

BELGIUM AT THE HELM

Recommendations for
the 2024 Council Presidency



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Introduction

In these unprecedented times, with war on the European continent, the need for robust policies is greater than ever. The Russian invasion of Ukraine has fuelled inflation and reduced citizens' purchasing power. The financial sector, in all its facets, is working closely with policymakers to mitigate the impact for citizens and enable governments to implement sanctions.

In recent years, the Belgian financial industry has proven to be resilient. Resilience, in our view, is being prepared for adversity, it is the ability to adapt to challenging situations. With the economic and technological environment changing at a rapid pace, the financial sector must demonstrate daily that it can cope with these changes, that it is resilient. And since the sector is closely intertwined with the economic fibre, it must also provide this resilience to other economic actors.

This document aims to strengthen the conversation between the financial sector and policymakers.

Banks take up their responsibility and play their role in society. Our sound position allowed Belgian banks to continue to finance the economy during the COVID crisis, and we are also fulfilling our societal role in the current energy crisis. The financial sector is committed to helping individuals and guiding them through the energy crisis, e.g. by enabling a payment deferral on their mortgages. Banks are also ready to help companies and look for the best solution, tailored to each company's specific situation.

The Belgian financial industry is a broad sector, from conventional banking to specialised financial services and niche activities. We can be proud of this diversity. Our members adapt daily

to the ever-changing context. They drive technological change while maintaining the highest standards of cybersecurity. Not to mention the important role played by financial institutions in financing the transition to a more sustainable society. We are proud of the broad know-how we can bring to the table and hope to contribute to the Belgian presidency in 2024.

This document aims to strengthen the conversation between the financial sector and policymakers. Civil society has historically played a key part in Belgian policymaking. This long-standing dialogue is an important asset that the Belgian presidency will bring to the European stage in 2024. Even if legislative procedures might seem endlessly long to outsiders, most successful policies are not made overnight. We believe that in interaction, moderation is found. We look forward to maintaining our commitment to the European policy-making process and thereby contributing to better policies for all EU citizens.

The financial sector stands ready to be a reliable partner of the presidency and is looking forward to providing constructive input to the discussions and entering into dialogue on the themes that we address here.



Karel Baert, CEO Febelfin

A prosperous Belgium in a prosperous Europe

The Belgian financial sector is determined to contribute to a prosperous economy. It needs a legislative framework that enables the industry to be competitive in an ever-changing global market. The performance of financial service providers and the overall health of companies are strongly intertwined.

EUROPEAN AUTONOMY

Keeping one's eyes on the outside world is a crucial ingredient for creating welfare through innovation and trade. Recent events have shown the need for control and autonomy in some strategic and critical areas at the European level. The financial sector is one such critical and strategic sector, because of the central and multidimensional role in the economy.

The financial sector is the main financier of investment and thus of economic growth. It stands ready to finance businesses and families to realise their projects. **The financial sector is a truly ally of European citizens and plays an important societal role.** During COVID, banks proved to be a resilient foundation and able to respond to the needs of governments, companies and families while maintaining financial stability. In the context of the current energy crisis, the financial sector, together with governments, is once again a key partner in mitigating the impact of the crisis by financing energy companies and providing solutions for clients experiencing financial difficulties.

We need a European financial sector that is open to the world but that can respond autonomously to the needs of the European market.



Today, the need for a resilient financial sector is greater than ever. The sector really needs to show that it has acquired the ability to adapt to difficult situations, to a rapidly changing world, with many technological and environmental challenges. **We need a European financial sector that is open to the world but that can respond autonomously to the needs of the European market.** To this end, the sector must be internationally competitive and innovative while maintaining high standards of capital requirements. **Adequate profitability is therefore necessary,**

as a strong banking sector is vital to have the capacity to absorb shocks and meet the challenges of the future.

An industrial policy aimed at developing the European financial sector as the main financier of the economy and a promising technological player is needed to ensure its strategic autonomy in the years to come.

A LEVEL PLAYING FIELD FOR BELGIAN BANKS

By centralising the regulatory and supervisory powers over the financial sector on the European level, the banking union has large positive effects. It has created a single financial space on a European scale, where friction costs due to differences in national legislation have been reduced. This brought (and still brings) stability and more trust to the financial system and it allows for a freer flow of capital through the Union. Nevertheless, regulation is not fully harmonised in all Member States. National competent authorities may impose national discretions and be stricter than required by supranational rules. We should also not forget that some financial activities are developed by companies outside the regulated banking world. This move means that **the mantra of “same services, same risks, same rules” should become central to EU financial services policy making.**

Febelfin therefore calls on policymakers to create a framework in which EU member states must respect a level playing field for all entities offering financial services

Febelfin attached great importance to a level playing field between all financial services providers in the EU context, where risk is thoroughly regulated, a level playing field rewards the most efficient business models, not the riskiest. The right balance needs to be struck between re-

specting the differences and interests peculiar to each member state and creating the level playing field that the banking union seeks.

Febelfin therefore calls on policymakers to create a framework in which EU member states must respect a level playing field for all entities offering financial services. As capital moves freely throughout the EU, European banks have become more European in the sense that they increasingly operate across European borders. It would therefore be unfair to treat them differently based on where the bank is based.

A DIVERSE LANDSCAPE

The Belgian financial industry exhibits a diverse landscape of business models, a strength we should cherish. The regulatory framework should reflect this diversity and create an environment in which smaller players can thrive. Regulations on topics such as instant payments or reporting, can affect smaller entities more severely. **This diversity is not only related to size, Belgium is home to several highly specialised financial service providers.** These B2B providers are less visible but play a vital role in the functioning of our financial system. **We call on policymakers to foster this diversity and involve the industry to best understand the impact of policy on different business models.**

BELGIUM'S ROLE IN EU POLICY MAKING

Today we note that, unfortunately, a Belgian position is often delivered late in the legislative process. **Belgium should focus more on shaping policy early in the decision-making process.** Even before an official proposal is published, Belgian policymakers could start mapping out a position and gather input from stakeholders. This would improve transparency and allow stakeholders, like Febelfin, to provide policymakers with appropriate input. The broad involvement of expert stakeholders would allow policymakers to take a well-informed position and to provide a strong Belgian voice at the European level. Abstention needs to be avoided at all costs, especially while holding the Presidency; politicians should come together and deliver high-quality policy.

Sustainable finance carrying the transition

The financial industry plays a key role in the transition towards a sustainable economy. Belgian financial institutions are committed to being an ambitious partner on sustainability. Guiding industry and consumers in the process of financing the transition will be an important challenge in the coming years.

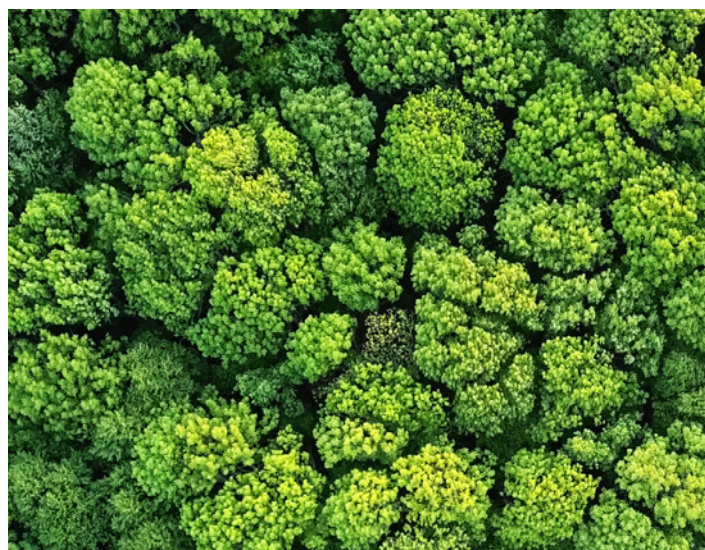
SUSTAINABILITY AS A CORE PRINCIPLE

Sustainability is a core principle in all EU policies. If we want to meet the Paris Agreement target and the Sustainable Development goals, major investments are required. In Europe alone, a financing gap of more than 180 billion euros a year needs to be bridged if we want to keep global temperatures in line with the objectives of the Paris Agreement. Without the private sector, that funding gap cannot be closed. **As about two-thirds of the European economy is financed by financial institutions, healthy banks and well-functioning capital markets will play a crucial role in the transition to a more sustainable society.**

Febelfin is convinced that policy should provide clear and encouraging pathways for the transition of the economy.

The growth of sustainable activities should take place in all economic sectors. Sustainable financial markets must encourage sustainable developments in the real economy and be able to finance and support that development without unnecessary restrictions. Companies are at different stages in their transition journey towards low-carbon and sustainable business models. Banks are willing to play a key role in supporting corporates on this journey, regardless of

where they start their journey from. **Febelfin is convinced that policy should provide clear and encouraging pathways for the transition of the economy. Regulation must be proportionate and fit for purpose, this way, the EU will strengthen its competitiveness in a changing global environment and build a better future for all.**



SUSTAINABILITY DISCLOSURES (CSRD)

The proposal for a Corporate Sustainability Reporting Directive (CSRD) would amend the existing reporting requirements of the Non-Financial Reporting Directive. It expands the scope, broadens the reporting topics, introduces mandatory reporting templates and requires digitalization.

Financial institutions, as reporting entities, often fall within the scope of the CSRD and therefore



need a practical approach. On the other hand, they are also users of ESG data and thus need ESG data from their clients to comply with their own reporting, disclosure and prudential requirements (E.g., SFDR, ESG Pillar 3, etc.). However, listed SMEs are in scope of the CSRD, but smaller companies remain out of scope which make up a large part of the professional clientele of Belgian banks. For these types of SMEs, a possible 'light' reporting regime could be important in their relationship with their stakeholders (civil society, investors, credit providers).

We strive for a reporting framework that is practical (bank as reporting entity), fit-for-purpose (bank as user of corporate ESG data) and proportionate (also feasible for SMEs). An additional (currently not envisaged) one-year deadline for financial institutions, compared to other reporting entities, would facilitate initial application. This should be considered since banks rely on data provided by their clients and need sufficient time to assess the clients' data before submitting their own reports.

Regarding the reporting templates (ESRS) currently developed by EFRAG, we agree that the ESRS should eventually cover all sustainability-related information to support an effective transition, but we do not believe that striving for exhaustivity is necessary to that end. All stakeholders need time to reach an outcome where companies complying with the ESRS, also de facto comply with ISSB standards.

Therefore, EFRAG urgently needs to take a phased approach in developing the ESRS and for the Commission to also phase its adoption.

DUE DILIGENCE (CSDDD)

The proposal for a Corporate Sustainability Due Diligence Directive aims to promote sustainable and responsible corporate behaviour and to embed human rights and environmental considerations in companies' operations and corporate governance.

Febelfin supports the objectives of promoting respect for human rights and environmental protection and embedding these aspects in supply and value chains to create a level playing field and avoid fragmentation between Member States. Several soft law standards already exist in this area, so the harmonisation of due diligence rules provided by the CSDDD is positive.

Several soft law standards already exist in this area, so the harmonisation of due diligence rules provided by the CSDDD is positive.

However, we have some major concerns, such as the lack of clarity of the text and of some concepts. This could lead to a lack of uniform interpretation, legal uncertainty and a fragmentation between Member States. For the Belgian financial sector, it is important that there is not too much leeway in transposing the directive, which entails a risk of gold plating.

Febelfin also calls for the administrative burden on companies to be kept to a reasonable level. The obligation to adopt a plan to ensure that the company's business model and strategy are compatible with the transition to a sustainable economy and the limitation of global warming to 1.5°C in line with the Paris Agreement, seems a complex challenge and should not be in the proposal but rather within the CSRD. We call on the presidency to avoid the inclusion of the civil liability provision, as this would be contrary to established national civil law principles and thus create an uncertain or even uncontrollable legal risk for companies. SMEs make up a large part of the professional clientele of Belgian banks but do not fall within the scope of the CSDD. Therefore, the exclusion of SMEs from the value chain of financial institutions should be applied to the provision of all regulated financial services.

Banking Union & European integrated reporting

For Febelfin, the creation of the Banking Union is considered a major achievement. As financial institutions are more robust than ever, Febelfin is convinced that prudential policy and supervision should also reflect this. For the framework to remain effective, it should be risk-based, flexible and less complex. Over the past decade, the cost of regulatory reporting has increased, both for institutions and supervisors. At the same time, several European initiatives are under way to simplify reporting flows. To realize full potential, European policymakers should strive for strategic alignment and leverage synergies.



PRUDENTIAL REGULATION AND SUPERVISION

The Belgian financial sector favours measures that increase the sector's resilience without drastically affecting the health of financial institutions. Febelfin stresses that risk sensitivity is the basis of the prudential framework. The wrong impression might be created that financial stability increases linearly with larger capital buffers. It should not be forgotten that capital accumulation above a certain level limits financial institution's investment, revenue generation and thus financing capacity. **We therefore call upon policymakers to keep prudential regulation risk-based and adjust the framework for emerging risks (such as ESG-related risks, cyberthreats and crypto assets) built upon strong data.**

Policymakers are currently working on the long-awaited Macroprudential Review. This review is needed because the crisis revealed that not all prudential policies are equally effective in addressing systemic risk to bring the framework in line with the progress made in the supervisory

framework. It is essential that the twofold objective of macroprudential tools is well considered, namely absorbing losses and ensuring that financial institutions provide sufficient lending in times of stress. To this end, **we need to enhance the usability of capital buffers and ensure that macroprudential instruments are used consistently across Member States.**

Transparent and predictable supervision and prudential requirements are key for the sector. In addition, there are still a lot of national competences in banking regulation and supervision. **The future of the Banking Union can only be secured through y a fully harmonised rulebook that allows Belgian banks to compete on a level playing field.** We urge the Belgian Presidency to keep these principles in mind so that the financial industry can use its capital as efficiently as possible, fulfil its role as an effective conveyor of monetary policy and support all sectors in achieving economic growth.

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CRISIS MANAGEMENT & DEPOSIT INSURANCE

Building a solid crisis management architecture is one of the key pillars on which banking stability rests. Significant progress has been made in recent years as banks have increased MREL and funded deposit and resolution schemes. A review of resolution and deposit guarantee legislation is planned. **The final crisis management system should maximise banking stability in adverse conditions. This implies that the cost of crisis management must always remain credible and under control.** To achieve such a credible system, further steps must be taken in a thoughtful manner, balancing the strengthening

of the pan-European financial fabric with respect for national realities and with attention to proportionality and a level playing field.



TOWARDS A EUROPEAN INTEGRATED REPORTING SYSTEM

There is agreement that the current state of regulatory reporting for financial institutions is cumbersome, disproportionate and increasingly complex. The ECB aims to integrate its statistical reporting requirements in a single reporting framework (IReF). It would, to the extent possible, standardise, harmonise and integrate existing requirements for collecting statistical information from financial institutions across domains and countries. At the same time, the EBA is conducting a review of options to redesign and integrate regulatory reporting, with a specific focus on governance and data model.

Febelfin supports initiatives for an integrated, standardised and proportionate reporting framework to improve data quality and reduce the reporting burden on financial institutions. The goal of integrated reporting can be even better achieved when all regulated reporting streams are included. First, a European common vision, data model and governance are needed as a basis. Next, the systematic application of the “define once, report once” principle is essential to ensure cost efficiency and reduce the overall reporting burden.

An Economy that works for people: consumer protection

Consumer protection is a top priority in the Belgian financial sector. Consumer trust is necessary for a well-functioning financial system, and this can only be earned by maintaining a high standard of transparency.



PAYMENT ACCOUNTS DIRECTIVE REVIEW – SWITCHING, NUMBER PORTABILITY

As part of the preparation of the Payment Accounts Directive (2014), the European Commission conducted a study on the impact of different options for interbank mobility. One of these was the possibility of bank account number portability. This study concluded that a system in which banks communicate the new account number to creditors operating via direct debit and to repeat payers offers an ideal balance (cf. bank switching in Belgium). Such a system would allow consumers to easily switch banks without hampering competition.

The portability of the account number was not retained; socially, the advantages clearly do not outweigh the disadvantages. First, account number portability requires a change to the IBAN system; this system uses a specific code per bank, which is crucial for processing payment orders. Moreover, this solution would require costly, technical and operational changes for banking service providers beyond the national level. Finally, any banking services initiative must be in line with the Single Euro Payments Area (SEPA) framework, which aims to create a harmonised European zone with uniform rules. Clearly, the benefits of number portability do not currently outweigh the aforementioned drawbacks.

The existing directive, PAD1, which is still very recent, was introduced in Belgium in 2018. This directive has been very well received by stakeholders. As part of the revision of PAD1, the European Commission will publish a new study on the impact of multiple options for interbank mobility, including an assessment of the costs and benefits of implementing EU-wide portability of bank account numbers. **Febelfin is aiming for a robust study that broadly evaluates the costs and benefits of all options.**

MORTGAGE CREDIT DIRECTIVE REVIEW

In the period from November 2021 to February 2022, the European Commission organised a public consultation on the Mortgage Credit

Directive (MCD) to learn whether a revision of the current legislation is desirable. For Febelfin it is, at present, not necessary to review the MCD. The transposition of the current version of the MCD into national law is still relatively recent. **Also, the application of the current legislation does not indicate any issues that would necessitate an update. The mortgage credit market in Belgium is a healthy market built upon balanced credit principles.**

Should the ongoing evaluation of possible adjustments to the MCD nevertheless lead to a revision, it is best to keep the adjustments as limited as possible, focusing on further adapting the directive to the digitalisation of the credit process.

INSTANT PAYMENTS

In the Commission's proposal for Instant Payments Regulation published in October 2022, instant payments are set to become the standard for payments in euros. This innovative method offers great possibilities for consumers and Belgium was one of the first to introduce this payment method. However, it is important to keep in mind the efforts required by banks to implement instant payments. Sending and receiving instant payments requires changes to banks' payment processing, liquidity management, reporting, fraud detection and other aspects that all need to be implemented in real time. **In particular, the efforts that banks have to make should not be underestimated and should be taken into account in legislation.**

Consumer protection and fraud prevention measures are key elements in payments, including instant payments.

For example, the cost of offering instant payments is higher than that of regular credit transfers. And the investments to build the infrastructure for instant payments are high; Payment Service Providers also have operating costs and bear greater risks. **There is no reason why the price of an instant payment transaction for the payer should be the same as that of a regular credit transfer. Because of incremental costs, operational and risk mitigation costs (e.g., fraud prevention), the**

two services should have the possibility to be priced separately (at least for non-retail clients). Moreover, it is not technically feasible today to process bulk payments immediately.

Consumer protection and fraud prevention measures are key elements in payments, including instant payments. Banks have already put in place robust and advanced fraud prevention mechanisms, which they continuously adapt and improve. In addition, banks educate their customers on fraud prevention, especially with regard to new types of fraud. Setting up an IBAN-Name check at EU-level would be an extensive project and will need to be developed under a scheme-like approach. This will take time and resources, which should not be underestimated. There are numerous challenges that will need to be considered and resolved. Once an EU-scheme is in place, banks will also need sufficient time to implement the solution in their own system.

FINANCIAL LITERACY

Educating people properly on financial skills remains essential, especially in these challenging times when skyrocketing energy prices are putting pressure on the finances of many households. **Febelfin is committed to improving consumers' ability to make informed financial decisions.** Better financial literacy enables individuals to be better prepared to deal with macro-economic shocks, thus contributing to a more stable financial system. There is still a lot of work to be done. Recently, **a study commissioned by Febelfin showed that the population - especially young people - overestimate themselves when it comes to financial education. Belgians scored particularly low** on the topics of investing, borrowing, retirement and pension saving. Even in the light of a proposed European retail investment strategy, it is of paramount importance to equip citizens with the right knowledge, just encouraging consumers to invest more is not enough. **If we really want to reap the benefits of deploying European capital and create a trusted environment for investing, consumers need to be equipped with the right tools to build their wealth in an informed way. Febelfin calls on the Belgian presidency to further promote financial literacy. The financial sector is ready to be a partner in improving and supporting financial literacy.**

A Digital Europe

The banking sector has been one of the pioneers in digitalization for years. But with a more digital and technology-based society, comes also increased cyber risk. Financial institutions invest heavily in new technologies and security every day. The legal framework, which is fundamental to privacy protection, must however be sufficiently open to respond to tomorrow's realities and needs. For the banking sector, where privacy protection has always been central, it is about striking the right balance between privacy and fighting fraud. At the same time, it is important for citizens to have the right knowledge and skillset to confidently manage their personal finance in the digital space.



PSDII REVIEW

PSDII (Payment Services Directive II), was published in 2015 and regulates consumer and business payments in the EU. The purpose of this directive was twofold. First, the EU wanted to increase the security of the European Payment System by introducing “Strong Customer Authentication” (SCA) with additional protection for consumers. Second, it aimed to increase competition in the European payments market by opening up data to Third Party Providers (TPPs).

Today, the revision of PSDII is on the table. Given the strategic importance of European payments, Febelfin and its members are also providing input on this revision. **For Febelfin, a full review of PSD2 comes too early.** The many clarifications from EBA, the national regulator, the NBB and countless Q&As have changed the practical impact of the directive. Therefore, it is necessary to first assess the effective market impact of PSDII.

While the practical consequences are not yet fully visible, **it is clear that PSDII has created an uneven playing field. Banks were forced to open up their customers' payment data without any compensation for building and maintaining an expensive infrastructure.** This while there is no real customer demand for such a system. At the same time, the benefits mainly accrue to

third-party providers. For Febelfin, this situation needs to be rectified. **The solution should seek more balance, with a fair distribution of value and risk and the possibility for all market participants to receive fair compensation for the services they provide.**

In addition, there are other working points for PSDII. Firstly, the Commission should work on better protection against fraud. New patterns in payment fraud call for new, stronger rules that allow payment service providers to share specific information on attempted and realised fraud (i.e. money mule accounts). **To enhance payment providers' ability to combat fraud, information sharing between private and public actors needs to improve and relevant actors not covered by PSDII should also be required to cooperate in fraud investigation and fraud prevention. This would help increase the trust and security of the payment services market.**

After all, **the fight against fraud is a shared responsibility, and only by joining forces we can strengthen our efforts. This requires all stakeholders to cooperate and be accountable for their tasks in the best possible way.** For the financial sector, cybersecurity is a cornerstone of the services we provide. The security standard in the financial industry creates trust among customers and is essential for the stability of the financial system. However, the Payment Service Directive (PSD) makes payment service providers liable for unauthorised payments for the negligent behaviour of customers to whom they must repay the loss except in cases of gross negligence. This might create "moral hazard". Besides, other stakeholders such as internet and technology service providers are not held responsible for appropriate countermeasures. Despite these working points, Febelfin believes it is important for policymakers to wait until the functional effects of PSDII are clear.

OPEN FINANCE FRAMEWORK

In the Digital Finance Strategy 2020, the Commission announced the promotion of data-driven finance as one of their priorities and stated its intention to present a legislative proposal on an open finance framework. A text proposal is expected by the second quarter of 2023.



Open finance refers to third party services providers' access to customer (business and consumer) data with customer agreement across a wide range of financial services. It would be the next step on access to data in the financial sector after the data access rights to payments accounts data introduced by PSD2. This initiative covers all relevant financial services. It will contribute to the Commission's cross-sectoral Data strategy for Europe, which envisages common European data spaces in various sectors of the economy and establishes cross-sector rules on data use.

Open Finance should be seen as part of the data economy as a whole. Consequently, there must be a careful reflection on the part of the Commission and all relevant stakeholders on the policy option to do so. **A framework or scheme with rules on how data can be shared, where data sharing remains voluntary, will allow the identification of the uses for which there is customer demand.** Indeed, a policy option that assumes new rights to access data risks increasing the existing asymmetries in the financial sector in data sharing after PSD2.

DATA ACT PROPOSAL

The Data Act is a horizontal legislative initiative. It aims to create a cross-sectoral governance framework for data availability, access and use by legislating on matters that affect relations between data economy actors (data holders, data recipients and data users), in order to provide incentives for horizontal data sharing across sectors.

Febelfin supports the underlying principles of the Data Act as data sharing could be beneficial for consumers, companies and society in general.

The objective is to ensure fairness in the allocation of value from data among actors in the data economy and to foster access to and use of data. The proposal's objectives include facilitating access to the use of data by consumers, businesses (incl. interoperability between sectors) and public sector bodies. It is also supposed to enable switching between cloud and edge services easily and tackle unlawful third-party access to non-personal data.

Febelfin supports the underlying principles of the Data Act as data sharing could be beneficial for consumers, companies and society in general. In this respect, the proposal has potential but at the same time it remains limited considering the narrow scope of data sharing (data connected products and related services in scope) and lacks precision with respect to the scope for new obligations and rights for data access and data sharing modalities. Moreover, it provides requirements for cloud switching that may not achieve the objectives (e.g. promotion of innovation or competitiveness, digital sovereignty). These elements could weaken European ambitions and possibilities of cross-sectoral data sharing. However, we welcome the recognition of data holders' investments through the compensation principle. At this point, and in general, this horizontal approach and other - existing or

new - legal and sector-specific regulations/strategies should be coordinated and aligned to avoid inconsistencies from a legal and strategic point of view.

DIGITAL EURO

Developments in the crypto world and the growing popularity of stablecoins are rapidly changing the financial landscape. These changes bring opportunities, but also risks. For instance, private stablecoins can undermine the sovereignty of monetary policy. The ECB's response to this is the creation of its own digital currency. However, the creation of the digital euro is a project with big and important technological, financial and economic questions. And if not done properly, it could in fact strengthen the position of big-techs, while destabilising the financial system. It is important that the digital Euro is thoroughly evaluated in an exhaustive cost-benefit analysis that considers the financial stability of the banking system, the impact on the current payment landscape and its payment solutions, the needs of European consumers and businesses and the added value that a digital euro would bring. Ultimately, **the decision to introduce the digital**



euro should not be a technological or operational decision. Instead, it should be a political decision based on all pros and cons, opportunities and risks.

A thorough dialogue with financial institutions is therefore needed in the run-up to such a decision, and if the added value of the digital euro cannot be clearly demonstrated, it should not be introduced. Moreover, it is recommended that the aforementioned analysis not be limited to retail applications of the digital euro, but also pay due attention to wholesale use cases, especially given the important infrastructural role played by certain Belgian financial institutions.

the decision to introduce the digital euro should not be a technological or operational decision. Instead, it should be a political decision based on all pros and cons, opportunities and risks.

ARTIFICIAL INTELLIGENCE – AI ACT PROPOSAL

The Proposal for a Regulation on Artificial Intelligence (April 2021) provides a horizontal approach and aims to address risks of specific uses of AI. It places a set of horizontal obligations on providers, product manufacturers, importers, distributors and users of high-risk AI systems. A European artificial intelligence council and new national competent authorities will be established.

Febelfin is concerned that the proposed Regulation could create unjustified barriers or restrictions on the development of AI based business solutions, limit research potential, make smooth adaptations of existing applications difficult, and ultimately, negatively impact competitiveness. And this mainly for a couple of reasons. Firstly, the text and its' approach are not technology neutral: AI is not an activity or use case in and of itself, and the mere fact

that AI might be used should not increase the requirements (control, governance, transparency, etc.) per se. Requirements should be based on particular risks of the use case and not on the underlying technology. **Next to that, the text should be aligned with existing legislations, duplication or conflicting requirements (e.g. with GDPR) have to be avoided.** The banking and financial services sector is already subject to strong sectoral regulation and supervision, which ensures consumer protection, risk management and financial stability in all services provided to customers, regardless of whether those applications or services involve the use of technologies such as AI, including in the cases of creditworthiness assessment.



The supervision of this draft Regulation also risks creating an unlevel playing field across different countries and industries if there is no consistency in supervisory expectations and practices among different national competent authorities. These differences could occur when dealing with the same high-risk AI application, such as creditworthiness assessment and credit scoring, as different entities could be supervised by different

market supervisory authorities. **To ensure a level playing field for all industries in the application of the Regulation, the “same activity, same risks, same rules” principle should be taken into account, while ensuring a well-coordinated and harmonised supervisory landscape for all market participants offering or using high-risk AI systems, and a high level of consumer protection should be maintained to ensure that consumers have confidence in using AI.**

EUROPEAN DIGITAL IDENTITY - EIDAS REGULATION

The European Digital Identity refers to the Commission’s proposal for Digital Identity wallets. These wallets will be built on the basis of trusted digital identities provided by Member States, improving their effectiveness, extending their benefits to the private sector and offering personal digital wallets that are safe, free, convenient to use, and protect personal data. For this initiative, the Commission builds on the existing cross-border legal framework for trusted digital identities, the European electronic identification and trust services initiative (eIDAS Regulation).

At this point, a lot of questions remain. What will be the use cases of the digital identity? Will banks act as trust anchors on the system? How can smart contracts be built and by who? And most importantly, what will the security infra-

structure be like? **For Febelfin it is essential that any Digital Identity wallet can be used on a voluntary basis. Belgian banks already invested strongly in secure and user-friendly identification interfaces, for example the Itsme Digital ID. Therefore, it is important for Belgian financial institutions to consider the difficult interaction between existing software and the architecture of an external digital wallet.** Enabling such an interaction is not easy and can pose security risks and high costs for financial institutions. We therefore advocate a voluntary system so that the industry can assess the system and its usability for its customers.

DATA PROTECTION – EPRIVACY REGULATION

The Commission adopted the ePrivacy Regulation proposal in 2017 to align them with the GDPR – and the file is currently still under negotiation. The scope of the regulation is the privacy protection of electronic communications. What would be new? The scope will be extended to new players, there will be stricter rules, communications content and meta data will be covered, there will be new rules on cookies, protection against spam,...). **Febelfin urges the Belgian presidency to bring the proposal into line with existing texts, especially those adopted - or under negotiation - since the proposal was published.**

A correct tax framework and the fight against money laundering

Banks and authorities together share a great responsibility in the fight against money laundering and terrorist financing. This requires an efficient legislative framework that leaves sufficient room for the exchange of information. For taxation at EU level, the Presidency needs to consider the competitiveness of Belgian banks in Europe and the world.

ANTI-MONEY LAUNDERING

By 2024, the AML Package should be in force. This package of 4 legislative acts (an AML/CFT Directive and a Regulation, the establishment of a new AML authority (AMLA) and the revision of the existing text on money transfers) will change the European framework to improve the processes for detecting suspicious transactions and activities and close the existing loopholes used by criminals to launder illicit proceeds or finance terrorist activities through the financial system.

For Belgian financial institutions, these new rules should have a positive impact on some respects, but they will certainly pose significant operational challenges. **For banks operating in multiple Member States, the introduction of uniform standards, directly applicable within the EU, may ensure greater consistency in AML compliance. However, there will also be some challenges, including adjusting internal procedures and adapting customer due diligence measures.** It is important that policymakers recognise these challenges and the efforts of financial institutions in 2024. Establishment of AMLA is a positive development as this will, alongside a uniform rule book, enhance supervisory convergence. This would constitute an important step for cross border operating financial institutions. It is important however that AMLA does not just add an extra layer of supervision and that duplication of mandates with existing regulators is avoided.

AML measures often require cross-border reporting. A lack of uniform reporting standards imposes avoidable administrative burdens and costs. **Standardisation and simplification of reporting should be encouraged as soon as possible. Moreover, it is crucial to create more legal grounds to allow public and private stakeholders to exchange AML information in order to have a more efficient fight against money laundering.** Finally, Febelfin is in favour to allow financial institutions to fully rely on



the information uploaded in the national UBO register by companies in order to further streamline KYC-processes in line with the “only once” reporting principle.

At the national level, some AML/CFT laws will likely need to be adapted to avoid conflict with the EU Regulation and the AML Authority’s recommendations.

TAXATION

Simplicity, consistency and a level playing field should be guiding principles in the development of tax competences for which Europe is responsible. After all, capital flows can move quickly within globalised financial markets, and after Brexit, the European Union no longer has a major financial centre. Moreover, frictions and friction costs may limit or negate the benefits of Capital Markets Union and reduce the competitiveness of European financial markets. Minimum harmonisation of European rules could be a step in the right direction, especially if it leads to unification of reporting standards, clear and well-defined definitions and the avoidance of vague or overly broad concepts. Discretionary options and extensive opportunities for member states to engage in goldplating should be limited as much as possible.

An FTT purely through enhanced cooperation between a few countries is completely unthinkable in an open economy such as ours.

In this context, Febelfin calls for a simplification of the legal tax framework, European legislative proposals should not become unnecessarily complicated. The EU itself should set an example by refraining from goldplating when formulating its own proposals based on OECD agreements and regulations (e.g. for future Directives on Administrative Cooperation (DACs)).

Policymakers should, whenever they develop new legislative initiatives, conduct a consistency

test with existing and related regulations. Even in the context of a single common tax base and profit allocation between Member States based on a single set of EU-wide corporate tax rules, coherence should be promoted more strongly as a principle to be pursued. A lack of logical coherence and uniformity between BEFIT, Pillar 1, Pillar 2 and other European proposals and standards can lead to an unlevel playing field, but most importantly it can lead to an unnecessary and avoidable increase in compliance costs and administrative complexity for companies.

Finally, care must also be taken to ensure that European tax proposals do not impede the ability of Member States to pursue targeted policies. Member States may and can use tax incentives in the context of the climate transition, digital transformation or R&D. European tax proposals and tax-related norms should therefore take into account the objectives Member States need to achieve and the tax resources they use to do so.

FINANCIAL TRANSACTION TAX

Febelfin believes that a Financial Transaction Tax (FTT) could have numerous negative effects on investments in Europe. **In a context where private investment is desperately needed to achieve social sustainability goals, it is counterproductive to introduce tax incentives that penalize investment.** Policymakers should be aware of the potentially distorting effect of the FTT on the global competitiveness of European banks. The danger of changing competitiveness also applies within Europe. **An FTT purely through enhanced cooperation between a few countries is completely unthinkable in an open economy such as ours.**

WITHHOLDING TAX PROCEDURES

The European Commission has already undertaken certain actions to address tax barriers to cross-border investment and the risk of tax abuse within the European Union. The EU Member States’ cross-border withholding tax procedures are a long-standing Giovanni-Barri related to inefficiencies in operational actions to process taxation and apply for eligible tax refunds. As a result, non-resident investors may



not fully and/or efficiently exercise their right to apply for tax relief they are entitled to. This leads to double taxation and making it less attractive to make cross-border investments in the EU market.

The Action Plan for fair and simple taxation proposes to introduce a common, standardised EU-wide system for withholding tax relief at source, together with a new exchange of information and cooperation mechanism between administrations. In autumn 2021, the Commission launched an Inception impact assessment for introducing a common EU-wide system for withholding tax on dividend or interest payments. The Commission is expected to publish a proposal for a directive in 2023. **Febelfin welcomes the European Commission's initiative as a first step in the right direction. We believe the market needs a solution that structurally reshapes the way withholding tax procedures are currently managed, minimizing the possibility of tax fraud while reducing costs and risks and increasing efficiency.**

Febelfin has confidence that by putting strong foundations in place, the withholding tax proce-

dures will be less burdensome compared to what they are today. We believe those foundations can tackle most of the inefficiencies linked to the Giovannini barriers identified twenty years ago.

This step can only be fully effective under a few conditions. Firstly, clear and harmonised definitions must be developed. Secondly, the scope and field of application must be broadened, in particular in relation to the type of investor. And lastly, standardised digital tools should be put in place to allow data exchange in order to facilitate the verification, control and compliance process.

However, for us, this step remains transitional, albeit of great importance, as it is necessary to look to the future and develop a harmonised method of applying withholding rates. With such an important intermediary step, and if achieved efficiently, the EU would be ready, in the future, to move towards a fully integrated and digitalised method of managing withholding tax procedures. Likewise, **we should be cautious that the EU initiative will not create additional obligations on top of the existing national requirements instead of replacing the current national requirements.**

Capital Markets Union (CMU)

The Capital Markets Union will continue to be a very important framework for the years to come. The right guidance will enable sustainable growth in Europe and make investments truly inclusive. Helping all consumers to put their money to good, profitable use would be a win for citizens, companies and governments.



EUROPEAN RETAIL INVESTMENT STRATEGY (RIS)

Part of the 2020 CMU action plan, the Commission's Retail Investment Strategy (RIS) focusses on the investor journey and personalised asset allocation strategy. The RIS may entail changes to MiFIR/ MiFID II suitability and assessment, portability of information and allocation schemes. There are also links with PRIIPS and inducements.

For Febelfin, it is of utmost importance to have proportionate measures that avoid overly radical changes to models implemented by banks and investment firms across the EU. The BE presidency should consider operational consequences and implementation costs.

Recently, the Commission started exploring the 'Value for Money' ('VfM') concept together with a possible 'full' ban on inducements. **On the VfM concept, we would advocate strengthening the existing legal framework, rather than introducing new rules.** This would help to create a harmonized market and a level playing field. In this regard, it is of importance that legislators and supervisors across the EU adopt measures in a similar way and avoid gold plating. **A full ban on inducements would have disruptive effects for the financial industry and the markets in which they operate. Especially in the Belgian context, where clients are usually not directly and/or fully charged a commission or fee for the investment services offered, a ban on inducements would have serious consequences.**

To be able to keep on serving customers, financial institutions need a sustainable revenue stream. If third-party payments would be prohibited, firms currently offering third-party products to their clients are likely to limit their product offer to deposits and basic savings products that can provide a recurring income stream, which is not in the interest of (retail) investors. Firms might decide to evolve towards a more closed-architecture model and develop their own products (e.g., investment funds). Institutions with large retail consumer bases do not necessarily have the same expertise and experience as third parties, which is not in the interest of (retail) investors either.

Precedents in the UK and the Netherlands show that banning the remuneration of investment services through inducements does not necessarily result in better investor protection.

As a result of higher upfront fees to be paid by the client, a shift from investment advice to execution-only driven business models is taking place. In a Belgian context, where the financial literacy of retail investors is less developed than in e.g., the Netherlands, this would have a detrimental effect. An “advice gap” is likely to emerge as the service offering for retail investors will become more and more limited to execution-only services, because advisory services will become too expensive for retail clients (advisory fees will increase to compensate for the lack of commissions, on top of which clients will need to pay VAT). Those investors are likely to receive less advice and may invest in products that are not sufficiently known. Firms that will continue to offer investment advice to those clients are also likely to reduce their product offer, which does not help to enhance investor protection. **The Retail Investment Strategy should look for ways to make investing more accessible, banning on inducements would do the opposite.**

Meanwhile, at the Belgian level, the FSMA is also continuing its activities in this area, notably in its “20 projects for the future” initiative, in which the national regulator announces it will map the

impact of costs on investment returns. To support and promote an investment culture, better use should be made of the high level of savings. An overarching condition for achieving this goal is improving financial education/literacy of citizens.

EUROPEAN SINGLE ACCESS POINT (ESAP)

On 25 November 2021, the European Commission adopted a package of measures to ensure that investors have better access to company and trading data. The proposals deliver on several key commitments in the 2020 CMU action plan, with the aim to help connect EU companies with investors, improve their access to funding, broaden investment opportunities for retail investors and better integrate capital markets.

If properly implemented, ESAP will help centralising public disclosures (required by EU legislation or given voluntarily), reducing the cost of access to publicly available information. It is currently foreseen that the ESAP Regulation and Omnibus acts will enter into force in January 2023, with the effective launch of ESAP with Transparency and Prospectus Information by end-2025.



The BE presidency should seek to give weight to the implementation, with a focus on making SMEs more visible (which are a fundamental building block of the BE economy) and on creating new investment opportunities for investors. These measures should remain voluntary however, so as not to unnecessarily burden SMEs. Febelfin advocates adding CSDR-related information to ESAP - that should provide market players with a centralised source of reference data for the calculation of penalties - by January 2027 (along with the already planned SRD II-related information).

The Belgian presidency should have special attention for improving enforceability of collateral.

SHAREHOLDER RIGHTS DIRECTIVE II (SRD II) REVIEW (EXP. Q3 2023)

The Shareholder Rights Directive II (Directive (EU) 2017/828 or 'SRD II') establishes rules promoting the exercise of shareholder rights at general meetings of companies having their registered office in the EU and whose shares are admitted to trading on a regulated market in the EU. The 2017 revision aimed to encourage long-

term shareholder engagement to ensure that decisions are made for the long-term stability of a company and take environmental and social issues into account. A further review is expected for Q3 2023.

There is certainly a need for a harmonized EU-wide definition of 'shareholders', and general implementation issues remain to be addressed, such as communication flows between intermediaries and issuers/ end-investors, which often require heavy manual intervention (also in relation to the Implementing Regulation (EU) 2018/1212).

SETTLEMENT FINALITY DIRECTIVE (SFD) REVIEW

The Settlement Finality Directive (Directive 98/26/EC or 'SFD') aims at reducing the systemic risk associated with participation in payment and securities settlement systems, and in particular the risk linked to the insolvency of a participant in such a system. A targeted consultation on the review of the Directive was conducted by the Commission in the first half of 2021.

For the Belgian financial sector, Improved SFD protection is a key priority. All intermediaries along the custody chain granting access to the system through the custody chain should be able to benefit from SFD protections in connection with transfer orders and netting carried out in the system. Next to that the difference between direct and indirect participants of CSDs/SSSs should be clarified accordingly. **The Belgian presidency should have special attention for improving enforceability of collateral.** The relationship between collateral giver and collateral taker should be considered and intermediaries between them should not pose any risk. Hence, an insolvency of an intermediary should not impair the possibility of the collateral taker to use the collateral.

We recommend a further harmonization of one-leg out transactions with systems governed by the law of a third-country. Also, in all of this, it is important to take into account the ever-changing business, technological and regulatory environment (e.g., level playing field with crypto assets).



Recommendations from the financial sector



Financial institutions fulfil critical functions in society and are pivotal to the financing of the European economy. In Belgium alone, the financial sector accounts for around 54,200 direct jobs. Given the size and importance of the sector, we are happy to share our views on EU policy.

With this paper, Febelfin wants to contribute its expertise on how the EU can be a driving force of sustainable economic growth.

Policy should be made with a broad contextual understanding. The costs and benefits of certain measures are not always obvious, especially considering the broad variety of financial institutions operating in the EU and Belgium. Banks and financial service providers come in all shapes and sizes, and it is important to keep in mind these different business models. A broad impact study can reveal the impact for all stakeholders. In addition, all stakeholders should be informed about the objectives of policymakers and the positions Belgium is taking during discussions. In this way, the financial sector can provide targeted input and contribute to a strong Belgian voice.

A level playing field for European financial institutions is very important for the industry. Considering Europe's advanced financial integration, the impact of divergent national policies is significant. Policymakers should focus on drafting clear texts, that allow for uniform interpretation. European policies should avoid too many opportunities for "goldplating". Furthermore, it is important to ensure that regulations remain coherent. No regulation is created in a legislative vacuum, so to provide maximum legal clarity, new texts must be consistent with existing legislation.

It is important to keep in mind that banks are companies like any other, even if the products they offer are not tangible, they still provide services to clients with the same rationale as most other businesses. The financial sector is well aware of its important role and aims to support families and corporates by providing our services in the most effective, secure and transparent way. But also through developing tailor-made solutions to pressing societal issues, as the industry did during COVID or the recent energy crisis. Moreover, policy makers should not intervene too much in banks' commercial decisions. Product pricing should be left upon individual companies, especially in the case of the financial sector where there is healthy competition. Given the globalisation of the sector, legislation should enable financial institutions to remain competitive. Our position can also be seen as an important export product towards the rest of the world. The high standards of European financial institutions can provide global stability and encourage the transition towards a sustainable economy for all.

With this paper, Febelfin wants to contribute its expertise on how the EU can be a driving force of sustainable economic growth. Such a future is only possible through policies that ensure a reliable financial system, enable the financing of a greener future, accelerate the rate of innovation and allow entrepreneurs and business to grow.

Let's stay connected!

We would love to exchange views on the topics presented in this document and any future challenges.

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