

## **Expert Group on Regulatory Obstacles to Financial Innovation**

### **Q & A on the Report: 30 recommendations on regulation, innovation and finance**

#### ***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.

#### ***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 the need to protect consumers?***

Technology-driven financial services may have a societal impact, as have other significant market developments. It gives new opportunities to consumers by offering greater access to, and new, financial services and products. But some consumers might not have 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 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 EDPS 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.

*Disclaimer: These Q&As have been drafted by the Expert Group on Regulatory Obstacles to Financial Innovation, not by the Commission services*