

## EU Action Plan for the European FinTech Sector

On 8 March 2018, the European Commission (EC) [published](#) its long-awaited **new FinTech Action Plan**. The EC understands **FinTech to be technology-enabled innovation in financial services**, and the strategy covers developments related to new technologies that are changing the financial industry and the way consumers and firms access services. At the same time, the action plan also covers related challenges, such as cyber threats, and proposes the assessment of innovative technologies, such as blockchain, cryptocurrencies and cloud computing services.

EU Commission Vice-President Valdis Dombrovskis recently compared the **increasing digitalisation of financial services** to a global “space race”, in which Europe should not lose out. Various national supervisory authorities in Europe are concerned about the **“gamification” of, and advertisement methods for, certain financial services** and warn of the risks associated with Initial Coin Offerings (ICOs). An **important policy debate for FinTech is thus in full swing** at the EU level.

## A New Enabling Framework for the European FinTech Industry

The EC had heralded the new FinTech framework to boost the European FinTech industry, while ensuring the protection of investors, consumers and the resilience and integrity of the financial system. The EC considers, based on the feedback received from the public and private sector, that the **case for broad legislative or regulatory action at the EU level is limited at this stage – but that a number of targeted initiatives are needed**. The arguably moderate level of ambition is not surprising also in light of the overall timing of this initiative: in spring 2019, a new EU Parliament will be elected, and in summer/autumn 2019, a new EU Commission will be formed. This means, in practice, that any new legislative measure which is being put forward in 2018 has only limited time to complete the co-decision procedure. In other words, only largely non-controversial new EC proposals have a chance to be adopted by the EU Parliament and Council before spring 2019.

## European Commission’s Three Main Objectives

The proposed legislative and non-legislative measures in the FinTech Action Plan focus on three broad policy objectives: (i) to enable innovative business models to reach EU scale, (ii) to support the uptake of technological innovation in the financial sector and to (iii) enhance security and resilience of the financial sector.

1. In order to **enable innovative business models reach EU scale**, the EC wants to ensure clear and converging licensing requirements for FinTech firms by proposing a **new legal framework for investment-based and lending or loan-based crowdfunding services** for business (see below). Currently, such operators are treated differently across the EU from a regulatory and supervisory perspective, and most operators do not benefit from the EU passporting regime.

The EC will also assess the applicability of the EU regulatory framework to **cryptocurrencies and Initial Coin Offerings (ICOs)**. In order to enhance competition and cooperation between the market players, the EC plans measures to **develop common standards and interoperable solutions** for the various FinTech services. The EC will work with the European Committee for Standardisation (CEN) and with industry to develop the necessary standards; for instance, around Application Programming Interfaces (API), which will form the basis of the **future European Open Banking eco-system**.

In order to support the scaling up of innovative business models across the EU, the EC will invite the three European Supervisory Authorities (ESAs) to come up with **best practices for innovation facilitators** (and related approaches such as regulatory sandboxes), potentially leading to future ESA supervisory guidelines in this context. The EC plans to present a report with best practices for **regulatory sandboxes**.

2. To **support the uptake of technological innovation** in the financial sector, the EC will do a **technology-neutrality “fitness review”** to ensure the existing EU rulebook is fit for disruptive new technologies, such as **distributed ledger technologies (DLT)** and/or **artificial intelligence (AI)**.

It will also look to remove obstacles to the use of **cloud services** and invite the ESAs to explore the need for guidelines in this context. The cloud service industry is tasked with developing **cross-sectorial self-regulatory codes of conduct to facilitate switching between cloud service providers**. The EC will facilitate the development of **standard contractual clauses** for cloud outsourcing by financial institutions.

Lastly, the EC will seek to advance Europe’s understanding and utilisation of blockchain-type technologies, including DLT, via a dedicated **EU Public Blockchain Initiative** and increase knowledge and, thereby, build trust via an **EU FinTech Lab** for the ESAs, national authorities and industry. In this context, the EC launched on 1 February 2018 the **EU Blockchain Observatory and Forum**, which monitors key developments of the blockchain technology and promotes European operators and interests. In particular, the new platform will seek to evaluate the “legal and regulatory” aspects of blockchain technology, while allowing EU member states to authorise testing.

3. To **enhance security and resilience of the financial sector**, the EC wants to **strengthen the “cyber hygiene”** within all relevant firms and organisations. The EC also points at the need to **share relevant information** among all operators in the EU financial sector and will look to address any legal and regulatory obstacles in this context. Rigorous testing will become an increasingly important factor and the EC invites the **ESAs to assess whether a coherent “cyber threat-testing framework” is needed** for certain significant market operators and infrastructures. Lastly, the ESAs will **map the existing supervisory practices around ICT security and governance requirements** in the EU financial sector.

## The New EC Proposal for Crowdfunding Platforms

The [proposed new Regulation for investment-based and lending or loan-based crowdfunding platforms for business](#) is the **only legislative measure** of the March 2018 Action Plan.

For the first time in EU financial services regulation, we see a so-called **“29th regime”** being proposed, which is to say that the new EU crowdfunding regime would sit “next to” existing national approaches. This means that operators can choose to either obtain the **new EU authorisation (administered and supervised by ESMA<sup>1</sup>)** – which then **allows for the provision of cross-border services across all 28 EU member states (EU passport)** – or they continue operating under the national regime (where such exists) in order to operate locally. If an EU authorisation is obtained, the national authorisation is withdrawn, and vice-versa.

Other operators, including payment services provider authorised under the PSD or E-MD<sup>2</sup>, may obtain the **new EU license, which allows for the provision of crowdfunding services to businesses, but not consumers.**

The new regime establishes a **maximum threshold of €1 million for each crowdfunding offer.**

The **new authorisation regime is risk-based** (e.g. no minimum capital rules) and contains organisational requirements to ensure the management possesses the **appropriate integrity, skills and experience**, but also in order to **counterbalance potential conflicts of interest** (e.g. the prohibition of crowdfunding service providers to have any financial participation in the crowdfunding offers on their platforms).

Another chapter of the new regime focuses on **investor protection** (including a new “entry knowledge test” for prospective investors) **and transparency requirements** (e.g. a “key investment information sheet”, including a number of warnings). Crowdfunding operators may not hold client funds, or provide payment services, without the necessary authorisation.

## The List of Proposed Measures

The new Action Plan presents **multiple measures of various types** in the coming months:

### Q1 2018

- Proposal for a **new Regulation on European Crowdfunding Service Providers for Business**
- **EU Blockchain Observatory and Forum launched on 1 February 2018** (monitoring the developments around blockchain technology through various sectors); in this context, the EC will draft a **study on the feasibility of deploying EU public blockchain infrastructure** to develop cross-border services; the EC to assess with the assistance of the Forum and collaboration with the European Standardisation Organisations, whether legal, governance and scalability issues are required and support interoperability and standardisation efforts (long-term measure)

### Q2 2018

- EC to work on a **comprehensive strategy on distributed ledger technology and blockchain** addressing the legal aspects with the aim to enable FinTech and RegTech applications across the EU (long-term measure)
- Public consultation on digitisation of regulated information about companies listed on EU regulated markets (**European Financial Transparency Gateway**) based on distributed ledger technology
- EC to invite **cloud service providers to develop cross-sectoral self-regulatory codes of conduct** to facilitate switching to other cloud service providers
- EC to organise a **public-private workshop to discuss the barriers for cyber threats between financial services market players and identify solutions based on data protection standards** (long-term measure)
- EC to host an **EU FinTech Lab**, where ESAs and national authorities will be engaging with technology solution providers (long-term measure)

### Q3 2018

- EC to work with major standard setting bodies (CEN, ISO) to **identify and assess the approach and standards for FinTech and blockchain applications** (long-term measure)

### Q4 2018

- ESAs to evaluate the **costs and benefits of developing a coherent cyber resilience-testing framework for significant market participants and infrastructures** in the entirety of the EU financial sector
- ESAs to **map the innovation facilitators set up by national supervisory authorities**, identify best practices and if appropriate, to issue guidelines
- **EC to monitor crypto-assets and Initial Coin Offerings** with the ESAs, ECB, FSB to assess the risks to the **regulatory framework; based on this work, EC to assess whether EU regulatory measures are necessary in this context**

1 The European Securities and Markets Authority based in Paris.

2 Directive 2015/2366/EC or Directive 2009/110/EC respectively.

## Q1 2019

- **ESAs to map the current authorisation, procedural and licensing approaches** across the EU when authorising innovative FinTech activities; ESAs to issue guidelines on whether such approaches are suitable or issue recommendations to the EC whether to adapt the existing EU financial services framework
- Based on the work of the ESAs on innovation facilitators, the EC to present a **report on best practices for regulatory sandboxes**
- Competent authorities to **take initiatives to facilitate innovation at national level** based on the ESAs best practices; the ESAs should facilitate supervisory cooperation based on the effort to create innovation hubs, regulatory sandboxes and consistent supervisory practices
- ESAs to **map the existing supervisory practices of the financial sector on ICT security and governance requirements**, and where appropriate:
  - Consider issuing guidelines aiming at supervisory convergence
  - Provide to the EC technical advice on the need for legislative improvements
- ESAs to explore whether there is a need for **guidelines on outsourcing to cloud service providers**

## Q2 2019

- EC to facilitate the development of **standard contractual clauses for cloud outsourcing by financial institution**
- EC to set up an **Expert Group to review unjustified regulatory obstacles within the EU financial services regulatory framework**
- By mid-2019, EC to support joint efforts by market players to **develop standardised PSD2 and GDPR compliant Application Programming Interfaces (API)** to support a European Open Banking eco-system

## Conclusion and Next Steps

With the new FinTech Action Plan, various elements of the existing EU financial services regulatory framework are again up for discussion, while new elements will be added to it (e.g. the new crowdfunding licensing regime). This process opens up strong advocacy opportunities for new and incumbent financial market operators in the coming months.

With a long history and **excellent track-record of combining high-end financial industry, legal and public policy expertise**, we help clients with assessing the threats posed to their business models via the new EU FinTech Strategy. We devise the appropriate course of action to minimise related risks and maximise potential opportunities arising out of the various proposals.

Squire Patton Boggs has a global network of 47 offices, of which 15 are located across Europe. This allows us to combine the expertise of more than 600 lawyers across Europe with our 'best in class' Public Policy team in order to help our clients successfully navigate their way through European legal, regulatory and policy matters.

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