

Press Release from the European Commission's Expert Group on Regulatory Obstacles to Financial Innovation

**How to deliver an accommodative framework for FinTech in the EU:
Commission Expert Group Publishes
'Thirty Recommendations'**

The Expert Group on Regulatory Obstacles to Financial Innovation, a group of financial sector experts set up by the European Commission in June 2018, has today published its [report \[Click link\]](#) entitled "Thirty Recommendations on Regulation, Innovation and Finance".

The Group, which has been tasked with reviewing the application and suitability of the European legal and regulatory framework to FinTech, recommends action in four broad areas:

- the need to respond to new and changed risks caused by the use of innovative technologies such as Artificial Intelligence (AI) and Distributed Ledger Technology;
- the need to remove fragmentation across the EU and ensure a level playing field between different participants in the financial services sector as they leverage new technologies;
- the necessity to reconcile data protection with the opportunities offered by FinTech;
- the need to consider the potential impact of FinTech on consumers, from the perspective of financial inclusion and the ethical use of data.

Dr Philipp Paech, Associate Professor of Financial Law at the London School of Economics and Chairman of the Expert Group said:

"Much of what is called 'FinTech' is already covered by EU law, albeit not very consistently. Apart from necessary clarifications and harmonisation of the existing rules, there are only few entirely new risks to consider. The most significant challenge is the entry of BigTechs such as Google and Amazon into the financial market, and, closely connected to the former, the implementation of the data economy in financial services. The EU needs common answers to these questions, to foster an environment to support the scaling up of FinTech across the EU and home-grown global champions and to remain amongst the global standard setters in finance, in particular with respect to consumer protection."

The Group calls on policy makers to act on the potential of FinTech to deliver greater choice and improved efficiencies in the provision of financial products and services and to take steps to ensure that regulation and supervision remains fit for purpose in the digital age. An updated regulatory

framework should enable the benefits of FinTech to be leveraged, whilst maintaining high standards of consumer protection, market integrity and the stability of the EU financial system. Delivered well, it should also have the effect of protecting and enhancing the attractiveness of the EU as a global financial centre.

In this far-reaching report, the Group recommends actions ranging from enhanced monitoring of market developments and emerging opportunities and risks, to the clarification of the applicability or appropriate adaptation of existing EU regulation, or to more substantial measures such as the introduction of entirely new EU rules. The Group's recommendations are not specific to any business model or financial service or product and cut across the whole market.

In particular, the Group highlights a number of particularly important recommended measures:

- The need for a common understanding of the principles for explainability and interpretability of technology, especially AI, as measures to protect consumers and businesses and foster supervision;
- The creation of a regulatory framework built on the principle that activities that create the same risks should be governed by the same rules, with a view to ensuring adequate regulation and supervision and maintain a level playing field;
- The ending of regulatory fragmentation, especially in the area of customer due diligence/KYC, as an important step towards greater competitiveness;
- Preventing differentiated treatment of competing downstream services by large, vertically integrated platforms, in order to strengthen innovation and maintain consumer choices;
- The establishment of a comprehensive cross-sectoral and consistent user data-sharing framework, in order to promote innovation and competition and establish a level playing field amongst actors and foster competition.
- The monitoring of the impact on the increasing use of data and technology to provide financial services to consumers, in terms of financial inclusion and the ethical use of available data.

The Group stresses that the aims informing these and all other recommendations are pursued best by regulation that is technologically neutral, in the sense that it does not differentiate between the different technologies that can potentially be used to provide a service, offer a product or perform a function or between different service providers. The Group further believes that cross-sectoral and international cooperation in setting relevant standards is crucial due to the borderless nature of the technologies.

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Embargo until 13.00 CET

The Group submits its report today in the expectation that it will be carefully considered by the European Commission when drafting the Digital Finance Strategy in support of new digital technologies in our financial system, as requested by Commission President Ursula von der Leyen in her mission letter to Executive Vice President Valdis Dombrovskis.

Complete List of Recommendations

Innovative use of technology in finance

Recommendation 1 – Explainability and interpretability of AI and associated technologies

The Commission should, in co-operation with the ESAs and relevant international standard-setting bodies:

- develop measures clarifying the circumstances under which requirements aiming at explainability or interpretability of AI and associated technologies, in their concrete applications, are appropriate, considering the need for sector-specific or horizontal rules;*
- provide guidance on how to meet explainability and interpretability requirements, where applicable, in respect of different stakeholders, including consumers and supervisors, acknowledging that different standards will be needed depending on the type of application for which the relevant technology is being used.*

Recommendation 2 – Firms' internal IT governance

The Commission should, in cooperation with the ESAs, require regulated entities to build adequate levels of IT governance and technological expertise at the appropriate management level, including, where appropriate, at board level.

Recommendation 3 – Supervisors' understanding of technology

The ESAs should be given a mandate to encourage and support supervisors in developing appropriate internal understanding, at appropriate levels, of the use of technology in financial services and the potential associated risks and opportunities.

Recommendation 4 – Cyber resilience

The Commission should, in cooperation with the ESAs and the ESCB, develop a coherent and proportionate cyber resilience testing framework for the financial sector.

Recommendation 5 – Outsourcing guidelines and certification/licensing

The Commission, in cooperation with the ESAs and the ESCB, international standard-setting bodies and other relevant authorities, should regularly monitor the extent and structure of outsourcing of critical services by financial institutions, and assess the appropriateness of tools in place to mitigate concentration risks, operational risks and systemic risk, taking account of the potential impact on innovation and competition. On this basis:

- *the ESAs should regularly review the outsourcing guidelines with a view to maintaining their proportionality in light of technological developments, new risks and new market conditions;*
- *the Commission, in cooperation with the ESAs, should consider the need to introduce a certification or licensing regime for third parties providing technology services to regulated entities.*

Recommendation 6 – Distributed financial networks

The Commission, in co-operation with the ESAs, the ESCB and international standard-setting bodies and other relevant authorities, should take action to clarify the regulatory framework applicable to distributed financial networks, in particular to:

- a. assess and clarify how relationships between participants should be regarded for regulatory and supervisory purposes, taking account of existing concepts such as agency and outsourcing;*
- b. ensure the applicability of defined terms and established concepts in existing regulation, such as SFD, FCD, CSDR, EMIR, MiFID, the SIPS Regulation or AMLD in view of the shift from bilateral relationships to a multilateral environment where functions can be attributed simultaneously to several parties;*
- c. define the addressee of relevant regulation concerning distributed financial networks;*
- d. assess and clarify how issues of operational resilience and higher exposure to cyber risks (in particular with regard to private key management) or systemic network failures, should be addressed.*

Recommendation 7 – Crypto-assets

The Commission, in co-operation with the ESAs, the ESCB and international standard-setting bodies and other relevant authorities should accelerate its work to assess the adequacy and suitability of existing rules mitigating risk flowing from the use of crypto-assets in the context of the provision of financial services and on this basis develop a legislative solution to complement and complete the framework where necessary. This process should extend to addressing:

- a. the risk and uncertainty flowing from the lack of a common taxonomy in respect of crypto-assets and the consequential fragmented national approaches to classifying crypto-assets under EU rules, such as MiFID or the e-money Directive and emerging national law;*
- b. the risks flowing from activities involving crypto-assets, in particular, in relation to:*
 - *money laundering, terrorist financing and tax evasion;*
 - *governance and operational resilience;*

- *client asset protection, including regarding segregation of client assets, redemption rules, disclosure requirements, and consumers' interests;*
- *systemic effects, including through threats to the orderly functioning of the payment environment;*
- *the prudential treatment of regulated financial institutions' exposures to crypto-assets;*
- *pegging and foreign exchange conversion mechanisms.*

Recommendation 8 – Commercial law of crypto-assets

In order to ensure market participants' rights and to guarantee a meaningful application of the commercial law concepts established in EU regulation (such as InsR, SFD, FCD, BWUD, BRRD) to crypto-assets which are held on a distributed financial network, the Commission, in co-operation with the ESAs and international standard-setting bodies and other relevant authorities, should:

- legislate a relevant conflict-of-laws rule, ideally enshrined in a Regulation, and,*
- consider which further aspects of the commercial law regarding such networks and regarding the assets administered on them should be addressed at EU level.*

Recommendation 9 – RegTech and SupTech

The Commission, in cooperation with the ESAs, and in co-ordination with relevant authorities and international standard setters, should develop and implement a comprehensive and ambitious agenda to support the adoption of advanced RegTech and SupTech by the financial sector.

Recommendation 10 – Standardisation of legal terminology and classification of actors, services, products and processes

The Commission, in co-operation with the ESAs and the ESCB, should facilitate initiatives that promote standardisation of legal terminology and digital standards-based common classifications of actors, services, products and processes in the financial sector for use by market participants, regulators, supervisors and standard setters.

Recommendation 11 – Human- and machine-readable legal and regulatory language

The Commission, in co-operation with the ESAs, should adopt a strategy on how reporting and compliance processes may become both machine- and human-readable, to the extent possible.

Recommendation 12 – Regulatory Clearing House

The Commission, in co-operation with the ESAs and the ESCB, should adopt a strategy for the conception and establishment of regulatory clearing houses, i.e. arrangements capable of :

- centralising the automated dissemination of rules to regulated entities,*
- receiving incident and reporting information from regulated entities, and*
- collecting market data.*

Maintaining a Level Playing Field

Recommendation 13: Activity and risk-based regulation

The Commission and the ESAs should take the necessary steps to ensure that regulation of the financial sector follows the principle of ‘same activity creating the same risks should be regulated by the same rules’.

Recommendation 14 – EU-level facilitation, including ‘the sandbox’

The Commission and the ESAs should further assess the need to establish an EU-level ‘regulatory sandbox’, or similar scheme, taking account of the experience acquired in the context of European Forum for Innovation Facilitators.

Recommendation 15 – Uniform regulation

The Commission, in co-operation with the ESAs, should review the aspects of financial regulation that are currently subject to fragmented regulation and assess how to address them to ensure the highest possible uniformity across the EU in order to foster efficiency and competitiveness.

Recommendation 16 – Fully harmonised KYC processes and requirements

The Commission, in co-operation with the EBA, should introduce legislation to fully harmonise the Know Your Customer (KYC) processes and requirements across the EU for obliged entities in the financial sector according to the AMLD with regard to identification and verification processes, as well as the mandatory collected set of data.

Recommendation 17 – Convergence in the use of innovative technologies for CDD purposes

The Commission and the EBA should take steps to achieve convergence in the acceptance, regulation and supervision of the use of innovative technologies for CDD purposes, including remote customer onboarding, and consider them on their respective merits, including through:

- enhanced industry engagement and monitoring of market developments;*

- *periodic updates of the Risk Factor Guidelines to support the use of these innovative technologies;*
- *further guidance relating to reliance on third parties, including on issues relating to liability;*
- *changes to Level 1 legislation (e.g. the AMLD), based on the advice of the EBA.*

Recommendation 18 – Clarifying the capacity to re-use CDD data

The Commission, in cooperation with the EDPB and the EBA, should clarify the rights of data subjects to permit the use of data provided for CDD purposes and the outcome of identity verification for further identified purposes, where the data subject consents.

Recommendation 19 – Digital identity verification

The Commission, in consultation with the EBA and relevant authorities, should investigate potential models (including decentralised models) for efficient, robust and trusted digital identity verification. The findings should inform a future legislative strategy on common digital identity solutions in the EU.

Recommendation 20 – End default paper requirement

The Commission, in cooperation with the ESAs, should take steps to remove provisions of financial services law that require documentation to be provided, by default, to consumers in hard copy. This is without prejudice to the right of consumers to request information in this format.

Recommendation 21 – Participation in clearing and settlement systems

The Commission, in cooperation with the ESAs and the ESCB, should evaluate the need to revise the Settlement Finality Directive to allow for the participation in clearing and settlement and payment systems of any type of regulated financial institution, on the basis of appropriate risk-based criteria.

Recommendation 22 – Access to platforms

The Commission should introduce rules to ensure that large, vertically integrated platforms do not unfairly discriminate against downstream services that compete against their own similar services.

Recommendation 23 – Framework for P2P insurance

The Commission, in cooperation with EIOPA, should evaluate the need for a framework for the regulation of P2P insurance.

Recommendation 24 – Proportionate restrictions on non-core business

The Commission, in cooperation with the ESAs and the ESCB, should consider the impact of existing activities restrictions for financial institutions' non-core business, to determine whether these restrictions remain proportionate and, if so, whether the restrictions are consistently applied having regard to the need to maintain a level playing field.

Access to data

Recommendation 25 – GDPR and new applications of technology

The EDPB should issue guidance on the application of the GDPR and other relevant legislation, in relation to the innovative use of technology in financial services, including the use of:

- DLT/Blockchain, in particular how to satisfy the requirement for erasure, for example, using encryption;*
- Artificial Intelligence, in particular addressing the issue of specificity of consent.*

Recommendation 26 – Regulatory Dialogue

The regular dialogue between the European Data Protection Board, the European Forum for Innovation Facilitators, national data protection authorities, national and EU competition authorities, national and EU financial regulators and financial supervisors and firms should be extended, with a view to keeping under review the practical application of relevant EU legislation concerning the processing of data (in particular GDPR and PSD2), taking account of technological developments within and beyond the financial sector. The objectives of this dialogue should be to:

- enhance knowledge-sharing about new technologies;*
- share experiences and promote a common approach to the regulatory and supervisory approach to the practical application of relevant EU legislation concerning the processing of data;*
- provide where appropriate clarification of or guidance on relevant EU legislation concerning the processing of data in a form that is publicly accessible.*

Recommendation 27 – Access to and processing of non-personal data

The Commission should develop measures to provide legal certainty on the access to and processing of non-personal data by different stakeholders. In preparing these measures, the Commission should assess the need for an EU-level supervision and enforcement mechanism and ensure consistency across the EU.

Recommendation 28 – Data sharing

The Commission should introduce rules to ensure that a user of digitally enabled products or services has the possibility to share seamlessly, securely and in real-time with other market participants of their choice the data that the providers of those products or services have observed on them. These rules should support user control and data-driven innovation by ensuring sharing is easy, secure and effective, for example by mandating the use of standardised sharing interfaces.

Financial inclusion and ethical use of data

Recommendation 29 – Financial inclusion and exclusion

The European Commission, in cooperation with the ESAs, should monitor and have regard to the impact of the increasing use of technology-driven financial services on our society and, where significant issues arise, should take action to:

- promote the use of those technology-driven financial services as a means to address financial inclusion;*
- prevent the use of those technology-driven financial services in ways that exacerbate financial exclusion or causes unfair discrimination.*

Recommendation 30 – Ethical use of data

The Commission, should, in cooperation with the ESAs and the EDPB, develop guidance to assist financial institutions in the ethical use of data in the context of the provision of financial services.

Q & A

What is the Expert Group on Regulatory Obstacles to Financial Innovation?

“ROFIEG” is a group of experts set up by the European Commission in the context of the March 2018 FinTech Action Plan to provide high-level expertise on EU financial services framework in relation to financial technology. The group was tasked with reviewing the fitness of the EU financial services regulatory framework for the use of innovative technologies.

How was the ROFIEG formed?

In March 2018, the Commission published a [call for applications](#) with a view to identifying suitably qualified experts on financial innovation to serve on its expert group. The Commission received 72 candidatures and selected 15 members and 5 observers on the basis of their proven and relevant competence and experience, expert knowledge of FinTech applications and any practical experience in terms of development and compliance with EU financial services legislation. As part of its selection process, the Commission endeavored to ensure a balanced representation both across different areas of financial services as well as geographically based on the applications received.

Who are the experts?

The Chair of the ROFIEG is Philipp Paech, Associate Professor and Director of the Law and Financial Markets Project at the London School of Economics. The ROFIEG consists of experts from various financial services backgrounds (banks, insurance companies, stock exchanges, clearing and settlement infrastructure, FinTech start-ups) as well as three university professors. The group also comprises representatives of the three European Supervisory Authorities, the European Central Bank and the Committee on Payments and Market Infrastructures. The names are set out in the report.

What does the report say?

The report sets out thirty recommended actions to create an accommodative framework for FinTech in the EU. Although the ROFIEG does not identify many obstacles in existing EU law, the group highlights that the absence of EU law, the inconsistent application of EU law, and the gap in supervisory knowledge in various areas is hampering the scaling up of FinTech in the EU. The ROFIEG also recommends action to further empower data subjects as regards access to and sharing of data.

What are the most important guiding principles of the thirty recommendations?

The ROFIEG has used as guiding principles the need for ‘technological neutrality’ in regulatory and supervisory approaches (same activity, same risk, same rule). The ROFIEG also urges a cross-sectoral

and, where relevant, internationally-coordinated approach in view of the potential application of FinTech across the financial sector.

What is the ROFIEG's view on necessary developments regarding the protection of consumers?

Technology-driven financial services may have a societal impact, as have other significant market developments. It will inevitably create winners and losers, amongst business and also amongst consumers. Some may benefit from new opportunities offered by greater access to, and new, financial services and products. Others may lose out, as a consequence of not being technically literate or not having access to the necessary devices such as smartphones and computers. This report hence suggests making the use of the potential for furthering financial inclusion, while closely monitoring potential financial exclusion or unfair discrimination. Beyond, there should be guidance regarding the ethical use of data, in particular as regards its provenance, the application for which data is used, and the increasing need to make data of all kinds available to obtain financial services.

Would the ROFIEG advocate a set of specific-rules addressing 'FinTech'?

The ROFIEG observes that FinTech does not typically give rise to new regulatory challenges. Rather, traditional regulatory rationales are relevant (appropriate levels of consumer protection, market integrity, financial stability, market efficiency). However, as we are seeing the continuous development of the financial sector towards ever more intensive use of technology, that commenced decades ago (ATM, online banking, algo-trading), it is necessary to take steps to clarify the application of, or extend, the existing regulatory framework to FinTech. Entirely new regulatory risks are scarce, relating to AI and DLT. At the same time, issues arising are not confined to financial services, many are also relevant to the use of the same technologies outside the financial sector and so cross-sectoral coordination is needed to avoid regulatory fragmentation and consequentially to inefficiencies.

Will the increased adoption of AI-based financial services require significant regulatory responses?

The use of AI can bring significant efficiency gains, while at the same time carrying specific risks. As with other areas of regulation, efficiency gains and associated risks are two sides of the same coin. Hence, regulation must strike a fine balance in this respect. The ROFIEG recommends actions to clarify the circumstances under which requirements aiming at explainability or interpretability of AI and associated technologies are appropriate. The ROFIEG also recommends actions in relation to access to and use of data.

What does the ROFIEG say about data?

In the context of an increasingly data-driven economy it is essential that a balance is struck to ensure that data subjects are empowered to determine who can access their data and for what purpose. The GDPR represents a world-leading standard for the protection of personal data. However, the ROFIEG observes that clarifications about the application of the GDPR and other relevant legislation in relation to the use of innovative technologies in the financial sector is needed in order to ensure that innovation is not inadvertently stifled by these important measures. Additionally, the ROFIEG recommends further measures to provide legal certainty about access to and processing of non-personal data, and to further empower data subjects as regards the sharing of their data. Finally, the ROFIEG recommends the EDPB and other relevant authorities extend their dialogue about the use of technology within and beyond the financial sector with a view to keeping under review the relevant legislation, promoting common regulatory and supervisory approaches and providing clarification or guidance where needed.

In the view of the ROFIEG, how should DLT/Blockchain and crypto-assets be regulated?

DLT/Blockchain is a database technology. As is the case with AI, the technology as such does not need to be regulated. The question is rather how the market applies it, for example for back office functions, for creating units resembling money or securities, or functions resembling payment. The ROFIEG considers that the application of EU regulation to DLT networks needs to be clarified in order to ensure the smooth application of rules contained in the FCD, SFD, MiFID, EMIR, CSDR, SIPS and AMLD, especially because these were drafted on a vision of the financial market that is organised in bilateral relationships, such as accounts – whereas DLT/blockchain applications are designed on the basis of multilateral relationships.

On crypto-assets, the ROFIEG sees a need to remove the uncertainty that flows from the unclear classification of those assets within the existing regulatory framework, and to address specific risks relating to AML/CFT, client asset segregation and customer protection, pegging to and conversion into fiat money and the prudential treatment of regulated financial institutions' exposures to crypto-assets. Further, the Group identifies a need to clarify the commercial law framework, indispensable for risk management.

What is the ROFIEG's view on RegTech and SupTech?

The ROFIEG sees the necessity to develop and implement a comprehensive and ambitious agenda to support the adoption of advanced RegTech and SupTech by the EU financial sector, so that regulatory and supervisory processes can become more effective and efficient. In particular, machine-readable and machine-executable legislation involving the standardisation of regulatory instructions in a

machine-executable version can facilitate automated regulatory reporting by firms. To make this happen, standardisation of legal terminology and classification of actors, services products and processes are required, and rules need to be both human- and machine-readable. Ideally, regulation would be pushed to the regulatees through 'regulatory clearing houses', which at the same time would serve as a hubs for financial reporting.

Why does the ROFIEG put such emphasis on ensuring a level playing field, and reducing regulatory fragmentation?

The ROFIEG firmly believes that previously separated markets with their own actors are increasingly converging – however, regulation is highly compartmentalised, notably along institutional dividing-lines: for example, platforms that venture into the provision of payment services, lending or insurance distribution, thereby competing with incumbent market participants. Regulation needs to ensure that activities that create the same risks are regulated in the same way, in order to avoid silos which might allow for regulatory arbitrage or situations creating competitive distortions.

As regards fragmentation, the ROFIEG sees significant benefits flowing from further harmonisation of financial regulation, including the need to address a number of aspects, e.g. KYC processes, in a uniform way, and achieving greater convergence regarding the rules on remote customer onboarding. Only thus will technology-based financial services be able to benefit fully from the significant size of the Single Market. This would allow innovators to scale up their services on the home market, building EU-wide champions capable of competing globally.