

Template for comments

Public consultation on a guide to assessments of fintech credit institution license application

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General comments

We welcome the proposal of drafting a guide for the fintech credit institution license applications, which we consider a positive step towards establishing a common regulatory framework among all institutions providing credit services in the EU. We are also supportive of incorporating the FSB definition of a "fintech institution" as a business model in which the production and delivery of banking products and services are based on technology-enabled innovation". Given the variety of institutions and technologies across the countries participating in the SSM, this broad definition captures the different activities of credit institutions in the different jurisdictions. By using a broad definition of "fintech institution" we understand that the ECB aims to promote a level playing field holding fintech banks accountable to the same standards as other banks. We are fully supportive of this initiative and agree that expanding the scope of the licensing model in the EU will achieve greater transparency, solvency, risk management and regulatory compliance, which will lead to better financial services being offered in the EU.

Providing clarity and a level playing field between actors and frameworks is necessary to ensure a real consumer protection.

Businesses performing financial activities are not always regulated like banks. This is not good for customer protection and it is not good for fair competition. When banks and 'non-banks' do the same things, they should be regulated the same way to protect properly the consumer rights: same activity, same risks, same rules, same supervision. Moreover, the high standards of consumer protection applied traditionally to financial services should not only affect to new entrants that perform the same type of activities but to those in the service chain that may affect the rights of consumers, the fair trade and competition in financial services as well. Protection of consumer rights and standards should be ensured in all cases.

Given the references in section 1.2 and 1.3 in which the ECB refers to existing banks that evolve and integrate technological innovation by developing fintech solutions in-house, acquiring fintech companies or engaging in strategic partnerships with them (through "white labelling", outsourcing (1.2) and (...) may equally be relevant to the assessment of banks with more traditional business models (1.3), we are keen to understand further the implications of the proposed licensing regime for Fintech entities incorporated within a traditional banking holding group or for a traditional bank incorporated within a fintech holding group.

Furthermore, although we welcome the ECB's draft guides for assessing licensing applications, we believe that this exercise does not reach all the different transformations that we see in the current FinTech ecosystem. For instance, in the case of incumbent banks, the strategy to adapt to the new environment is not limited to forging alliances or partnerships with other companies, but also embarking in an internal transformation journey that requires a change in all aspects of the organisation. Therefore, we would like to see a similar effort by supervisors to adapt their mindset to be able to support banks in this endeavour.

Fintech entities owned (51% or more) by a traditional bank holding entity would already be applying the licensing requirements in terms of capital, liquidity, solvency, suitability of the management body at a group level. The fintech entities would also leverage from the IT risk, AML, outsourcing, data governance and program operations security standards being used by the holding entity. We would welcome the ECB's views on the applicability of the licensing requirement in this scenario. We would be of the view that the licensing requirement may not apply in this scenario as compliance with all the relevant requirements already exists. This would also avoid the overlapping licensing requirements.

As regards governance requirements, however, we would like to make one additional comment on the application of the proportionality principle to the assessment of the suitability of the shareholders. Considering the degree of influence each shareholder intends to exercise over the fintech bank seems reasonable when assessing the professional competence and the financial soundness of shareholders, but not about integrity. For the latter, no proportionality should be applied.

We would also welcome the ECB's views on the applicability of the proposed regime for fintech holding groups acquiring banking entities. If the fintech holding group already is in possession of a banking license, we would also be of the view that overlapping licensing requirements would need to be prevented.

Finally, we agree with the ECB in that fintech banks are likely to make greater use of outsourcing and cloud. In this context, regulation on outsourcing imposes requirements on the risk assessment and due diligence process that banks must follow when entering into an outsourcing agreement which may be overly burdensome for these fintech banks. In this context, developing a system of third-party certifications of technological vendors recognized by relevant regulators and supervisors would be essential for all financial institutions, but more so for smaller new entrants, and would also enhance the confidence of financial supervisors. Aligned with this last proposal, standard clauses/models in outsourcing contracts would produce the same effects on banks and supervisors. It would be desirable for the ECB Guides on licensing of fintech banks to incorporate an explicit reference to the EBA Guidelines on cloud outsourcing, which are applicable to every bank and offer a more thorough control framework.

