



Financial innovation – a regulator’s perspective

1 Making innovation happen

As regulator and supervisor of Austria’s financial markets the Austrian Financial Market Authority (FMA) is committed to make financial innovation happen – as long as it complies with the law. Our commitment to enabling innovation entails focusing on a dialogue for innovation and sharing our experience and expertise with stakeholders. We are keen to get more insight into new business models whilst ensuring financial stability and investor protection. We know that financial markets are at the forefront of digitalisation and either market participants will innovate or they risk to be out of business rather sooner than later.

FinTechs bring opportunities and challenges to banks and regulators. The FMA defines FinTech products as referring to innovations in the area of financial services that are based on information technology and that:

- are frequently but not necessarily developed by non-licensed companies;
- typically include interfaces to the systems of licensed enterprises; and
- have the potential of causing changes that permanently affect how the financial sector currently operates.

From our supervisory perspective, there is no such thing as a “typical FinTech” – some FinTechs are small start-ups with little legal knowledge, other FinTechs are part of blue chip companies authorised as banks or insurance undertakings with large compliance divisions. Our stance as FMA is very simple and very clear: we are completely neutral and will neither favour nor discriminate against any market participant. We are also strictly neutral when it comes to technology: all technological approaches complying with the law stand on an equal footing.

That being said, we are aware that businesses with less legal knowledge

need more guidance about regulation than others. The vast majority of our market participants is committed to complying with the law, but some need to understand better what the precise requirements are.



2 FMA’s FinTech Contact Point

To address the need for information we have established the *FinTech Contact Point* accessible via the FMA’s website: Not only do we provide easily understandable information about FinTechs including a practical “Navigator” that guides through regulatory questions, but entrepreneurs can also use our FinTech contact form to submit questions regarding their specific business projects to our experts: <https://www.fma.gv.at/en/cross-sectoral-topics/fintech/fintech-contact-form/>.

We are an integrated financial supervisor and thus have an in-house network of FinTech experts in all different areas of our competences: banking including payment services, insurances and securities markets. Depending on the specific business model, a dedicated ad-hoc team of experts answers the request as soon as possible. Our services understand that time is of the essence and are thus committed to provide speedy replies after having assessed the request. In the following dialogue the



entrepreneur has a single point of contact at the FMA to clarify all necessary aspects of his/her business model.

We are perceiving intensifying activity on the Austrian FinTech market: After being set up in October 2016, in the first six months of operation the contact point already evaluated 30 cases involving questions or business models related to FinTechs and provided regulatory feedback. We have held talks with about 40 FinTech stakeholders from companies which do not hold a license from the FMA and we are constantly in touch with the Austrian Economic Chambers (WKO) and other FinTech-interest-groups. Furthermore, the FMA organises serial FinTech network events to spread knowledge and raise awareness about FinTechs and their regulatory and supervisory environment. The FMA FinTech Contact Point cooperates closely with the Austrian central bank – the Oesterreichische Nationalbank (OeNB).

We do not believe that providing guidance about the current legal framework is enough. This is why the FMA has launched a “Call for Input” to detect

obstacles to digitalisation contained in the law as it reads today. Some regulations still require users of financial services to be physically present at the business premises or to provide paper copies with handwritten signatures. We believe that these requirements are outdated and should be modernised. We are inviting market participants as well as other interested stakeholders like academics or NGOs to give us input where regulation needs to be revised to allow for innovative digital solutions.

3 Regulatory change: online video identification

Whilst the FMA is committed to enabling useful innovation, financial stability and investor protection have to be ensured. A case where the FMA and the Ministry of Finance successfully amended the regulatory requirements to allow a very useful FinTech solution in the best interest of financial service providers and their clients is online video identification. Due to requirements for the prevention of money laundering and terrorism financing the Austrian Banking Act¹ stated that every new customer had to be identified while she or he is physically present. Having to be physically present at a bank’s premises can be quite cumbersome and difficult for some clients. To find a solution, the FMA was mandated to develop a legally sound approach to allow a digital form of identification while this process is fully compliant with the provisions for the prevention of money laundering and terrorism financing.²

The FMA has taken immediate regulatory action and has enacted the new

*Online Identification Regulation*³ which allows online identification of new customers inter alia under the following conditions:

- The customer needs a video connection with a specifically trained staff of the service provider;
- The customer needs to show his/her official ID or passport so that the holograms as security features and the document number can be checked;
- The financial service provider has to perform the online identification in a dedicated room with access control and has to stop the procedure if either the customer or his/her ID or passport cannot be sufficiently verified.

4 Open regulatory questions: outsourcing of activities

With regard to online video identification the FMA was able to act immediately, because EU legislation was flexible enough – in some areas like payment services Union law is already “fit for FinTechs”. However, there are examples where important regulatory questions are still to be answered: The use of cloud computing services in banking is treated as an outsourcing of activities, but to date the relevant European legal framework contains only very high level guidance for credit institutions: The existing outsourcing framework is limited to the requirements of the CEBS-Guidelines on Outsourcing from 2006.⁴ As the Capital Require-

ments Directive (CRD) (2013/36/EU) regrettably contains no provisions on outsourcing, the FMA has submitted a draft proposal to the European Commission regarding an amendment of the CRD to include provisions on outsourcing a year ago. Our draft aims at creating a level-playing field for outsourcing and efficient supervision. Therefore, we would welcome new and advanced common European rules for outsourcing institutions and service-providers. Meanwhile we are eager to see more guidance on the use of outsourcing and in particular cloud computing services from the European Banking Authority (EBA) and the European Central Bank (ECB). EBA recently published a consultation setting out its guidance for the use of cloud service providers by financial institutions⁵.

5 FinTechs are an international and European affair

FinTechs are high on the agenda of several European fora since 2016: see for example the European Supervisory Authorities’ report on automation in financial advice⁶ and discussion paper on big data⁷, the European Securities and Markets Authority’s (ESMA) report on the distributed ledger technology applied to securities markets⁸ and the EBA discussion paper on innovative uses of consumer data by financial institutions⁹. To represent FMA’s positions, our staff participates in the relevant

¹ Bundesgesetz über das Bankwesen (Bankwesengesetz – BWG), Austrian Federal Law Gazette I 532/1993 as amended.

² This was made possible because of the new Directive (EU) 2015/849 (4th AMLD), which is implemented in Austria by the Financial Markets Anti-Money Laundering Act (Bundesgesetz zur Verhinderung der Geldwäscherei und Terrorismusfinanzierung im Finanzmarkt), Austrian Federal Law Gazette I 118/2016.

³ Verordnung der Finanzmarktaufsichtsbehörde (FMA) über die videogestützte Online-Identifikation von Kunden (Online-Identifikationsverordnung – Online-IDV), Austrian Federal Law Gazette II 5/2017.

⁴ <https://www.eba.europa.eu/documents/10180/104404/GL02OutsourcingGuidelines.pdf.pdf>.

⁵ <https://www.eba.europa.eu/documents/10180/1848359/Draft+Recommendation+on+outsourcing+to+Cloud+Service++%28EBA-CP-2017-06%29.pdf>.

⁶ [https://esas-joint-committee.europa.eu/Publications/Reports/EBA%20BS%202016%20422%20\(JC%20SC%20CPFI%20Final%20Report%20on%20automated%20advice%20tools\).pdf](https://esas-joint-committee.europa.eu/Publications/Reports/EBA%20BS%202016%20422%20(JC%20SC%20CPFI%20Final%20Report%20on%20automated%20advice%20tools).pdf).

⁷ https://esas-joint-committee.europa.eu/Publications/Discussion%20Paper/jc-2016-86_discussion_paper_big_data.pdf.

⁸ https://www.esma.europa.eu/sites/default/files/library/dlt_report_-_esma50-1121423017-285.pdf

⁹ <https://www.eba.europa.eu/documents/10180/1455508/EBA-DP-2016-01+DP+on+innovative+uses+of+consumer+data+by+financial+institutions.pdf>.

European working groups dealing with FinTech matters in particular at the ECB, ESMA, EBA and the European Insurance and Occupational Pensions Authority (EIOPA). We want to be part of the European effort to promote innovation through FinTechs and to keep the right balance with regards to investor protection and financial stability.

Many new FinTech-related initiatives are coming up – in 2018 the transposition of the Payment Services Directive (EU) 2015/2366 (PSD2) and of the Directive on security of network and information systems (EU) 2016/1148 (NIS-Directive) concerning measures for a high common level of security of network and information systems are due. More initiatives are in the regulatory pipeline concerning for example anti-money laundering and cybersecurity.

In order to formulate a comprehensive European policy on FinTechs the Euro-

pean Commission launched a consultation “Fintech: A more competitive and innovative European financial sector”.¹⁰ The focus of the Commission was to promote a more competitive and innovative European financial sector through FinTechs and we fully share this goal.

6 Conclusion

Like every innovation, FinTechs bring risks and opportunities, the FMA is committed to ensure that financial markets can seize those business opportunities and provide safe and sound services to their customers. The FMA wants to enable innovative solutions through new FinTechs as well as through existing financial service providers and at the same time to safeguard investor protection and financial stability, making FinTech a success story – for businesses, regulators and especially the users of financial services.



¹⁰ https://ec.europa.eu/info/finance-consultations-2017-fintech_en.