

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 |
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| 11 | Intro | | | | UK Finance welcomes the publication of a plain language Guide to banking applications. The use of easily understandable language and low levels of industry jargon will promote the accessibility of the industry and provide transparency to the licencing applications system. The Guides are accessible to a non-expert or non-industry audience, which could allow consumers or consumer groups valuable insight into how the banking industry is regulated, thus building trust in the system. | |
| 2 | | | | | We welcome the Guides' purpose of ensuring that there are no unnecessary barriers for new market entrants. As a succinct overview document, the Guides provide value, with their accessibility potentially contributing to increased competition within the industry. | |
| 3 | | | | | UK Finance encourages the harmonisation of standards and the Guides can play a role in this. Standards set at national levels may vary, potentially bringing risks to consumers. Standardised Guides can help national regulators ensure that they are meeting minimum requirements, and can act as a facilitator of engagement between transnational bodies and national supervisors. The Guides clearly communicate expectations of standards and are a welcome tool to ensure that businesses are operating within a regulated environment and, as such, are addressing risk appropriately. | |
| 4 | | | | | In its public hearing, the ECB clarified that it does not intend to introduce any new regulatory requirements, nor is it intending to revise existing requirements. Rather, the purpose of the Guides is only to clarify the existing process for credit institutions and FinTechs. We support this clarification and suggest that the ECB make it explicit within its Guides. Moreover, with regards to specific considerations (such as cyber, outsourcing, and data), the ECB should make reference within the Guides to the existing EU regulatory framework to clarify that they are not seen as additive to existing requirements. | |
| 51 | Intro | | 2 | Clarification | UK Finance welcomes the continued work being undertaken across the EU to define and produce standards for FinTech activities, and as such would agree that any Guides to banking licences should consider any unique requirements of these activities. | |
| 6 | | | | | We welcome the ECB's reference to the Financial Stability Board's (FSB) definition of FinTech. However, we note that in section 1.2 on page 4 the ECB refers to the FSB definition of a "FinTech institution". We are unaware of any such definition. To our knowledge the FSB has only defined FinTech as an activity and we can find no definition for a "FinTech institution". We would appreciate clarity from the ECB as to the source of this reference. | |

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| 7 | | | | | <p>The FSB definition makes clear that FinTech is an activity, not a type of organisation. FinTech can be carried out by a range of organisations, for example, start-ups, technology companies or incumbent financial institutions. However, the definition of a 'FinTech bank' within the Guides states that it is based upon organisations "having a business model in which the production and delivery of banking products and services are based on technology-enabled innovation". 'Technology-enabled innovation' is an unclear and wide parameter that arguably could include most organisations operating within financial services.</p> | |
| 8 | | | | | <p>RECOMMENDATION: A consistent definition of FinTech activities is vital to establish uniformity of standards. As such, the ECB should replace the definition of a 'FinTech bank' with a definition that emphasises that FinTech is an activity that can be carried out by a range of organisations, and not a type of organisation in and of itself (i.e. the EBA should make use of a definition akin to that of the FSB).</p> | |
| 9 | | | | | <p>UK Finance believes that equality of regulatory requirements is crucial to stable markets, healthy competition and certainty for consumers. Activities should carry the same regulatory obligations regardless of who is carrying them out. This principle of 'same service, same rules' should apply to all, which in this case means that an organisation should not be treated differently if it is classified as a 'FinTech bank'. To this extent, we welcome the ECB's clarification that 'FinTech banks' would be subject to the same rules as any other bank. However, and as per our recommendation above, we stress that such a principle should be tied to FinTech activities, as opposed to FinTech banks. Any institutions offering FinTech activities should be held to the same rules and requirements as any other financial service operators, and this equality should be reflected in licensing Guides.</p> | |
| 10 | | | | | <p>We do not believe that it is necessary to separate the licensing information into two separate Guides. Instead, we recommend that the two Guides could effectively be merged, with a separate section within the single Guide to address any specific requirements for firms carrying out FinTech activities. There are a number of reasons for this:</p> | |
| 11 | | | | | <p>Two separate Guides imply a distinction between "FinTech banks" and "non-FinTech banks". However, many of the considerations within the FinTech Guide should be apply to all financial institutions, albeit on an activities- and risk-based basis.</p> | |
| 12 | | | | | <p>Having two separate Guides creates the impression that the ECB is creating a bespoke FinTech licencing framework, which itself could lead to confusion within the industry and among other policymakers internationally. As the ECB has stated, the purpose of the Guides is to clarify the existing process, rather than introduce new requirements, or revise existing requirements.</p> | |
| 13 | | | | | <p>The scope of the Guide is determined by type of entity – i.e. the FinTech bank. However, as per previous arguments, any FinTech related considerations should be tied to specific activities.</p> | |
| 14 | | | | | <p>Furthermore, at its public hearing, the ECB noted that the general licencing Guide and the FinTech licencing Guide are intended to complement each other and be read as one document, further supporting our recommendation that the ECB simply merge the two distinct Guides into one.</p> | |

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| 15 | | | | | RECOMMENDATION: The two Guides should be merged into one, with a separate section looking at any FinTech activity-specific requirements. | |
| 16 | | | | | The underlying point of both key recommendations is that any regulatory approach should be activity- and risk-based. In the FinTech context, clear and comprehensive regulation is a particularly difficult issue because FinTech is not one type of business, but a term that encompasses a multitude of business plans, products, and services. For instance, the operations and business considerations of a marketplace lender, a payments processor, and a service provider using distributed ledger software — and the risks that the activities of such market actors may pose to the financial system if not properly managed and supervised — are thoroughly different. Further, the risks associated with customer-facing and non-customer-facing FinTech companies are likely to be different as well. Therefore, a one-size-fits-all regulatory approach is not appropriate nor is it conducive to technological innovation for existing financial services firms or new entrants. Any new regulatory framework or requirement to address the emergence of FinTech or similar in the financial services space should be flexible, graduated and principles-based, and oversight should be tied to scale and the risks presented. With that said, there are specific activities that do warrant careful attention by regulators, regardless of who is engaging in the activity — namely payments, lending activities, and data collection/storage — as the risks associated with these activities have far reaching impacts to consumers and the broader financial system (i.e. money laundering, terrorist financing, disparate impact, fraud, identity theft, unauthorized transfers, etc.). | |
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| 18 | | | | | In line with our general comments above, we note that IT-related risk is not equally addressed across both Guides. Whilst we recognise the particular importance of attending to IT-related risks for FinTech operations, UK Finance is concerned that the issue is not equally highlighted in the 'general credit licencing' Guide. Every financial institution must be aware of outsourcing and IT risks, including their responsibilities to protect consumer data, not just those undertaking FinTech activities. FinTech, as with financial services more generally, operates within an ecosystem in which any damage to a single institution will have ramifications for the wider sector. Therefore, the importance of IT risk including cyber security and data protection should not be focused only on those institutions reliant on a greater use of technology. | |
| 19 | | | | | Given the ubiquitous importance of IT risk for all credit institutions, we reiterate that it would be more useful if the two Guides were combined as one, with perhaps a separate section addressing any specific requirements related to FinTech activities (which might be carried out by a range of organisations). | |
| 204 - Structure | | 2 | | | Finally, UK Finance would query the statement within Section 4.2 of the 'FinTech Guide' that "a FinTech bank has a business model that is at its core technology driven, and can employ technology at an early stage of maturity". Again, this definition does not feel unique to FinTech activities, and could be applied to almost any organisation operating within financial services currently. Many established firms are increasing technology driven and might even define themselves as technology companies first. | |
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| 224 - Structure | 3 | | | Section 4.3 of the 'FinTech Guide' states that "FinTech banks tend to make greater use of outsourcing and cloud services". UK Finance would query this assumption. Cloud computing should be understood as an enabling technology that allows greater levels of technology innovation within financial services. Such services are now widely used or being explored by a number of financial services organisations, as was noted by the Basel Committee on Banking Standards in their recent consultation paper.[1] By addressing the use of outsourcing and cloud services as relevant to only a particular subset of organisations, the ECB risks implying that established firms, or those entering the market who do not consider themselves "FinTech banks", need not be as concerned about outsourcing and other associated risks as those undertaking FinTech activities. In order to maintain security and trust in the industry, all financial service operators need to maintain high standards in this | |
| 23 | | | | UK Finance has previously submitted a response to the EBA's Consultation on Cloud Computing, which sets out our position on this topic in full. Our response can be read here . | |
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| 25 | | | | There is currently a significant amount of work being undertaken across the EU regarding FinTech activities, which UK Finance welcomes. However, if proper coordination is not undertaken, there is a risk of duplication of efforts, or misalignment and inconsistencies. | |
| 26 | | | | We note that the EBA has published its detailed annual work programme for 2018, which sets out the specific activities and tasks of the Authority for the coming year. The document also describes the key strategic areas of work the EBA will cover over the period 2018-2021. One of the EBA's focal points for 2018 is 'evaluating and contributing to the FinTech regulatory perimeter'. This will no doubt build on the current consultation that they have out regarding the EBA Approach to FinTech. Furthermore, there are aspects of the ECB's guide that relate to further EBA work, including forthcoming guidelines on the use of cloud service providers. It would be helpful to ensure that the ECB and EBA activities on this subject are mutually informed. | |
| 27 | | | | We further note that the BIS Basel Committee is currently consulting on the implications of FinTech developments for banks and supervisors. A harmonised approach to regulation and policy in this area will be essential for the successful digitisation of financial services, as well as for ensuring high consumer protection standards. We encourage the ECB to be mindful of activity being undertaken by international regulators and recommend collaboration on the issues raised wherever possible. | |
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| 29 | | | | UK Finance has provided responses to the consultations mentioned above. These can be viewed in full on our website. | |