



EUROPEAN CENTRAL BANK
EUROSYSTEM

Reply form for the ECB Consultation on FinTech Banking Licence

Association of Financial Markets in Europe (AFME)

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to share our views on the Consultation Papers issued by the European Central Bank (ECB) published on 21 September 2017, with a deadline for a response by 02 November 2017.

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

Should you wish to discuss any of the points please do not hesitate to contact:

- Emmanuel Le Marois on 44 203 828 2674, email Emmanuel.LeMarois@afme.eu
- David Ostojitsch on 44 203 828 2761, email: David.Ostojitsch@afme.eu.

Executive Summary

AFME welcomes the ECB consultation on guides concerning the assessment of FinTech license applications, and considers this an important step towards supporting a future harmonised approach for the EU. We believe that FinTech can deliver a more competitive and innovative financial sector, and believe that a strong market for Fintech is an important area of growth for the future of Europe.

- AFME is supportive of the ECB clarification that ‘FinTech banks’ would be subject to the “same service, same rules” as incumbents.
We believe that a ‘level-playing field’ between FinTech banks and incumbents is important for maintaining an open, competitive and sustainable market for financial services technology and innovation, as stated in our consultation to the European Commission on Fintech in June 2017¹. We would like to emphasise that our clarification in this specific consultation on FinTech licensing as primarily being to promote continued market financial stability, and not to impact current and future competition between all participants.
There are potential financial stability and consumer protection concerns if the risks associated with certain activities are not mitigated via the consistent application of an appropriate regulatory framework across different entities engaging in such activities.
- As noted in its public hearing, the ECB has made explicit that the published guidance does not intend to introduce any new regulatory requirements, nor is it intending to revise existing requirements. Rather, the purpose of the guide is to clarify the existing process for FinTech firms with regards to specific considerations (such as cyber, outsourcing, and data). The ECB should make reference to the existing EU regulatory framework to clarify that the guide is not additive to existing requirements.
- As noted by the ECB in its public hearing, the general licencing guide and the FinTech licencing guide are intended to complement each other and be read as one document. To this end we recommend that the ECB merge the two distinct guides into one.
 - By defining “FinTech bank” in an additional guide, the ECB creates an implied distinction between “FinTech banks” and “non-FinTech banks”. This may become problematic, as many the considerations within the FinTech bank guide e.g. cybersecurity, data control, are relevant to all banks within the financial system.
 - An additional guide specific to “FinTech banks” may create the impression that the ECB is creating a bespoke FinTech licencing framework, which itself could lead to

¹ <https://www.afme.eu/en/reports/consultation-responses/afme-response-to-european-commissions-consultation-on-fintech-a-more-competitive-and-innovative-european-financial-sector/>

confusion within the industry and among other policymakers internationally. As the ECB has stated, the purpose of the guide is to clarify the existing process, rather than introduce new requirements, or revise existing requirements

- The ECB should provide additional clarity on specific financial services activities, rather than an all-encompassing “FinTech bank” definition.
 - As previously stated, by defining “FinTech bank”, the ECB creates an implied distinction between “FinTech banks” and “non-FinTech banks”, which is problematic for the aforementioned reasons.
 - The ECB definition of “FinTech Bank”, (i.e. as organisations with a “*business model in which the production and delivery of banking products and services are based on technology-enabled innovation*”), would include many existing and longstanding banks in the current digitally enable environment. Subsequently, such banks may be required to implement governance changes as described in guide, e.g. CIO to the Executive Board. Financial service firms have a long history of implemented technological change which has not required formal governance changes. Banks have a successful track record of safely implementing technological innovations, and have significantly strengthened controls and governance regimes over the last period to enable technological innovations to be safely and effectively implemented.
- AFME believes a regulatory approach should be activity and risk-based. FinTech encompass a large spectrum of business plans, products, and services.
 - For instance, the operations and business considerations of a marketplace lender, a payments processor, and a service provider using distributed ledger software, and the risks that the activities of such market actors may pose to the financial system, are thoroughly different. Further, the risks associated with customer-facing and non-customer-facing FinTech companies are likely to be different as well.
 - Therefore, a one-size-fits-all regulatory approach is not appropriate nor is it conducive to technology innovation for existing financial services firms or new entrants. AFME views that any new regulatory framework or requirement to address the emergence of FinTech in financial services should be flexible, graduated and principles-based, and oversight should be tied to scale and the risks presented.
 - However, there are specific activities that do warrant careful attention by regulators, regardless of who is engaging in the activity –such as payments, lending activities, and data collection/storage– as the risks associated with these activities have far reaching impacts to consumers and the broader financial system (i.e. money laundering, terrorist financing, disparate impact, fraud, identity theft, unauthorized transfers, etc.).