

## High level response to the European Commission public consultation on Fintech – regulatory reflections and input

1. We welcome the opportunity to respond to the European Commission consultation document on “*Fintech – a more competitive and innovative European financial sector*”. Our response will focus on the regulatory issues in the consultation and will provide our academic reflections and input as to the regulatory approach when developing a common framework for fintech in the EU.
2. As indicated in the consultation document it is paramount to take a broader approach to fintech and the digitalization of financial services in order to foster innovation within the financial sector, which is also necessary to support better ways and new ways of financing and thus to support growth, trade and employment, both within and outside the financial sector.
3. Moreover, as also indicated in the consultation document – and even in the title of the consultation document – fintech should not be considered as oppose to the financial sector. Fintech should rather be considered as a natural extension of the traditional financial sector bringing new financial business models to the existing financial sector. In other words, fintech is also about traditional financial services only presented in new technological ways (new digital platforms etc.).
4. This should also be the common regulatory and supervisory approach to fintech, meaning that fintech regulation is not oppose to financial services regulation – fintech regulation is indeed financial services regulation (and vice versa). Thus, level-playing field arguments should not be focusing on the difference between fintechs and traditional financial services providers (the entities) but rather on the financial services they offer (the activities and products) and the risks involved.
5. This calls for technology neutral financial/fintech regulation and for financial/fintech regulation based on the activities carried out and the risks involved (not the players), including more proportionate and flexible regulation that takes into account the various levels of risk associated with a certain financial activity / financial service and also takes into account the various levels of actual business volume, scale etc.
6. This implies that both existing and new financial/fintech regulation introduces small and large licenses, small and large capital requirements, passporting and no passporting rights etc. depending on complexity and size of the business within the financial activity / the financial service in question.

7. This will mean more start-up friendly and balanced financial regulation that allows for fintechs etc. to start-up faster/easier and then scale their business while always complying with regulatory requirements that scales correspondingly.
8. This also calls for a common regulatory framework for the so-called regulatory sandboxes across the EU, which provides a safe space for new fintech start-ups and established fintechs, financial institutions etc. to develop, experiment with and test new innovative financial products, services and business models without immediately incurring all the normal and burdensome regulatory consequences (licenses, capital requirements, compliance requirements etc.) of engaging in the financial activity in question.
9. A common regulatory framework, oppose to national solutions and sharing of best practice, will ensure that such regulatory sandboxes and safe spaces are mandated by EU legislation and do not violate the various financial directives and regulations.
10. As to crowdfunding, it is not sufficient for the EU only to continue to monitor the market and the regulatory developments across the member states and merely to encourage closer alignment of the difference national regulatory approaches and sharing of best practice. A common regulatory framework is needed at this stage to support and promote a European crowdfunding market. Otherwise, crowdfunding will not scale beyond the small local markets.
11. We support the notion that there is a need to draw up a comprehensive Fintech Action Plan, which includes a common strategy and regulatory framework for fintech. And we support the principles set out in the recent European Parliament report and resolution on fintech meaning, that financial/fintech regulation and supervision should be based on the following regulatory principles: (1) same services and same risks, the same rules should apply regardless of the type of entity concerned; (2) technology neutrality; (3) a risk-based regulatory approach taking into account the proportionality of legislative and supervisory actions to risks and materiality of risks.
12. Traditional financial regulation in the EU is based on the principles of a single market, a single license (passporting), cross-border level playing field, consumer protection, and financial stability. Moreover, traditional financial regulation is widely based on well-known financial business models (universal banking etc.). Hence the traditional regulatory approach of regulating the entities (the players) instead of regulating the activities (the services).
13. Traditional financial regulation in the EU is not tailored for the new financial business models and the breakup of the traditional financial business models/silos that fintech implies. Without compromising the aforementioned traditional regulatory principles, both new and existing financial regulation need to incorporate the newer principles of technology neutrality, proportionality, innovation-friendly, market entry-friendly, consumer supporting, and true level playing field. Hence the newer regulatory approach of regulating

the risks involved / the activities (the services) provided by fintechs, financial institutions etc. instead of regulating the entities (the players placed in silos) as such.

14. In particular, both existing and new financial regulation in the EU need to introduce a more general regulatory distinction between requirements for new market entrants (fintech start-ups etc.) and additional requirements for already established companies (fintech scale-ups etc.), the former in need of easier access to enter the domestic market, the latter in need of passporting to other markets.
15. Hence, the above mentioned proposal that financial/fintech regulation in the EU introduces small and large licenses, small and large capital requirements, passporting and no passporting rights, lighter and extended requirements regarding fit & proper, compliance, reporting etc. depending on complexity and size of the business within the financial activity / the financial service in question.
16. In other words, a flexible, proportionate and balanced regulatory scaling licensing regime for the providers of new financial/fintech services and activities, reducing the existing regulatory barriers to entry on the market (not to be mistaken for an all-encompassing fintech-license as such, because fintech covers all types of financial services and activities). This can be accomplished by adapting the current rules without necessarily adopting new rules.
17. On this basis – and if the above mentioned is taken into account – we support the European Commission’s intention (according to the revised CMU Action Plan) to assess the case for an EU licensing and passporting framework for fintech activities.
18. In this context, consideration should also be given to a more risk based and principle based approach – rather than the traditional rule based approach – to financial/fintech regulation and supervision. A more risk based / principle based regulatory and supervisory approach will ensure a more flexible and a less expensive legal and compliance framework for fintechs to operate within.
19. This will also make financial/fintech regulation much more adaptable to technological developments within cloud computing, artificial intelligence, machine learning, robotics, distributed ledger technology (DLT/blockchain) etc. which has a greater and more significant impact on financial services and the financial/fintech sector.
20. Finally, a common regulatory and supervisory framework for fintech should also address the issues of data security and cyber security. Especially because of fintech and the ongoing digitalization of financial services, data protection regulation and financial regulation are closely interconnected. Unintended overlap and duplication of regulatory requirements should be avoided.