypto-assets. Another priority addresses artificial intelligence in the financial sector. In this context, we should not forget the strong interconnectedness across sectors that goes hand in hand with artificial intelligence. Thus, the bigger picture of digital services should always be taken into account. Smart contracts and the ecosystem surrounding these should not be underestimated in the regulatory framework as the field is rapidly evolving and risks are not yet fully assessed. In this context, innovative phenomena such as DeFi should be thoroughly examined in order to understand the concepts and the technology and potentially address them on European or even international level as borders are almost non-existent in this realm while of course preserving the dynamic setting.

“Code is law” is a well-known quotation ascribed to Lawrence Lessig, US professor of constitutional

law. In many fields of digital finance, we see aspects of this doctrine. Think of Bitcoin for example. No court, no competent authority is able to enforce a rightful judgement if it is not compatible with the code. If a private key is lost, no judge will move a bitcoin. Decentralisation, in some cases, renders lawmakers and authorities stranded. But if only code is law, then democracy is in danger. It should be the legislator who defines the rules and authorities should have appropriate tools in order to execute them in a proportionate manner treating all market participants equally. A level playing field should also be provided in an ever more digital world of financial services.

A good example is Open Banking. As Big Data was already in the past and will in future be the driver of many digital finance developments, PSD II was a major step taken by the EU legislator in order to explore the concepts, address the right issues and unleash the potential of financial data. Now it lies with the customers to make use of it. Technical interfaces will facilitate the exchange of this data. This might help preparing the ground for new business models – hopefully many European companies and Citizens will benefit. On the other hand, we shall not overlook that also other big players, especially Big Tech firms possess extensively valuable data that should mutually be readily available, at the request of the customer.

Summing up, legislators and regulators need to closely follow technical developments in digital finance and draw the appropriate and proportionate conclusions at the right moment. We know it best, it’s a balancing act.