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Regulation of Digital Finance in the EU: challenges and opportunities

Digital innovation is key in today's world. The financial services sector is no exception, with various commentators highlighting an ongoing digital 'revolution' in this field. Whilst this inevitably creates a number of opportunities for stakeholders, it also brings a number of challenges to the fore – these inter alia include cyber security, privacy, and data protection issues.

The European Commission (EC) has been proactive, putting forward a number of key initiatives including:

[i] the Digital Finance Strategy (DFS) – one of the pillars identified in the Digital Finance Package published by the EC on the 24 September 2020. Building on the FinTech Action plan, the DFS acknowledges the impact of digital innovation on the economy and embraces digital finance solutions, such as cloud computing and data sharing. It seeks to ensure sound practices, and to enhance consumer protection and market competition;

[ii] the Digital Markets Act (DMA) and Digital Services Act (DSA) - described by the EC as “an ambitious reform of the digital space, a comprehensive set of new rules for all digital services, including social media, online marketplaces and other online platforms operating in the EU”,^[1] these proposals appear to acknowledge the widespread benefits brought about by digital solutions and set the tone for further digitisation across the EU; and

[iii] the Digital Operational Resilience Act (DORA) – a proposal seeking to harmonise ICT risk management requirements across the financial services industry. It is inter alia aimed at strengthening the confidentiality, integrity and availability of data and complements this by establishing an oversight framework on Critical ICT ThirdPartyServiceProviders, including Cloud Service Providers.

The strategy and the proposed legislative instruments seek to address fragmentation in the existing framework and will eventually provide stakeholders with regulatory certainty. These proposals embrace digital innovation, and should provide more opportunities for FinTechs to establish themselves in the European market. This should increase consumer choice vis-à-vis the range of financial services offered, strengthening competition, and also enhancing resilience and cybersecurity. Of course, regulation will also bring about compliance costs; however, the pros of regulation outweigh the cons.

The success of the EC's strategy and proposals are reliant on a number of factors, namely: [i] legal certainty being achieved; [ii] NCAs embracing digital finance in their work and initiatives; [iii] the uptake of market participants; [iv] education and awareness; and [v] the enforcement of any legislative instruments promulgated. It is in this manner that Europe can become a standard setter in the digital world.

[1] European Commission, Press Release, Europe fit for the Digital Age: Commission proposes new rules for digital platforms, 15 December 2020,