

Position of the Czech National Bank to the selected questions of the Commission consultation

„FinTech: A more competitive and innovative European financial sector”

1.3. Is enhanced oversight of the use of artificial intelligence (and its underpinning algorithmic infrastructure) required? For instance, should a system of initial and ongoing review of the technological architecture, including transparency and reliability of the algorithms, be put in place? What could be effective alternatives to such a system?

1.4. What minimum characteristics and amount of information about the service user and the product portfolio (if any) should be included in algorithms used by the service providers (e.g. as regards risk profile)?

1.5. What consumer protection challenges/risks have you identified with regard to artificial intelligence and big data analytics (e.g. robo-advice)? What measures, do you think, should be taken to address these risks/challenges?

ČNB position:

1.3.: No. We do not believe that the increased oversight of individual software solutions related to artificial intelligence is necessary at this time. Such solutions are at very early development phases with still another number of years before the deployment that would materially influence the financial services sector. Setting up European rules that would require specific supervisory approach at this stage would not be an effective approach, and could hinder the development of deployment of artificial intelligence solutions on EU financial market. The present general rules related to investor protection are sufficient and adequate.

1.4.: It is too early to provide answer to this question as the assessment of specific use cases have to be made, and we are not aware of any instance of application of such solutions in financial markets in the Czech Republic or EU.

1.5.: We are not aware of any consumer protection risks or challenges related to artificial intelligence or automated advice tools additional to the risks mentioned in the JC Report on automation in financial advice. Before discussing any measures, thorough assessment of specific applications should be made.

1.6. Are national regulatory regimes for crowdfunding in Europe impacting on the development of crowdfunding? In what way? What are the critical components of those regimes?

1.7. How can the Commission support further development of FinTech solutions in the field of non-bank financing, i.e. peer-to-peer/marketplace lending, crowdfunding, invoice and supply chain finance?

1.8. What minimum level of transparency should be imposed on fund-raisers and platforms? Are self-regulatory initiatives (as promoted by some industry associations and individual platforms) sufficient?

ČNB position:

1.6.: No. We do not see any evidence that would suggest that national regulatory regimes for crowdfunding impacting development of provision of crowdfunding services or that these regimes have negative implications on real economy. Financial crowdfunding services are already fully regulated activities either under MiFID framework in case of investment-based

crowdfunding or under PSD, CCD and MCD in case of lending-based crowdfunding. These services are able to be fully passported to other Member States. Mere existence of lighter national regimes does not constitute need for European harmonisation.

1.7.: We do not see any need either to support or to suppress further development of peer-to-peer lending, crowdfunding or invoice and supply chain finance. No new specific harmonized European crowdfunding rules are needed.

1.8.: The current general rules under Prospectus Directive and Investor Protection rules under MiFID (alternatively rules under PSD, CCD and MCD) are sufficient. If self-regulatory initiatives are in compliance and go beyond these European rules we would support such initiatives.

2.2. What measures (if any) should be taken at EU level to facilitate the development and implementation of the most promising use cases? How can the EU play its role in developing the infrastructure underpinning FinTech innovation for the public good in Europe, be it through cloud computing infrastructure, distributed ledger technology, social media, mobile or security technology?

ČNB position:

From the financial markets regulatory perspective we do not see the need for EC to support further development of infrastructure underpinning FinTech innovations in any other way than by revision and simplification of existing rules. No new specific rules are needed.

2.5. What are the regulatory or supervisory obstacles preventing financial services firms from using cloud computing services? Does this warrant measures at EU level?

2.6. Do commercially available cloud solutions meet the minimum requirements that financial service providers need to comply with? Should commercially available cloud solutions include any specific contractual obligations to this end?

ČNB position:

2.5.: We do not see any regulatory obstacles related to the use of cloud computing services by regulated entities. However, we would welcome the possibility of similar supervisory approach across the EU in relation to the use of cloud computing services by regulated entities. No measures at EU level are needed. The rules for outsourcing are sufficient regulation in this respect. The outsourcing of regulated entities' core systems by means of cloud computing would not be appropriate due to inadequate increase of risks for provision of the regulated services. Reducing existing requirements would be against the interests of regulated entities in terms of their risk management as well as in terms of effective supervision.

2.6.: According to our experience the extent of compliance with "the minimum requirements" is dependent on the ability and readiness of a particular cloud provider to adjust some essential conditions of the contract. In other words the prudential usage of cloud in financial sector lies in cloud provider's willingness to reflect the specific and undoubtedly legitimate needs of regulated financial institutions. Many positive cases of such a prudent cloud implementation in financial institutions affirm the above mentioned statement. Generally, it is very difficult to respond this question precisely as we should take into account the proportionality principle as well.

3.3. What are the existing regulatory barriers that prevent FinTech firms from scaling up and providing services across Europe? What licensing requirements, if any, are subject to divergence across Member States and what are the consequences? Please provide details.

3.4. Should the EU introduce new licensing categories for FinTech activities with harmonised and proportionate regulatory and supervisory requirements, including passporting of such activities across the EU Single Market? If yes, please specify in which specific areas you think this should happen and what role the ESAs should play in this. For instance, should the ESAs play a role in pan-EU registration and supervision of FinTech firms?

3.5. Do you consider that further action is required from the Commission to make the regulatory framework more proportionate so that it can support innovation in financial services within the Single Market? If so, please explain in which areas and how should the Commission intervene.

3.6. Are there issues specific to the needs of financial services to be taken into account when implementing free flow of data in the Digital Single Market? To what extent regulations on data localisation or restrictions on data movement constitute an obstacle to cross-border financial transactions?

3.7. Are the three principles of technological neutrality, proportionality and integrity appropriate to guide the regulatory approach to the FinTech activities?

ČNB position:

3.3.: We consider the Commission's intended regulation in Fintech to be premature, as the use of a number of new financial technologies is still very limited, and therefore insufficient information is available to adequately assess their potential risks or to identify obstacles to their use under existing regulation.

We do not believe that there are any obstacles for fintech firms to scale up their services. Current regulatory and supervisory practices are based on common principles applicable to all participants irrelevant to the fact whether such applicants are start-ups or not. If proportionality principle is applied, various factors such as size, complexity or systemic importance are primarily used. We do not believe that “innovation” factor should be main the main factor when considering application of proportionality principle.

3.4.: No

3.5.: No

3.6.: No

3.7.: Yes

3.8. How can the Commission or the European Supervisory Authorities best coordinate, complement or combine the various practices and initiatives taken by national authorities in support of FinTech (e.g. innovation hubs, accelerators or sandboxes) and make the EU as a whole a hub for FinTech innovation? Would there be merits in pooling expertise in the ESAs?

3.10. Are guidelines or regulation needed at the European level to harmonise regulatory sandbox approaches in the MS? Would you see merits in developing a European regulatory sandbox targeted specifically at FinTechs wanting to operate cross-border? If so, who should run the sandbox and what should be its main objective?

3.11. *What other measures could the Commission consider to support innovative firms or their supervisors that are not mentioned above? If yes, please specify which measures and why.*

ČNB position:

3.8.: We are not against opportunities for sharing experience with innovative products and services that various supervisory authorities may have. However, the attempts leading to creation of rules related to fintech facilitators such as innovation hubs or regulatory sandboxes organised or participated by national competent authorities are not necessary. Such rules would be contrary to one of the main principles of approach to FinTech, specifically proportionality. The ESAs already pool expertise and experience in the area of FinTech by discussing particular FinTech areas and publishing related Opinions and Advices (e.g. on Crowdfunding, Automation in financial advice or DLT).

3.10.: We do not believe that rules harmonising regulatory sandbox approaches are needed. Such attempts violate proportionality principle, as NCAs' innovation facilitation activities are peripheral to main activities.

Creating new rules for entities wanting to operate cross-border that do not comply with all regulatory rules would essentially mean opening up the issue of revising existing European rules. If the more moderate regulatory requirements concerned only FinTech, this would violate the principle of neutrality.

3.11.: The main focus of activities of EC in the area of FinTech should be stability of existing rules without continuous creation of new specific requirements.

3.12. *Is the development of technical standards and interoperability for FinTech in the EU sufficiently addressed as part of the European System of Financial Supervision? Is the current level of data standardisation and interoperability an obstacle to taking full advantage of outsourcing opportunities?*

3.13. *In which areas could EU or global level standards facilitate the efficiency and interoperability of FinTech solutions? What would be the most effective and competition-friendly approach to develop these standards?*

3.14. *Should the EU institutions promote an open source model where libraries of open source solutions are available to developers and innovators to develop new products and services under specific open sources licenses? What other specific measures should be taken at EU level?*

ČNB position:

3.12.: Yes. We do not consider that European System of Financial Supervision provides any impediments to the development of technical standards and interoperability for FinTech

3.13.: No. We do not consider the current level of data standardisation and interoperability as an obstacle in taking full advantages of outsourcing opportunities.

3.14.: Yes. We agree that the EU institutions should promote and use open source frameworks.

3.15. How big is the impact of FinTech on the safety and soundness of incumbent firms? What are the efficiencies that FinTech solutions could bring to incumbents? Please explain.

ČNB position:

At present FinTech solutions have very limited impact on the financial markets and so far we have not seen any evidence that would indicate that various innovations may be something different than gradual pursuit of digitalisation in the society. If analyses of the impacts on the industry have to be made, it has to be based on thorough analysis of specific innovation products and services, including relevant business models.