Template for comments

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

Institution/Company

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General comments

Bitkom represents more than 2,500 companies of the digital economy, including 1,700 direct members. Through IT- and communication services only, our members generate a domestic turnover of 190 billion Euros per year, including 50 billion Euros in exports. Members of Bitkom employ more than 2 million people in Germany. Among the members are 1,000 small and medium-sized businesses, over 400 startups and nearly all global players. They offer a wide range of software technologies ,IT-services, and telecommunications or internet services, produce hardware and consumer electronics, operate in the sectors of digital media or are in other ways affiliated to the digital economy. 80 percent of the companies' headquarters are located in Germany with an additional 8 percent each in the EU and the USA, as well as 4 percent in other regions. Bitkom supports the digital transformation of the German economy and advocates a broad participation in the digital progression of society .

Deadline: 2 November 2017

ID	Chapter	Paragraph	Page	Type of comment	Detailed comment	Concise statement as to why your comment should be taken on board
1	Foreword	4.2	2	Clarification	As general introductory comment to the proposed draft guide we would like to point out that most of the requirements outlined in the draft guide are not specific to fintech banks. We strongly support applying the principle of “a level-playing field /same business same rules” and the principle of proportionality in regulation. The guide deviates from such an approach. This relates in particular to the following points: - All applicants for banking licenses have to show the suitability of shareholders. Practically, all (successful) start-ups obtain seed funding irrespective of their business model. Such funding will come either from private or institutional investors. Some investors may intend to invest long-term and some investors may intend to invest mid-term into the company. This has nothing to do with the use of technology by a company and should, therefore, not be included in the requirements for fintech banks. - All banks in the credit business are obliged to show credit risk approval and governance, i.e. a credit-scoring model. There is no apparent connection between the use of technology and a specific requirement for the credit scoring model. All banks that operate cross-border have to ensure that their credit-scoring model is adapted to the jurisdiction they are active in. Such requirements may be discussed - however - they should not be included in a specific guide for fintech banks. - Banks are economic entities and there is always a possibility that enterprises do not remain on the market. The Guide proposes a special requirement of an exit plan for fintech banks. Such a requirement is not connected to the type of technology used by the company. We suggest to change the structure of the guides and not to produce a specific guide for fintech banks. There should be one guide that applies to all applicants and which provides a level-playing field for all market participants. The (few) fintech specific points may be addressed as part of such a document. In addition, the guide should clarify that the requirements do not affect existing licenses and that banks with existing licenses will not be affected by the points raised.	

2	Foreword		2	Amendment	We suggest adding the following sentence: "The Guide does not intend to impose additional requirements on Fintechs, but only clarifies the meaning of certain terms of the applicable legislation in the context of license applications of fintechs."	We agree with the assessment that all legislation and guidelines should be technology-neutral and should not discourage any business model based on the fact that it uses a specific technology. The Guide seems to indicate with regard to certain points, however, that fintech should fulfill additional requirements not applying to other banks.
3	Foreword		2	Amendment	The phrase "Equally, to ensure a level playing field, fintech banks must be held to the same standards as other banks" should be replaced by the following wording: "Equally, to ensure a level playing field, all market participants must be held to the same standards."	We agree with the statement that there should be a level playing field. However, the guide does deviate from the current principle of a level-playing field / same business same rules. A balanced approach should make clear that all participants should be held to the same standards, which can go both ways. It needs to be clear that fintech banks comply with the provisions applicable to them, but also that no special obligations/requirements are put onto fintech banks that other banks do not have to comply with.

4	2 - Management body		6	Deletion	The section on specific requirements for the suitability for members of the management body and the supervisory body should be deleted.	This requirement does not create a level-playing field and is disproportionate. The activities of fintech banks do require knowledge in IT. However, such knowledge is needed in practically every bank and does not require that all members of the management have formal and practical training in IT. Also it is not necessary that the CTO is part of the executive management team. In such a case the CTO would have to fulfill the other minimum requirements of suitability for executive staff in the bank, i.e. the CTO would have to have theoretical and practical experience in finance, regulatory framework, strategic planning, risk management, accounting and auditing etc. as identified in the ECB's Guide to fit and proper assessments of May 2017. We do not see a necessity to require fintech banks to prove additional points of suitability - over and above the requirements for other banks.

5	3 - Shareholders		7, 8	Deletion	This section on specific requirements for the suitability of shareholders should be deleted.	The section includes special provisions for the suitability of shareholders of fintech banks. We appreciate that the ECB stresses its committment to the principle of proportionality. However, the issues described in this section are not specific to fintech banks. Practically, all (successfull) start-ups obtain seed funding irrespective of their business model. Such funding will come either from private or institutional investors. Some investors may intend to invest long-term and some investors may intend to invest mid-term into the company. This has nothing to do with the use of technology by a company and should, therefore, not be included in the requirements for fintech banks. In addition, it seems disproportionate to require specific IT knowledge from shareholders. Although, shareholder may give valuable input with regard to the management of the day-to-day business it seems to restrictive to require technical knowledge from investors.
6	4 - Structure		9, 10, 11	Deletion	The section on specific requirements for the credit risk approval as part of the review of the organization should be deleted.	The section includes special provisions for the credit risk model. However, it relates to issues that may be relevant in any license application and is not fintech specific.

7	4 - Structure		11, 12	Clarification	We suggest the following amendment to this section: - Fintechs should be subject only to provisions that apply to other applicants. - The on-site examination should only be required if it is necessary and proportionate. Any such examination should take into consideration the business interests of the company. It should be announced with a sufficient delay of time and the announcement should include a specific description of the scope for the examination. The scope of the examination should take into consideration the principle of proportionality. In particular, it should be a measure of last resort and only be taken if the information cannot be obtained in another manner. The scope should take into consideration that such examination requires the company to employ additional resources.	We understand and agree that the protection against cyber crime is an important issue, in particular in connection with technology-oriented business models. However, such requirements should apply to all applicants - not only fintechs. In addition, on-site examinations may pose a substantial burden on the companies and should only be required if necessary and proportionate.
8	4 - Structure		12, 13	Deletion	We suggest deleting this section on outsourcing.	This section relates to the - general - practice used by all banks of outsourcing arrangements. All banks should be subject to the same requirements. The EBA Guidelines of 14 December 2006 on outsourcing in particular do not contain a requirement of a financial due diligence with regard to the service provider. Any such requirement should be subject to proportionality and take into account the scope of the services provided by the outsourcing company. More specifically with regard to the cloud outsourcing the requirements may be disproportionate. In particular, if only immaterial services have been outsourced, the requirement of a "comprehensive assessment of the nature, scope and complexity" of the cooperation seems unnecessary. The issue of cloud services should be addressed in another context, e.g. licensing of cloud service providers and / or regulating the outsourcing regime.

9	5 - Programme		14, 15	Deletion	We suggest deleting the section on the exit plan.	Banks are economic entities and there is always a possibility that enterprises do not remain on the market. The Guide proposes a special requirement of an exit plan for fintech banks. Such a requirement is not connected to the type of technology used by the company. Fintech banks should – as any other bank – be required to submit a plan if required under the Bank Recovery and Resolution Directive.
10	6 - Capital		16	Deletion	We suggest deleting the section on the liquidity.	The section regarding the treatment of deposits is not technology-neutral. It effectively leads to a discrimination of a specific medium - the internet. This does not make sense in particular as the internet has become the most important distribution channel for financial services - including deposits. The proposal further establishes that deposits with high(er) interest rates cause a higher risk for the liquidity. This effectively seems to lead to a distortion of competition and benefits banks that offer low or no interest rate to its customers - although recent experience shows that in these cases - the risk is effectively higher that customers change as they do not receive interest rates based on the market standard. Such a requirement also is not in the interest of the consumer as it effectively impedes competition.