



BANKING AND FINANCE

# Public consultation on FinTech: a more competitive and innovative European financial sector

Fields marked with \* are mandatory.

## Introduction

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Thank you for taking the time to respond to this consultation on technology-enabled innovation in financial services (FinTech). Our goal is to create an enabling environment where innovative financial service solutions take off at a brisk pace all over the EU, while ensuring financial stability, financial integrity and safety for consumers, firms and investors alike.

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**Please note:** In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact [fisma-fintech@ec.europa.eu](mailto:fisma-fintech@ec.europa.eu).

More information:

- [on this consultation](#)
- [on the protection of personal data regime for this consultation](#) 

## 1. Information about you

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\*Are you replying as:

- a private individual
- an organisation or a company
- a public authority or an international organisation

\*Name of your organisation:

FG Lawyers B.V.

Contact email address:

The information you provide here is for administrative purposes only and will not be published

hakvoort@fglawyersamsterdam.com

\*Is your organisation included in the Transparency Register?

(If your organisation is not registered, [we invite you to register here](#), although it is not compulsory to be registered to reply to this consultation. [Why a transparency register?](#))

- Yes
- No

\*If so, please indicate your Register ID number:

350260527479-86

\*Type of organisation:

- Academic institution
- Consultancy, law firm
- Industry association
- Non-governmental organisation
- Trade union
- Company, SME, micro-enterprise, sole trader
- Consumer organisation
- Media
- Think tank
- Other

\*Please indicate the size of your organisation:

- less than 10 employees
- 10 to 50 employees
- 50 to 500 employees
- 500 to 5000 employees
- more than 5000 employees

\*Where are you based and/or where do you carry out your activity?

The Netherlands

\*Field of activity or sector (*if applicable*):

*at least 1 choice(s)*

- Accounting
- Asset management
- Auditing
- Banking
- Brokerage
- Credit rating agency
- Crowdfunding
- Financial market infrastructure (e.g. CCP, CSD, stock exchange)
- Insurance
- Investment advice
- Payment service
- Pension provision
- Regulator
- Social entrepreneurship
- Social media
- Supervisor
- Technology provider
- Trading platform
- Other
- Not applicable

\*Please specify your activity field(s) or sector(s):

Law firm specialized in corporate and alternative finance including FinTech



## Important notice on the publication of responses

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\*Contributions received are intended for publication on the Commission's website. Do you agree to your contribution being published?

([see specific privacy statement](#) )

- Yes, I agree to my response being published under the name I indicate (*name of your organisation /company/public authority or your name if your reply as an individual*)
- No, I do not want my response to be published

## 2. Your opinion

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## 1. Fostering access to financial services for consumers and businesses

FinTech can be an important driver to expand access to financial services for consumers, investors and companies, bringing greater choice and more user-friendly services, often at lower prices. Current limitations in traditional financial service markets (e.g. opacity, lack of use of big data, insufficient competition), such as financial advice, consumer credit or insurance, may foreclose access to some categories of individuals and firms. New financial technologies can thus help individuals as well as small and medium-sized enterprises (SMEs), including start-up and scale-up companies, to access alternative funding sources for supporting their cash flow and risk capital needs.

At the same time, potential redundancy of specific back-office functions or even of entire market players due to automation via FinTech solutions might have adverse implications in terms of employment in the financial industry, even though new jobs would also be created as part of the FinTech solutions. The latter, however, might require a different skill mix.

Question 1.1: What type of FinTech applications do you use, how often and why? In which area of financial services would you like to see more FinTech solutions and why?

On a law firm level - none; we advise our clients who are active in FinTech sector and who develop FinTech solutions.

### Artificial intelligence and big data analytics for automated financial advice and execution

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 1.2: Is there evidence that automated financial advice reaches more consumers, firms, investors in the different areas of financial services (investment services, insurance, etc.)?

- Yes
- No
- Don't know / no opinion / not relevant

Question 1.3: Is enhanced oversight of the use of artificial intelligence (and its underpinning algorithmic infrastructure) required? For instance, should a system of initial and ongoing review of the technological architecture, including transparency and reliability of the algorithms, be put in place?

- Yes
- No
- Don't know / no opinion / not relevant

Please elaborate on your answer to whether enhanced oversight of the use of artificial intelligence is required, and explain what could more effective alternatives to such a system be.

In developments like robo-advice, self-learning algo's, DLT (including smart contracts), it is important to determine who could be held responsible and liable for the actual outcome of such 'FinTech product'. In respect of automated advice for example, it is proposed (but not laid down in a law or regulation as yet) in the Netherlands that eventually a natural person could always be held responsible/liable for the generated automated advice. Also robots can make mistakes and consumers/clients should maintain the same level of protection as they currently have irrespective of the manner in which they have obtained their advice/service/product etc. However, the input that such consumers/clients give in order to obtain such automated advice etc. should also be taken into account when determining whether or not the FinTech/AI solution/Algo could reasonably come to the generated advice/service/product etc.

Question 1.4: What minimum characteristics and amount of information about the service user and the product portfolio (if any) should be included in algorithms used by the service providers (e.g. as regards risk profile)?

See above; the same amount of information/input as currently required or in any event as required to enable the FinTech/AI solution/Algo to provide a (personal) advice or service such service user and / or to ensure that the product or service offered through such FinTech means is aligned with the risk profile, knowledge and experience level of such service user.

Question 1.5: What consumer protection challenges/risks have you identified with regard to artificial intelligence and big data analytics (e.g. robo-advice)? What measures, do you think, should be taken to address these risks/challenges?

In particular the non-existent awareness of consumers of the value of their data / privacy, in particular in respect to the BigTechs such as Apple and Google. Consumers easily consent to sharing their data without knowing /realizing what it actually means when they give such consent. Although we firmly believe that AI/FinTech solutions including Big data analytics could be beneficial to consumers, we do urge the European Commission to safeguard a better understanding and awareness of privacy related issues by consumers in the EEA.

### Social media and automated matching platforms: funding from the crowd

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 1.6: Are national regulatory regimes for crowdfunding in Europe impacting on the development of crowdfunding?

- Yes
- No
- Don't know / no opinion / not relevant

Please elaborate on your reply to whether there are national regulatory regimes for crowdfunding in Europe impacting on the development of crowdfunding. Explain in what way, and what are the critical components of those regimes.

The lack of a European harmonised interpretation of the manner in which crowdfunding platforms should be regulated, in particular lending based platforms and investment based platforms, as well as differences in national interpretation and licencing or other manners of supervising a crowdfunding platform (e.g The Netherlands vs Italy) hinder cross border development. Investment based platforms for example are regulated as investment firms under MiFID in a number of Member States. Despite the passporting possibilities under their MiFID license, such platforms are still confronted with additional local rules due to such form of crowdfunding being qualified differently in a local Member State and/or specific crowdfunding rules (including a specific local crowdfunding license) apply in a specific Member State. This is not in accordance with the passporting rights that should be available to such platforms under MiFID. Lending based platforms are subjected to local rules in each Member State as no passporting possibility currently exists under EU legislation (other than if such platforms qualify as credit institutions under CRD IV or if they intermediate in respect of debt securities and would qualify as an investment firm under MiFID).

**Question 1.7: How can the Commission support further development of FinTech solutions in the field of non-bank financing, i.e. peer-to-peer/marketplace lending, crowdfunding, invoice and supply chain finance?**

Create a European level-playing field and increase alignment between local supervisors between supervisory approach and consumer protection. This does not need to be a new crowdfunding regulation or directive, but rather level 2 and 3 guidance under the existing regulatory framework which could be applicable to crowdfunding models (such as, non exhaustive, MiFID II, AIFMD, PSD II, CRD V, Prospectus Regulation, etc).

Enable secondary market in crowdfunding assets by allowing bilateral trading without the platform immediately being confronted with a MiFID license. E.g. from a Dutch law perspective, private loans generally become debt securities upon such private loan being tradable, resulting in the loan based platform shifting colours from 'just an intermediary in repayable funds' to an investment firm requiring a MiFID license.

**Question 1.8: What minimum level of transparency should be imposed on fund-raisers and platforms? Are self-regulatory initiatives (as promoted by some industry associations and individual platforms) sufficient?**

Platforms should ensure that fundraisers provide the following information on the website of the platform:

- historical financial information of the fundraiser (e.g. of last 2 years) and pro forma's for the upcoming years;
- information memorandum enabling the investor to make an informed investment decision including description of business of fundraiser, its business model, transparent organizational structure, use of proceeds of funds raised, financial information (see above) incl. other indebtedness, responsibility statement management, information about management, terms of loan agreement/security offered and, if applicable, securities provided to secure repayment to investors (i.e. 'mini prospectus, but not to be approved by regulator subject to Prospectus Regulation);
- summary of IM in line with e.g. KID.

Moreover the platform should provide clear information in respect of its role and of its respective affiliates, the cost structure/fees applicable, segregation of assets and, if applicable, trading possibilities (and legal requirements to ensure valid transfer).

All such information should be complete, accurate, not-misleading (not misleading by omission of material information either) and comprehensible.

**Sensor data analytics and its impact on the insurance sector**

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 1.9: Can you give examples of how sensor data analytics and other technologies are changing the provision of insurance and other financial services? What are the challenges to the widespread use of new technologies in insurance services?

Question 1.10: Are there already examples of price discrimination of users through the use of big data?

- Yes
- No
- Don't know / no opinion / not relevant

Please provide examples of what are the criteria used to discriminate on price (e.g. sensor analytics, requests for information, etc.)?

### **Other technologies that may improve access to financial services**

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 1.11: Can you please provide further examples of other technological applications that improve access to existing specific financial services or offer new services and of the related challenges? Are there combinations of existing and new technologies that you consider particularly innovative?

## 2. Bringing down operational costs and increasing efficiency for the industry

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

FinTech has the potential of bringing benefits, including cost reductions and faster provision of financial services, e.g., where it supports the streamlining of business processes. Nonetheless, FinTech applied to operations of financial service providers raises a number of operational challenges, such as cyber security and ability to overcome fragmentation of standards and processes across the industry. Moreover, potential redundancy of specific front, middle and back-office functions or even of entire market players due to automation via FinTech solutions might have adverse implications in terms of employment in the financial industry, even though new jobs would also be created as part of the FinTech solutions. The latter, however, might require a different skill mix, calling for flanking policy measures to cushion their impact, in particular by investing in technology skills and exact science education (e.g. mathematics).

**Question 2.1: What are the most promising use cases of FinTech to reduce costs and improve processes at your company? Does this involve collaboration with other market players?**

We assist multiple different types of FinTech companies, from crowdfunding platforms and other alternative financiers such as credit unions to clients who contemplate to offer financial services via smart contracts and use DLT to facilitate and expedite such services. We recognize that the enablers within the FinTech sector generally offer the innovative backend solutions to incumbents and other financial undertakings (e.g. via DLT, SAAS, APIs etc) and those FinTech companies generally collaborate with other market players, whilst the more disruptive FinTech companies are less interested in collaborating with other market players except if they need such other market players for regulatory reasons. Other than for commercial / investment reasons, we see JVs, SLAs and other types of collaboration/cooperation agreements being entered into between FinTech companies and other regulated market players to enable the FinTech company to launch its product/business without a regulatory license / approval, subject to the regulated market player accepting responsibility for the FinTech company (e.g. such as tied agents and cooperations with AIFMs etc). From a commercial perspective, this generally does not have the preference of the FinTech company, but it enables them to launch their business and to test the market without having to obtain a full regulatory license themselves. In many situations, such collaboration may even be the only way forward due to disproportional license/regulatory requirements including for example suitability norms of daily policy makers requiring a certain level of expertise and experience years in the financial sector to which many of the daily policy makers of such FinTech companies cannot (yet) adhere to.

**Question 2.2: What measures (if any) should be taken at EU level to facilitate the development and implementation of the most promising use cases? How can the EU play its role in developing the infrastructure underpinning FinTech innovation for the public good in Europe, be it through cloud computing infrastructure, distributed ledger technology, social media, mobile or security technology?**

We highly favour harmonized guidance to be provided on a EU level in order to assist both the FinTech companies/sector but also the national regulators how to deal with FinTech initiatives. The current EU regulatory framework is not drawn up with FinTech companies and FinTech solutions in mind. Although we agree that the same financial product or financial service should be treated in the same manner throughout Europe irrespective of the party who is offering such product or service, but we stress that the scope of certain current EU Directives and Regulations (such as the AIFMD and MiFID II) is incredibly broad and does not leave sufficient room for national regulators /Member States to deviate from. We often experience that our national regulators are willing to consider another regulatory approach (e.g. via de Regulatory Sandbox initiative) but also feel that their hands are tight when it is not clear from the outset that a specific business model of a FinTech company does not fall outside the scope of a European Directive of Regulation. It would help the sector and all of its stakeholders incredibly if on a EU level a stand is taken what the discretionary power is for local Member States under the current EU regulatory framework. We suggested the introduction of a new Step-Up License in the Netherlands and repeat such suggestion here as well. Such a Step-Up License could be a basic license requirement for any type of financial undertaking irrespective of the financial product or financial service such undertaking offers, but requiring the undertaking to comply with minimum requirements (such as a prudent board of directors, AO/IC policy to ensure a sound business and prevent conflicts of interest, a minimum information document requirement such as a KIID, required segregation of accounts and an exit plan). Either at the request of the financial undertaking, or if a specific growth indicator is exceeded (such as volume, profits, customer base, employees, etc), the financial undertaking should be required to bring its license to the next level and become subject to the regulatory requirements that are appropriate to its size, risk profile, etc. In our view this gives more flexibility and proportionality to the current framework, whilst it also enables the regulators to keep an eye on all parties being active in the financial sector.

Question 2.3: What kind of impact on employment do you expect as a result of implementing FinTech solutions? What skills are required to accompany such change?

### **RegTech: bringing down compliance costs**

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 2.4: What are the most promising use cases of technologies for compliance purposes (RegTech)? What are the challenges and what (if any) are the measures that could be taken at EU level to facilitate their development and implementation?

### **Recording, storing and securing data: is cloud computing a cost effective and secure solution?**

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 2.5.1: What are the regulatory or supervisory obstacles preventing financial services firms from using cloud computing services?

Question 2.5.2: Does this warrant measures at EU level?

- Yes
- No
- Don't know / no opinion / not relevant

Please elaborate on your reply to whether the regulatory or supervisory obstacles preventing financial services firms from using cloud computing services warrant measures at EU level.

Question 2.6.1: Do commercially available cloud solutions meet the minimum requirements that financial service providers need to comply with?

- Yes
- No
- Don't know / no opinion / not relevant

Please elaborate on your reply to whether commercially available cloud solutions do meet the minimum requirements that financial service providers need to comply with.

Question 2.6.2: Should commercially available cloud solutions include any specific contractual obligations to this end?

- Yes
- No
- Don't know / no opinion / not relevant

Please elaborate on your reply to whether commercially available cloud solutions should include any specific contractual obligations to this end.

### **Disintermediating financial services: is Distributed Ledger Technology (DLT) the way forward?**

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

**Question 2.7: Which DLT applications are likely to offer practical and readily applicable opportunities to enhance access to finance for enterprises, notably SMEs?**

Permissioned blockchains with a limited number of pre-approved nodes and e.g. special rights for the regulators in the field of online issuance of securities/trading/settlement (clearing may not even be necessary if the smart contract is well developed) and smart contracts in relation to trade and invoice financing, could be a readily applicable opportunity to enhance access to finance. DLT application such as smart contracts in the field of insurance would also be a very interesting development (although not necessarily enhancing access to finance).

**Question 2.8: What are the main challenges for the implementation of DLT solutions (e.g. technological challenges, data standardisation and interoperability of DLT systems)?**

Question 2.9: What are the main regulatory or supervisory obstacles (stemming from EU regulation or national laws) to the deployment of DLT solutions (and the use of smart contracts) in the financial sector?

Depending on the solution being brought by DLT, currently the regulatory framework is not clear. The above mentioned struggle of regulators in respect of qualifying the services being offered through DLT and the scope of the current EU legislation applies in this respect as well. Local private laws are generally not harmonized resulting in different legal requirements to be applicable for the validity of a smart contract and the requirements applicable to a valid transfer of the smart contract. In respect of cryptocurrencies, from a Dutch law regulatory and private law objective for example, cryptocurrencies are not yet deemed to be an asset (goed) which can be pledged etc nor does it qualify as funds within the meaning of PSD2 and the implementation of the PSD in the Dutch financial supervision act.

### Outsourcing and other solutions with the potential to boost efficiency

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 2.10: Is the current regulatory and supervisory framework governing outsourcing an obstacle to taking full advantage of any such opportunities?

- Yes
- No
- Don't know / no opinion / not relevant

Please elaborate on your reply to whether the current regulatory and supervisory framework governing outsourcing is an obstacle to taking full advantage of any such opportunities.

Question 2.11: Are the existing outsourcing requirements in financial services legislation sufficient?

- Yes
- No
- Don't know / no opinion / not relevant

Please elaborate on your reply to whether the existing outsourcing requirements in financial services legislation are sufficient, precisising who is responsible for the activity of external providers and how are they supervised. Please specify, in which areas further action is needed and what such action should be.

Yes, these are sufficient subject to both the regulators and the financial institution that uses the services of an external provider in the field of DLT understands the solution being offered to the clients of the financial institution on the basis of the DLT.

The financial institution should however be able to hold the external provider liable if the DLT solution being offered by such services provider appears to be based on an inaccurate algorithm or generally does not comply with the relevant laws and regulations, in particular private laws in relation to smart contracts etc.

### Other technologies that may increase efficiency for the industry

Question 2.12: Can you provide further examples of financial innovations that have the potential to reduce operational costs for financial service providers and/or increase their efficiency and of the related challenges?

## 3. Making the single market more competitive by lowering barriers to entry

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

A key factor to achieving a thriving and globally competitive European financial sector that brings benefits to the EU economy and its society is ensuring effective competition within the EU single market. Effective competition enables new innovative firms to enter the EU market to serve the needs of customers better or do so at a cheaper price, and this in turn forces incumbents to innovate and increase efficiency themselves. Under the EU Digital Single Market strategy, the EU regulatory framework needs to be geared towards fostering technological development, in general, and supporting the roll-out of digital infrastructure across the EU, in particular. Stakeholder feedback can help the Commission achieve this goal by highlighting specific regulatory requirements or supervisory practices that hinder progress towards the smooth functioning of the Digital Single Market in financial services. Similarly, such feedback would also be important to identify potential loopholes in the regulatory framework that adversely affect the level playing field between market participants as well as the level of consumer protection.

**Question 3.1: Which specific pieces of existing EU and/or Member State financial services legislation or supervisory practices (if any), and how (if at all), need to be adapted to facilitate implementation of FinTech solutions?**

This is an extremely broad question due to FinTech solutions being offered in the full financial sector. We refer to our answers to questions 1.6, 1.7 and 2.2.

In addition to that, it would be very much welcomed if on a EU level specific material terms used in one or more EU directives or regulations are clarified (such as 'public', 'securities' and in that respect 'tradability' etc) and used in such a way on a harmonized basis throughout the EEA. Also with a view on the Capital Markets Union and the free flow of capital within the EU, it is important that EU Directives and Regulations really result in a harmonized framework in order to

(I) enable regulated parties to launch the same business model in multiple Member States without the need to tweak it to additional or deviating local rules and regulations,

(ii) to prevent (the possibility of) forum shopping and

(iii) to ensure that clients/investors/consumers are actually treated in the same manner in each Member State.

**Question 3.2.1: What is the most efficient path for FinTech innovation and uptake in the EU?**

Enable and stimulate this type of Innovation but with a certain level of regulatory oversight. We again refer to our answers to questions 1.6, 1.7, 2.2 and to 3.1.

Question 3.2.2: Is active involvement of regulators and/or supervisors desirable to foster competition or collaboration, as appropriate, between different market actors and new entrants?

- Yes
- No
- Don't know / no opinion / not relevant

### FinTech has reduced barriers to entry in financial services markets

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

### But remaining barriers need to be addressed

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 3.3: What are the existing regulatory barriers that prevent FinTech firms from scaling up and providing services across Europe? What licensing requirements, if any, are subject to divergence across Member States and what are the consequences? Please provide the details.

We refer to our answer to question 1.6.

Moreover, we notice that - irrespective of EU Directives or even EU Regulations being in place - there is still no actual harmonized EEA due to different interpretations of material terms (see our answer to question 3.1) and the level of discretion and flexibility a local Member State and its regulators take. There still is no real EEA market; even if a FinTech firm has the possibility to provide its services in other Member States on the basis of a passport opportunity under the respective applicable EU Directive /Regulation, it is more often than not confronted with additional local rules and regulations, even if it is just offering its services on a cross border basis from its Home Member State.

Question 3.4: Should the EU introduce new licensing categories for FinTech activities with harmonised and proportionate regulatory and supervisory requirements, including passporting of such activities across the EU Single Market?

- Yes
- No
- Don't know / no opinion / not relevant

If the EU should introduce new licensing categories for FinTech activities with harmonised and proportionate regulatory and supervisory requirements, including passporting of such activities across the EU Single Market, please specify in which specific areas you think this should happen and what role the ESAs should play in this. For instance, should the ESAs play a role in pan-EU registration and supervision of FinTech firms?

We refer to our answer to question 2.2.

Question 3.5: Do you consider that further action is required from the Commission to make the regulatory framework more proportionate so that it can support innovation in financial services within the Single Market?

- Yes
- No
- Don't know / no opinion / not relevant

If you do consider that further action is required from the Commission to make the regulatory framework more proportionate so that it can support innovation in financial services within the Single Market, please explain in which areas and how should the Commission intervene.

We refer to our answers to questions 1.6, 1.7, 2.2 and to 3.1.

Question 3.6: Are there issues specific to the needs of financial services to be taken into account when implementing free flow of data in the Digital Single Market?

- Yes
- No
- Don't know / no opinion / not relevant

Please elaborate on your reply to whether there are issues specific to the needs of financial services to be taken into account when implementing free flow of data in the Digital Single Market, and explain to what extent regulations on data localisation or restrictions on data movement constitute an obstacle to cross-border financial transactions.

Question 3.7: Are the three principles of technological neutrality, proportionality and integrity appropriate to guide the regulatory approach to the FinTech activities?

- Yes
- No
- Don't know / no opinion / not relevant

Please elaborate on your reply to whether the three principles of technological neutrality, proportionality and integrity are or not appropriate to guide the regulatory approach to the FinTech activities.

We refer to our response to question 2.2.

### Role of supervisors: enabling innovation

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 3.8.1: How can the Commission or the European Supervisory Authorities best coordinate, complement or combine the various practices and initiatives taken by national authorities in support of FinTech (e.g. innovation hubs, accelerators or sandboxes) and make the EU as a whole a hub for FinTech innovation?

Provide transparency on a EU level of

- the initiatives being taken by local regulators/Member States
- the manner in which relevant FinTech solutions / business models are being treated and enabled in local MS
- the regulatory interpretation/view of the relevant EU institution of the manner in which local regulators treat such FinTech solutions/business models
- maintain an open and transparent dialogue between the relevant EU institution and the local regulator in order for the FinTech market to learn and grow.

Question 3.8.2: Would there be merits in pooling expertise in the ESAs?

- Yes
- No
- Don't know / no opinion / not relevant

Please elaborate on your reply to whether there would be merits in pooling expertise in the European Supervisory Authorities.

There would certainly be merits in pooling expertise in the ESAs, especially because FInTech solutions are not the limited field of expertise of just one ESA. Alignment of expertise and transparency in respect of the guidelines /interpretations/practices of both local regulators as well as the ESAs could have a highly effective and positive impact on making the EU a hub for FinTech innovation.

Question 3.9: Should the Commission set up or support an "Innovation Academy" gathering industry experts, competent authorities (including data protection and cybersecurity authorities) and consumer organisations to share practices and discuss regulatory and supervisory concerns?

- Yes
- No
- Don't know / no opinion / not relevant

If you think the Commission should set up or support an "Innovation Academy" gathering industry experts, competent authorities (including data protection and cybersecurity authorities) and consumer organisations to share practices and discuss regulatory and supervisory concerns, please specify how these programs should be organised.

We refer to our response to question 3.8.1.

Question 3.10.1: Are guidelines or regulation needed at the European level to harmonise regulatory sandbox approaches in the MS?

- Yes
- No
- Don't know / no opinion / not relevant

Please elaborate on your reply to whether guidelines or regulation are needed at the European level to harmonise regulatory sandbox approaches in the MS?

Guidelines rather than new Regulations. We refer to our answers to questions 1.6, 1.7, 2.2, 3.1 and 3.8.1.

Question 3.10.2: Would you see merits in developing a European regulatory sandbox targeted specifically at FinTechs wanting to operate cross-border?

- Yes
- No
- Don't know / no opinion / not relevant

Question 3.11: What other measures could the Commission consider to support innovative firms or their supervisors that are not mentioned above?

### Role of industry: standards and interoperability

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 3.12.1: Is the development of technical standards and interoperability for FinTech in the EU sufficiently addressed as part of the European System of Financial Supervision?

- Yes
- No
- Don't know / no opinion / not relevant

Please elaborate on your reply to whether the development of technical standards and interoperability for FinTech in the EU is sufficiently addressed as part of the European System of Financial Supervision.

There is a misalignment between EU Directives and Regulations; we would highly favour a review of the existing EU regulatory framework applicable to financial institutions and to align - to the extent possible, reasonable and proportionate - the terms used and the requirements to which a financial undertaking is subjected. In particular information requirements could be highly aligned.

Question 3.12.2: Is the current level of data standardisation and interoperability an obstacle to taking full advantage of outsourcing opportunities?

- Yes
- No
- Don't know / no opinion / not relevant

Please elaborate on your reply to whether the current level of data standardisation and interoperability is an obstacle to taking full advantage of outsourcing opportunities.

Question 3.13: In which areas could EU or global level standards facilitate the efficiency and interoperability of FinTech solutions? What would be the most effective and competition-friendly approach to develop these standards?

Question 3.14: Should the EU institutions promote an open source model where libraries of open source solutions are available to developers and innovators to develop new products and services under specific open sources licenses?

- Yes
- No
- Don't know / no opinion / not relevant

Please elaborate on your reply to whether the EU institutions should promote an open source model where libraries of open source solutions are available to developers and innovators to develop new products and services under specific open sources licenses, and explain what other specific measures should be taken at EU level.

We refer to our answer to question 3.8.1.

## Challenges

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 3.15: How big is the impact of FinTech on the safety and soundness of incumbent firms? What are the efficiencies that FinTech solutions could bring to incumbents? Please explain.

## 4. Balancing greater data sharing and transparency with data security and protection needs

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 4.1: How important is the free flow of data for the development of a Digital Single Market in financial services? Should service users (i.e. consumers and businesses generating the data) be entitled to fair compensation when their data is processed by service providers for commercial purposes that go beyond their direct relationship?

Yes, there should be a fair compensation. However, compensation does not need to be in a monetary form. We do think, however, it is very important that users /consumers become better aware of the value of their data. We refer to our answer to question 1.5.

### Storing and sharing financial information through a reliable tool

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 4.2: To what extent could DLT solutions provide a reliable tool for financial information storing and sharing? Are there alternative technological solutions?

We refer to our answer to question 2.7.

Question 4.3: Are digital identity frameworks sufficiently developed to be used with DLT or other technological solutions in financial services?

- Yes
- No
- Don't know / no opinion / not relevant

Please elaborate on your reply to whether digital identity frameworks are sufficiently developed to be used with DLT or other technological solutions in financial services.

AML/CDD/KYC requirements etc. are not yet drawn up in such a way that it sufficiently covers the potential of DLT and other technological solutions in financial services. Video identification and biometric identification etc. should be available means of identification of clients under the aforementioned requirements.

Question 4.4: What are the challenges for using DLT with regard to personal data protection and how could they be overcome?

### The power of big data to lower information barriers for SMEs and other users

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 4.5: How can information systems and technology-based solutions improve the risk profiling of SMEs (including start-up and scale-up companies) and other users?

Risk profiling of SMEs could be highly improved if the information on the basis of which a risk profile is being created / creditworthiness of an SME borrower etc. is being determined comes from more independent sources rather than (financial) input provided by that same SME itself. APIs and XS2A under PSD2 for example could result in a much better determination of the risks involved.

Question 4.6: How can counterparties that hold credit and financial data on SMEs and other users be incentivised to share information with alternative funding providers ? What kind of policy action could enable this interaction? What are the risks, if any, for SMEs?

Presumably PSD2 will already have a material influence in this respect as such information (through XS2A) will improve the outcome of credit analysis and the credit scoring performed by third party service providers which enables alternative funding providers to make a better judgment of the creditworthiness of the borrower/SMEs.

## Security

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 4.7: What additional (minimum) cybersecurity requirements for financial service providers and market infrastructures should be included as a complement to the existing requirements (if any)? What kind of proportionality should apply to this regime?

Question 4.8: What regulatory barriers or other possible hurdles of different nature impede or prevent cyber threat information sharing among financial services providers and with public authorities? How can they be addressed?

Question 4.9: What cybersecurity penetration and resilience testing in financial services should be implemented? What is the case for coordination at EU level? What specific elements should be addressed (e.g. common minimum requirements, tests, testing scenarios, mutual recognition among regulators across jurisdictions of resilience testing)?

### Other potential applications of FinTech going forward

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 4.10.1: What other applications of new technologies to financial services, beyond those above mentioned, can improve access to finance, mitigate information barriers and/or improve quality of information channels and sharing?

Question 4.10.2: Are there any regulatory requirements impeding other applications of new technologies to financial services to improve access to finance, mitigate information barriers and/or improve quality of information channels and sharing?

- Yes
- No
- Don't know / no opinion / not relevant

Please elaborate on your reply to whether there are any regulatory requirements impeding other applications of new technologies to financial services to improve access to finance, mitigate information barriers and/or improve quality of information channels and sharing?

### 3. Additional information

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Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:

**eda4cd5f-4241-4495-a32d-a7b99d748b53/2017JAN\_-  
\_Most\_important\_regulatory\_obstacles\_to\_cross\_border\_crowdfunding.pdf**

#### Useful links

[More on the Transparency register \(http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en\)](http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

[Consultation details \(http://ec.europa.eu/info/finance-consultations-2017-fintech\\_en\)](http://ec.europa.eu/info/finance-consultations-2017-fintech_en)

[Specific privacy statement \(https://ec.europa.eu/info/sites/info/files/2017-fintech-specific-privacy-statement\\_en.pdf\)](https://ec.europa.eu/info/sites/info/files/2017-fintech-specific-privacy-statement_en.pdf)

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#### Contact

fisma-fintech@ec.europa.eu

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