

CLIENT ALERT

A Giant Leap for FinTech in the EU

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European FinTech has taken a giant leap, indeed. The European Commission has proposed a draft legal framework that opens the door to a modern regulated financial services industry.

Towards a European Digital Finance Strategy

By now, everyone has heard of Bitcoin and the promising blockchain technology behind it. While Bitcoin was conceived for a non-regulated financial world, it was clear from the beginning that regulators and legislators would do whatever was in their power to control, and thus influence, this new digital financial services offering in order to protect both consumers and investors. That power has been limited, however, mainly because the current financial legislation was drafted with the traditional financial system in mind.

In the last couple of years, new technologies have drastically changed the financial services industry in a way that is similar to how over-the-top (*i.e.*, non-carrier) services have changed the way we communicate. An e-Privacy framework is being built to regulate the aforementioned innovative communication services, and a similar EU-wide framework is being built for digital financial services.

The intention behind the new legislation is not to stifle innovation by regulation, but to create a level playing field where financial innovation can thrive. When the European Commission launched its [FinTech Action Plan](#) in March 2018, it stated that a new EU-wide regulatory and supervisory framework “should allow firms operating in the EU Single Market to benefit from financial innovation and provide their customers with the most suitable and accessible products.”

The next step was public consultation on a proposed regulatory framework and the [Digital Finance Outreach 2020](#), and a series of events was organized in collaboration with the EU Member States to discuss FinTech and digital innovation in the financial sector, and to prepare the new EU digital finance strategy.

Now, another big step has been taken: the adoption on September 24 of a digital finance package, which includes the promised digital finance strategy, a renewed strategy for modern and safe retail payments, as well as two legislative packages on (i) crypto-assets and (ii) digital resilience.

The Legislative Proposals

The first legislative draft is for a [Regulation on Markets in Crypto-assets](#). As was the case with the well-known General Data Protection Regulation (GDPR), which regulates the processing of personal data of EU-based individuals, this proposal would create a regulation to replace a directive. In short, instead of creating general guidelines that can be further developed by the EU Member States, a regulation creates EU-wide legislation that is directly applicable, thus creating an EU-wide level playing field.

The second draft is again for a regulation, this time on digital operational resilience for the financial sector. It would also replace an existing directive.

The third draft regulation is entirely new in concept, and introduces a pilot regime for market infrastructures based on distributed ledger technology.

Lastly, a draft directive is proposed that would establish a temporary exemption for multilateral trading facilities and amend or clarify certain provisions in existing EU financial services directives.

Watch this space for a detailed analysis of these proposals.

The Next Step?

While the European Commission can propose legislation, the latter can only be enacted when it is approved following the so-called “trilogue” negotiations with the European Parliament (which consists of members that are elected directly in EU Member States), and the European Council (consisting of heads of state or government of EU Member States).

For the GDPR, the path from proposal to final text took several years. At this stage, there are no indications that the same will happen with regards to this legislative package. The European Union needs legal certainty, not only for the highly innovative FinTech start-ups, but also for the traditional financial institutions, and these proposals will allow them to take the next steps in their journey towards digital transformation. The strategy is clear, let’s do this!

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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