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EBF detailed recommendations for an EU framework of experimentation

The European Banking Federation (EBF) welcomes the ongoing attention of supervisors and regulators on testing frameworks in Europe. The development of an ecosystem in which businesses could grow and foster innovation is a vital component of a functioning and competitive Digital Single Market. We believe that a testing environment with a risk-based approach to regulation that provides an appropriate, flexible and simplified regulatory framework for innovators to experiment new technologies or business models in interaction with regulators, is a key tool to foster innovation and competition.

Against this background, the EBF is convinced that an EU wide regulatory framework of experimentation would be the best solution to increase the level of innovation happening in the EU while also bolstering the EU's competitiveness with other leading markets as a hub for innovation and talent attraction.

The main benefit of such an approach is that new technologies, business models and the regulatory learnings that result from innovation could reach across all EU member states more efficiently than with a fragmented approach and, obviously, it would have great value as a testing ground for cross border projects.

Considering the above, we welcome the ongoing work of the EBA to identify best practices in the design and operation of such schemes. We consider this as a key step forward in ensuring stronger coordination for the benefit of EU technological environment and competitiveness.

A good level of cooperation will encourage alignment, avoid unlevel regulatory playing fields across Members States and prevent potential fragmentation of approaches - something that would otherwise compromise the goals of the Digital Single Market, as well as the Banking Union and the Capital Markets Union. A level playing field across the EU is a powerful instrument for both financial entities and supervisors to test and learn about risks and opportunities of applying new technologies and developing new business models, minimizing potential undesired impacts and protecting consumers. Such an approach should be also neutral regarding technological developments and business models, following a project -based approach.

To support this objective, we have developed the following list of detailed recommendations for the development of an EU harmonised framework for experimentation.

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◆ **Access to the testing:**

- Access to the testing environment should not be restricted based on the nature or the size of the business. A broad range of participation will increase the learning opportunities for regulators and industry and ensure more innovative financial products and services will reach the market, to the benefit of EU consumers.
- Access to the testing framework should by no means be considered as a way to circumvent existing rules.
- The entry system should consist of a flexible regime that does not restrict entry to specific periods / slots, to allow firms starting the testing as soon as ready. Given the high pace of the innovation environment, forcing firms to wait for a fixed cycle of testing may affect the timeliness of the project and thus impair its potential outcome. We acknowledge that different approaches have been implemented in some jurisdictions. Whilst we understand that a fixed approach based on testing slots presents advantages from the management of the testing process' perspective, we believe that a more agile regime would nevertheless be the option that provides the highest benefits in terms of efficiency of testing.
- Participation in the framework by institutions should always be voluntary, and institutions should not be forced to participate. Participation should always be based on the interest of the participants to test innovative projects.
- The testing environment could include also the possibility that a project could be developed by several promoters together. This will be especially interesting for projects with distributed technologies e.g. blockchain-based projects. For these cases, costs and risks could be shared among all promoters.
- Project sponsors should have enough resources to face the testing process.
- All authorities that are relevant for the project should be represented in the testing framework (e.g. financial authorities, data protection authorities, consumer protection authorities, AML authorities...) according to a one-stop-shop approach. This will help to provide certainty on the testing outcomes, and will make the process more efficient

◆ **Eligibility criteria:**

To facilitate the broadest access to innovators, the eligibility criteria should be simple and based on the following key principles:

- The project is innovative, namely that there are regulatory uncertainties about its implementation, or that it is not clear how the existing regulations shall be applied, but that it is clear that financial regulation is needed. E.g. the project requires a revision/update of existing rules (which may not be up to the digital context) to be efficiently implemented and unleash its full potential and benefits. In this context, the testing environment would allow regulators to understand all the direct and indirect impacts of the application of the technology under testing before this is used on a wider scale.
- The project benefits consumers, either directly or indirectly by, for example, providing a proven benefit to the efficiency of the market and /or its players, or helping to improve regulatory compliance and facilitating a better financial supervision or regulation.
- Resources should indeed be concentrated in projects with a positive impact on the EU financial sector and its users (e.g. launch new products or services or improving existing ones in the EU).

◆ **Length and scope of the testing period:**

The testing period provides a unique opportunity to learn and to provide authorities and participating firms with valuable knowledge on the risks and opportunities associated to the project, and the necessary safeguards that need to be in place in order to guarantee the security and the stability to the entire ecosystem. Therefore, the length of the testing period should be enough to fulfil this learning process.

Considering that:

- The testing may be initially envisaged for a limited time framework of 6 months with the possibility to extend it up to other 6 months on a case-by-case scenario, when deemed necessary.
- During the testing period, projects should also be limited in scope to reduce potential risks to both users and the financial system. Such limits will depend on the specificities of each project and should be established on a case-by-case basis (e.g. on the type of customers participating, maximum number per segment, exposure limit to financial losses per customer).

◆ **Exit of the testing period**

Exit plans should be designed to allow firms to conclude the testing at any point without disrupting /harming participating consumers.

- The entry and exit process should be streamlined and avoid unnecessary bureaucratic constraints.
- The exit plan shall be agreed between the participating firms and the relevant authorities before the start of the testing period. Any subsequent changes to the exit strategy due to unforeseen circumstances linked to the testing shall be agreed with the supervisors. Once the expected testing period is closed, if the authorities agree that the project can be launched in the market, both parties should work for the fulfilment of the necessary regulatory requirements/adjustment made evident by the results of the testing in a timely manner.
Pending any necessary regulatory change, in order to minimize the time-to-market, authorities may temporarily authorise the company to operate on the market based on an updated interpretation of the sector-specific legislation

◆ **Information sharing and transparency**

In an increasingly digital world, innovation in the field of financial services is likely to be affected by a wider set of regulations beyond the context of strict financial services law and/or outside a single jurisdiction. An open dialogue between different actors and regulators is a very important element to increase knowledge, supporting the scale-up of projects and preventing regulatory arbitrage.

- Transparency on the learnings from the testing should be enhanced by issuing reports on the outcomes of the tests. The reports should not disclose business-sensitive elements but should provide the relevant information that are needed for innovation to spread and regulation to become more effective.
- To ensure full consumer protection, customers must be aware that they are about to use a service/product that is under testing.
- Information sharing is necessary in order to leverage on the results of testing already undertaken in certain jurisdictions. This would allow shorter time-to-market and would support the uptake of technological developments.

To maximize the effectiveness of the testing framework for innovative companies, and the learning opportunities for authorities, all relevant regulatory and supervisions bodies should be involved according to a one-stop-shop approach (e.g. Data protection, competition, etc) In order to ensure appropriate coordination, reduce uncertainty and time-to-market.

◆ **Cross-border coordination**

Cross-border coordination within the EU is fundamental to promote the scale-up of technological innovation and to prevent the creation of unlevel playing fields or regulatory arbitrages. This is the underlying principle underpinning the EU framework for experimentation. We already witness that fragmentation is limiting the power of technological developments, affecting also the overall competitiveness of the EU.

- Coordination across EU member states should be enhanced. This would imply at least the possibility for a national authority to rely on the outcome of the testing done by another authority via a system of mutual recognition system.
- The EBA should take the role of central hub facilitating exchange of information as well as the gathering of legal interpretations of existing regulations by national authorities – in order to support the uptake of common approaches.
- An EU representation should be organised by the EU authorities in any international initiative (e.g. the GFIN) to ensure that the views of the Union are represented and to allow EU financial entities to be part of any trials across multiple jurisdictions globally. Likewise, any EU framework of experimentation should also keep in mind similar initiatives that are promoted in third countries, as well as the GFIN work, to ensure sharing of learnings and avoid a regulatory/innovation arbitrage.

About EBF

The European Banking Federation is the voice of the European banking sector, uniting 32 national banking associations in Europe that together represent some 4,500 banks - large and small, wholesale and retail, local and international - employing about 2.5 million people. EBF members represent banks that make available loans to the European economy in excess of €20 trillion and that securely handle more than 300 million payment transactions per day. Launched in 1960, the EBF is committed to creating a single market for financial services in the European Union and to supporting policies that foster economic growth.

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