



Discussion Paper on the EBA's approach to financial technology (FinTech)

Public hearing, 4 October 2017

Overview

FinTech DP:

- published on 4 August 2017;
- consultation closes on 6 November 2017;
- <https://www.eba.europa.eu/regulation-and-policy/other-topics/approach-to-financial-technology-fintech-/-/regulatory-activity/discussion-paper>.

Structure of the presentation

- Background
- FinTech mapping data: Methodological approach and key outputs
- Identified priority policy areas and proposals
- Next steps

FinTech DP

BACKGROUND

Background

The EBA's regulatory remit is defined by the EU directives and regulations that fall into its 'scope of action', either because they are listed in the EBA's founding regulation or because they confer specific tasks on the EBA. They include:

- Capital Requirements Directive and Regulation (CRDIV/CRR)
- Deposit Guarantee Scheme Directive (DGSD)
- Mortgage Credit Directive (MCD)
- Payment Accounts Directive (PAD)
- Electronic Money Directive (EMD)
- Payment Services Directive (PSD1/PSD2)
- Anti-Money Laundering Directive (AMLD)
- Markets in Financial Instruments Directive and Regulation (MiFID/MiFIR, for structured deposits)



Background (cont.)

- The EBA Regulation requires the EBA to contribute to enhancing consumer protection, promoting a sound, effective and consistent level of regulation and supervision, ensuring the integrity, transparency, efficiency and orderly functioning of financial markets, preventing regulatory arbitrage, and promoting equal competition. The EBA is also required to monitor new and existing financial activities.
- To this end the EBA has carried out already a range of work in relation to financial innovations, including:
 - virtual currencies;
 - lending-based crowdfunding;
 - roboadvice;
 - the use of cloud services by credit institutions and investment firms;
 - innovative uses of consumer data by financial institutions.

Legal instruments available to the EBA

The EBA has different types of legal instruments at its disposal that differ in terms of purpose, legal status, and possible addressees.

- Technical standards
- Guidelines and recommendations
- Opinions / Technical advice
- Warnings
- Temporary prohibitions
- Joint positions
- Breach of Union law investigations
- Binding and non-binding mediation



The purpose of EBA public hearings

The EBA organises public hearings, to support the consultation process, with a view to enabling interested parties to ask questions about EBA Consultation Papers and Discussion Papers.



- An EBA hearing takes place during the consultation period, usually a month or so before the submission deadline of responses.
- The purpose of the hearing is for the EBA to present a summary of the DP/CP, re-produce the questions of the CP, and ask attendees whether they require additional explanations or clarifications from the EBA so as to be able to answer the questions in the DP/CP.
- The public hearing does therefore not replace written responses to the DP/CP, as it is only through written responses that the EBA is able to give the views of stakeholders the required consideration.

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MAPPING DATA: METHODOLOGICAL APPROACH AND KEY OUTPUTS

FinTech mapping exercise: Overview

- In view of the rapid growth of FinTech, in December 2016 it was agreed that the EBA should take forward further work having regard to the potential for FinTech to transform the provision of a wide range of financial services.
- To this end the EBA issued to the competent authorities in the EU Member States and the EEA States a detailed FinTech survey, the preliminary findings and observations from which, in addition to previous work of the EBA, have informed the FinTech DP.
- The EBA defined the scope of the FinTech survey by reference to firms using technologically enabled financial innovation for the purposes of the provision, or enabling the provision by another entity, of one or more specified financial services, using one or more specified financial innovations.

FinTech mapping exercise: Overview (cont.)

- Competent authorities were requested to report on a best efforts basis information on:
 - the total estimated number of FinTech firms established in each Member State and anticipated growth trends;
 - a sample of FinTech firms in each Member State, including information on main financial innovations used, main financial services provided, regulatory status (including, where relevant, under national authorisation or registration regimes), target end-users, group status etc;
 - the authorisation and registration regimes (if any) in place under the national law of the Member States and the prudential and conduct of business requirements under these regimes;
 - the policy approaches used by the Member States to facilitate the development of FinTech (e.g. regulatory “sandboxing” schemes); and
 - any identified challenges in regulating/supervising FinTech.
- 24 responses were received (22 from Member States and 2 from EEA States).
- The FinTech sample includes a total of **282** reported FinTech firms.

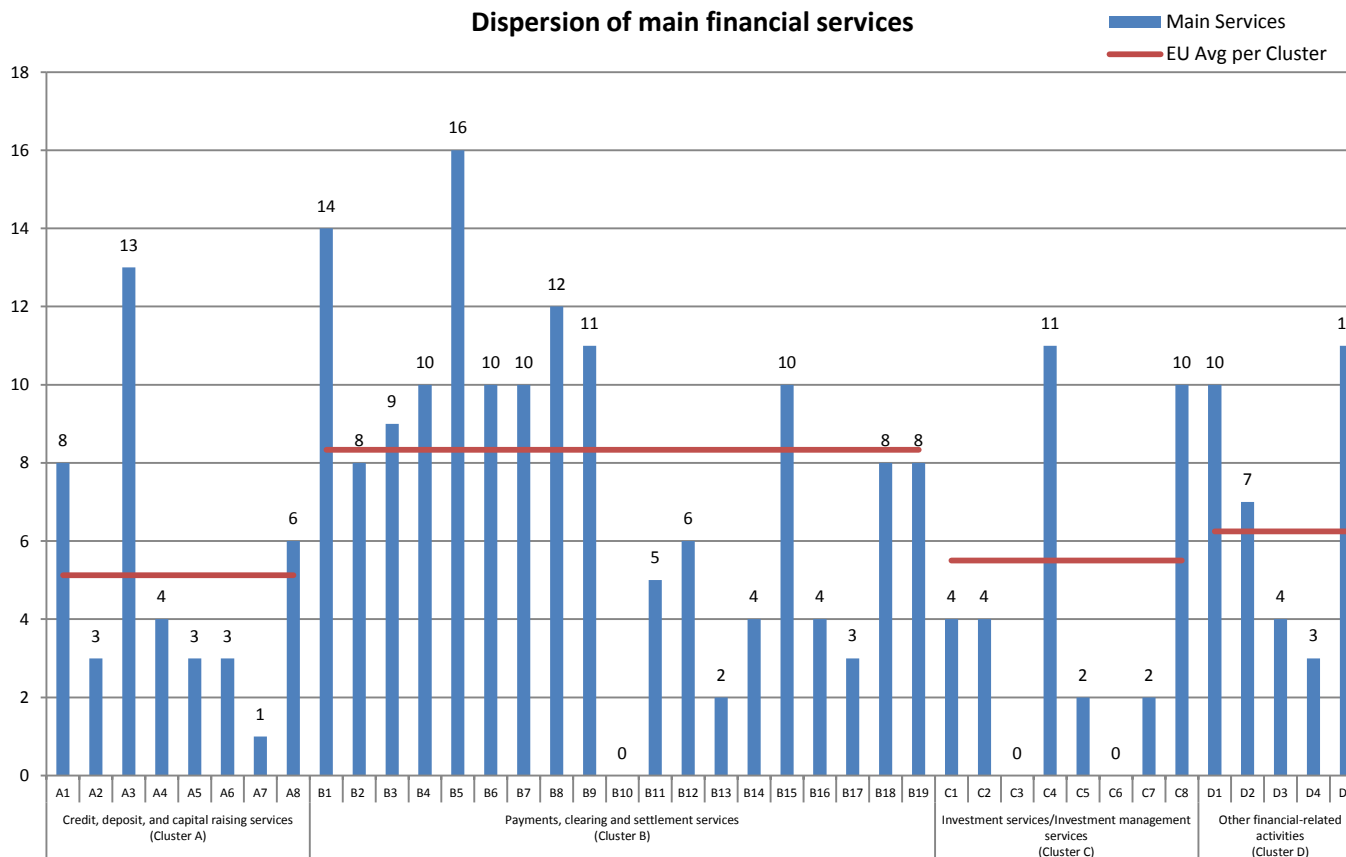
FinTech sample: Regulatory status

- The regulatory status of firms in the FinTech sample is highly varied.
- FinTech firms reported as ‘not regulated’ make up **31%** (the largest portion) of the FinTech sample.
- The next most reported types of entities within the FinTech sample are:
 - payment institutions under PSD (**18%**);
 - investment firms under the MiFID (**11%**);
 - subject to national registration regimes (**9%**);
 - credit institutions under the CRD (**9%**).

FinTech sample: Financial services and innovations

A wide range of services are provided by firms in the FinTech sample, with payments dominating. In terms of innovations, online facilities dominate.

Dispersion of main financial services

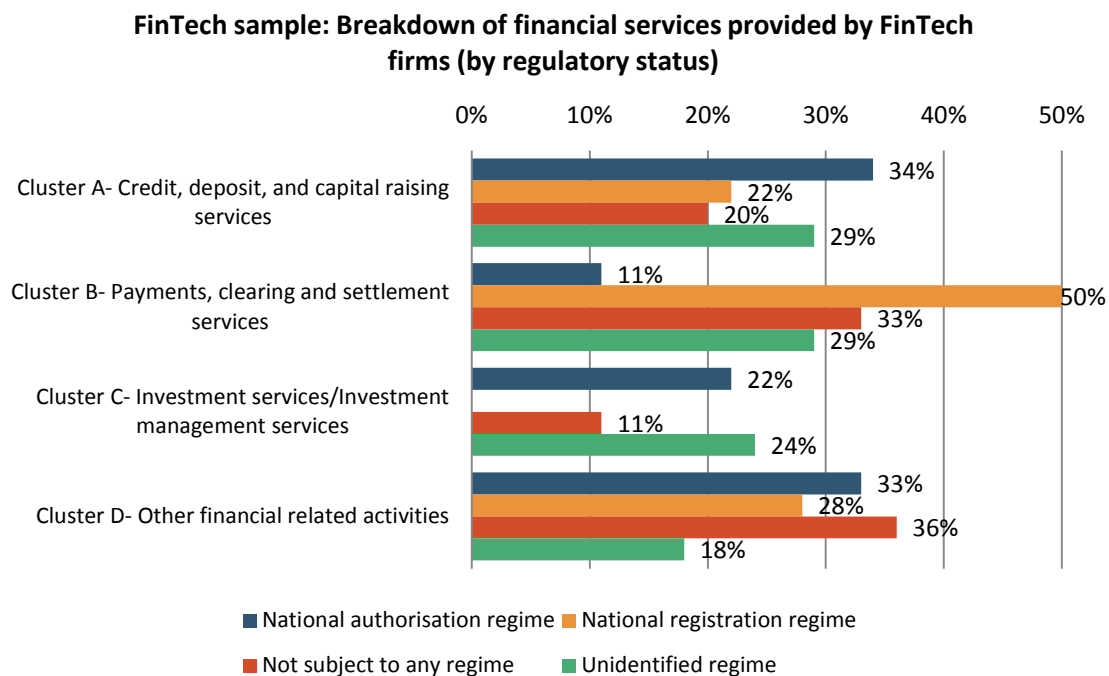


Top 5 financial innovations applied

1. Distribution channel is online only
2. Online platform (e.g. crowdfunding, peer-to-peer transfers)
3. Distribution channel is mobile only
4. Value transfer network
5. Electronic personal financial management tools

FinTech sample: Financial services (cont.)

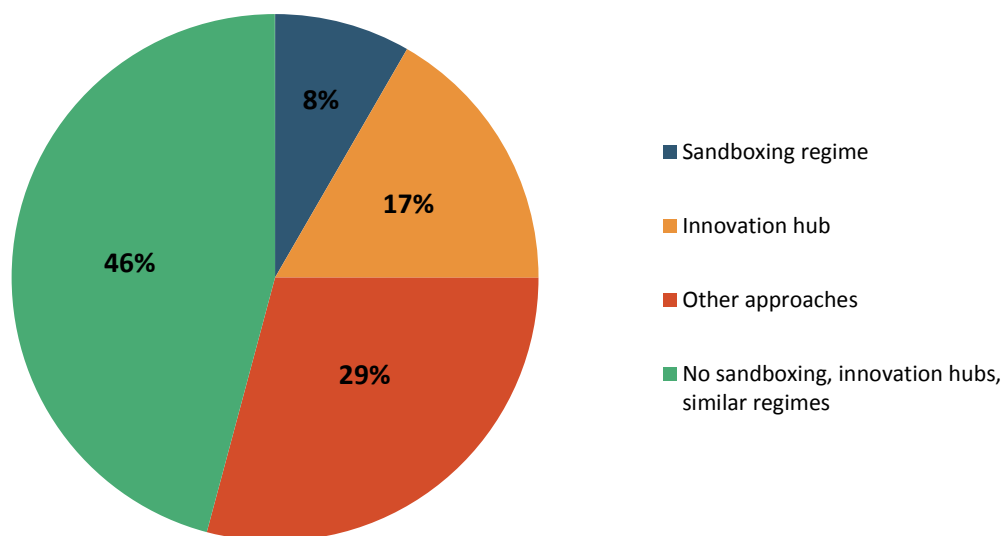
Taking a closer look at the services provided by FinTech firms, it is notable that there are firms outside the current regulatory perimeter (EU and national law) offering financial services:



FinTech policy approaches

Approaches to FinTech appear to vary across the Member States with some having introduced sandboxes and innovation hubs and others having no such regimes:

FinTech policy approaches in the EU



FinTech DP

PRIORITY POLICY AREAS

EBA priority policy areas and next steps

Priority policy areas

- The EBA has identified in the DP six areas for further analysis in 2017/2018:
 1. authorisation and registration regimes and sandboxing/innovation hub approaches;
 2. prudential risks and opportunities for credit institutions, payment institutions, and electronic money institutions;
 3. the impact of FinTech on the business models of credit institutions, payment institutions, and electronic money institutions;
 4. consumer protection and retail conduct of business issues;
 5. the impact of FinTech on the resolution of financial firms;
 6. the impact of FinTech on AML/CFT.

Consultation questions

The DP includes specific questions on each of these areas.

1. Authorisations

Key issues

- A range of regulated firms are classified as FinTech. Some of these firms are regulated pursuant to EU law but others are regulated pursuant to national authorisation or registration regimes and indeed some firms appear not to be regulated at EU or national level. The different treatment of FinTech firms offering similar financial services could benefit from further investigation.
- There may be merit in investigating the approaches to the monitoring of the FinTech sector in order to ensure that risks are appropriately identified and addressed.
- The significant number of sandboxing regimes, innovation hubs, and similar regimes appear to have varying features which suggests there may be a need to further analyse these regimes.

Next steps

- To assess the national regulatory regimes in place and produce a report and, if appropriate, an opinion comparing the regulatory treatment of selected activities and services under national law and EU law.
- To further assess the features of sandboxing regimes, innovation hubs and similar regimes.
- To assess the merits of converting the EBA Guidelines on authorisation under PSD2 to RTS once experience has been acquired in the application of the Guidelines, in line with Article 5(6) of PSD2.

Consultation questions

Are the issues identified by the EBA and way forward proposed in section 4.1 of the DP relevant and complete? If not, please explain why.

2. Prudential risks and opportunities to CIs, PIs and EMIs

Key issues

- FinTech services and new market entrants are expected, over time, to impact the existing business models and inevitably the risk profiles of credit institutions (CI), payment institutions (PI) and electronic money institutions (EMI).
- The significant growth of FinTech is mainly due to the benefits entailed for the entire industry (customers, credit institutions, other stakeholders).
- As the ultimate effect on established market participants and the provision of financial services is unclear, the rapid pace and broad reach of FinTech developments indicate that further work in this area is required.

Next steps

- Further work to be conducted on identifying the prudential risks and opportunities for CIs, PIs and EMIs stemming from the use of new technologies with an aim to provide guidance to supervisors on how to understand and evaluate these new prudential risks.
- This work would include: (i) analysis of the prudential risks and opportunities for CIs, PIs and EMIs from the use of technological innovations, (ii) workshops and trainings, and (iii) possible update of relevant EBA Guidelines for supervisors.

Consultation questions

Are the issues identified by the EBA and the way forward proposed in subsection 4.2.1 and 4.2.2 relevant and complete? If not, please explain why.

What opportunities and threats arising from FinTech do you foresee for CIs, PIs, EMIs?

3. Impact on CIs, PIs and EMIs' business models

Key issues

- Growth in FinTech may force credit institutions (CIs), Payment Institutions (PIs) and Electronic Money Institutions (EMIs) to adapt their business models as a response to the increasing competition in the context of an already challenging operating environment characterised by generally low profitability and drag of non-performing assets.
- Apart from this, FinTech can also result in new business models, however this appears to be at an early stage indicating the need to continue monitoring and working on this area.

Next steps

- Continue working on better understanding the impact of FinTech on the business models of CIs, PIs and EMIs and their strategic response. In particular, the EBA is planning to further analyse:
 1. the evolution of incumbent CIs, PIs and EMIs - new players relationships;
 2. the threats to the viability of business models and sustainability of strategies of incumbent CIs, PIs and EMIs;
 3. the changes on business models that emerge in the financial sector.

Consultation questions

Are the issues identified by the EBA and the way forward proposed in subsection 4.3.1 and 4.3.2 relevant and complete? If not, please explain why.

What are your views on the impact that the use of technology-enabled financial innovation and/or the growth in the number of FinTech providers and the volume of their business may have on the business model of incumbent CIs, PIs and EMIs?

4. Consumer protection and conduct of business

Key issues

- The FinTech survey results show that target end users of FinTech firms are mostly consumers. This raises the importance of consumer awareness and the increasing need of financial literacy.
- The scope and elements of the reported national authorisation regimes, both from a prudential and conduct of business perspective differ, leading to differences on the protection consumers receive when contracting similar products and services.
- The EBA has identified a long list of key issues in the area of consumer protection that include: unclear consumer rights due to unclear regulatory status; unclear consumer rights in the case of cross-border service provision; unsuitable or non-existent complaints handling procedures; inadequate/insufficient disclosure to consumers in a digital environment; low levels of financial literacy.

Next steps

- The EBA will assess what, if any, action should be taken in the area of consumer protection, both from a perspective of regulatory convergence and supervisory convergence. For example:
 - The EBA will provide further clarity on the regulatory perimeter.
 - The EBA will continue to coordinate and foster national initiatives on financial literacy.
 - The EBA will perform an in-depth review of EU legislation requirements that may restrict digitalisation and will assess what information should be disclosed to the consumer and how that information should be presented in the digital ecosystem.

Consultation questions

Are the issues identified by the EBA and way forward proposed in section 4.4 . 1 to 4.4.5 relevant and complete? If not, please explain why.

As a FinTech firm, have you experienced any regulatory obstacles from a consumer protection perspective that might prevent you from providing or enabling the provision of financial services cross-border?

Do you consider that further action is required on the part of the EBA to ensure that EU financial services legislation within the EBA's scope of action is implemented consistently across the EU?

Are there any specific disclosure or transparency of information requirements in your national legislation that you consider to be an obstacle to digitalisation and/or that you believe may prevent FinTech firms from entering the market?

Would you see the merit in having specific financial literacy programmes targeting consumers to enhance trust in digital services?

5. Resolution

Key issues

- Resolution-related requirements on FinTech firms are not common; however divergent practices are emerging across jurisdictions.
- FinTech firms could have a direct or indirect impact on the resolvability of credit institutions. The impact and opportunities these firms and their innovations present will require enhanced scrutiny in the near future.
- Instant payments, digitisation and other innovations such as Blockchain) may have an impact in resolution scenarios (e.g. on the speed and level of outflows).

Next steps

- To look into interactions between FinTech and credit institutions, as well as their consequences for resolution, and resolution planning in particular, and assess what if any action should be taken.

Consultation questions

Are the issues identified by the EBA and way forward proposed in section 4.5 relevant and complete? If not, please explain why.

6. AML/CFT

Key issues

- Lack of harmonised approach within the EU to FinTech solutions being used by financial services firms in their customer due diligence processes.
- The applicability of relevant AML/ CFT legislation is unclear at times where financial services are provided via internet or other digital means on a cross-border basis.
- Lack of understanding and technical expertise within national competent authorities when considering FinTech solutions employed by financial services firms as part of their customer identification and verification processes.

Next steps

- The EBA, together with ESMA and EIOPA, will draft an Opinion which will set out clear expectations of how national competent authorities should approach the use of FinTech solutions in AML/CFT compliance to foster a more harmonised approach across the EU.
- The EBA will keep under review its Risk Factors Guidelines to ensure that any additional risks connected with FinTech solutions are addressed.
- The EBA will ensure that its work on FinTech is consistent with Financial Action Task Force's (FATF) approach and will feed into FATF's work going forward.

Consultation questions

Are the issues identified by the EBA and way forward proposed in section 4.6 relevant and complete? If not, please explain why.

FinTech DP

NEXT STEPS

Next steps

- The consultation closes on 6 November 2017.
- Comments can be sent to the EBA by clicking on the ‘send your comments’ button on the consultation page: <https://www.eba.europa.eu/regulation-and-policy/other-topics/approach-to-financial-technology-fintech->

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QUESTIONS



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