

FinTech in International Capital Markets



by *Gabriel Callsen*

Fintech regulatory developments

ESMA: analysis of RegTech and SupTech – change for markets and regulators

On 14 March 2019, ESMA [stated](#) it had carried out an analysis of the regulatory and supervisory technologies currently being developed in response to various demand and supply drivers. The results of this analysis are presented in an article in the latest *Trends, Risks, and Vulnerabilities (TRV) Report (No 1.2019)*. ESMA finds that, on the demand side, regulatory pressure and budget limitations are pushing the market towards an increased use of automated software to replace human decision-making activities. This trend is reinforced by supply drivers such as increasing computing capacity and improved data architecture. Market participants are increasingly using new automated tools in areas such as fraud detection, regulatory reporting and risk management, while potential applications of new tools for regulators include greater surveillance capacity and improved data collection and management.

BCBS: statement on crypto-assets

On 13 March 2019, the BCBS released a [statement on crypto-assets](#). While the crypto-asset market remains small relative to that of the global financial system, and banks currently have very limited direct exposures, the Committee is of the view that the continued growth of crypto-asset trading platforms and new financial products related to crypto-assets has the potential to raise financial stability concerns and increase risks faced by banks. [...] The BCBS is setting out its prudential expectations related to banks' exposures to crypto-assets and related services in relation to due diligence, governance and risk management, disclosure requirements and supervisory dialogue, for those jurisdictions that do not prohibit such exposures and services. [...] The BCBS will in due course clarify the prudential treatment of such exposures to appropriately reflect the high degree of risk of crypto-assets. It is coordinating its work with other global standard setting bodies and the FSB.

ESMA: Trends, Risks, and Vulnerabilities (TRV) Report (No 1.2019)

On 28 February 2019, ESMA published its latest *Trends, Risks, and Vulnerabilities (TRV) Report (No 1.2019)*. In the section on Products and innovation (pages 25-30), ESMA notes with regard to initial coin offerings (ICOs) that “around EUR 17bn have been raised through ICOs in 2018 globally, compared with EUR 5.4 billion in 2017, ie a more than threefold increase year on year. However, almost 90% of the volumes raised in 2018 have been collected in the first half of the year and monthly issuance volumes are now closer to 2017 levels.” Furthermore, ESMA observes that “some FinTech firms have started establishing inroads in credit provision and payments. FinTech credit is growing rapidly but is still small when considered as a proportion of overall credit in most jurisdictions. [...] The competitive impact of technology firms that begin to offer financial services (TechFins) (eg Alibaba, Baidu, Amazon) is likely greater than that of FinTech firms.”

FSB: FinTech developments and potential financial stability implications

On 14 February 2019, the FSB published a report on [FinTech and market structure in financial services](#). The publication is part of the FSB's ongoing work to monitor FinTech market developments and their

potential implications for financial stability. [...] Some key considerations from the FSB's analysis of the link between technological innovation and market structure are the following:

- To date, the relationship between incumbent financial institutions and FinTech firms appears to be largely complementary and cooperative in nature.
- The competitive impact of BigTech may be greater than that of FinTech firms. BigTech firms typically have large, established customer networks and enjoy name recognition and trust.
- Reliance by financial institutions on third-party data service providers (eg data provision, cloud storage and analytics, and physical connectivity) for core operations is estimated to be low at present. However, this warrants ongoing attention from authorities.

GFIN: cross-border testing pilot for innovative firms open to applications

On 31 January 2019, the [Global Financial Innovation Network \(GFIN\)](#) - a group of 29 international organisations including the FCA - [invited applications](#) from firms wishing to test innovative financial products, services or business models across more than one country or jurisdiction. Currently chaired by the FCA, the GFIN is an international network of organisations committed to supporting financial innovation in the

interests of consumers. The network was developed following the FCA's earlier proposal to create a global sandbox. The FCA's sandbox, which allows firms to test innovative ideas in a live market environment, was a first for financial services regulators across the world. [...] Firms interested in applying to take part in the pilot in the UK should review the list of participating regulators and submit an application before the deadline - 28 February 2019. The terms of reference of the GFIN are available on the [FCA's website](#).

ESMA: advice on crypto-assets need common EU-wide approach to ensure investor protection

On 9 January 2019, ESMA [published its Advice to the European Union \(EU\) Institutions](#) - Commission, Council and Parliament - on initial coin offerings and crypto-assets. The Advice clarifies the existing EU rules applicable to crypto-assets that qualify as financial instruments, and provides ESMA's position on any gaps and issues in the current EU financial regulatory framework for consideration by EU policymakers. These gaps and issues fall into two categories:

- For crypto-assets that qualify as financial instruments under MiFID, there are areas that require potential interpretation or re-consideration of specific requirements to allow for an effective application of existing regulations.



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- Where these assets do not qualify as financial instruments, the absence of applicable financial rules leaves investors exposed to substantial risks. At a minimum, ESMA believes that Anti Money Laundering (AML) requirements should apply to all crypto-assets and activities involving crypto-assets. There should also be appropriate risk disclosure in place, so that consumers can be made aware of the potential risks prior to committing funds to crypto-assets.

EBA: report on crypto-assets

On 9 January 2019, the EBA published the [results of its assessment of the applicability and suitability of EU law to crypto-assets](#). Typically, crypto-asset activities do not constitute regulated services within the scope of EU banking, payments and electronic money law, and risks exist for consumers that are not addressed at the EU level. Crypto-asset activities may also give rise to other risks, including money laundering. In light of these issues, the EBA recommends that the European Commission carry out further analysis to determine the appropriate EU-level response. The EBA also identifies a number of actions that it will take in 2019 to enhance the monitoring of financial institutions' crypto-asset activities and consumer-facing disclosure practices.

BIS: proceeding with caution - a survey on central bank digital currency

On 8 January 2019, the BIS published the report [Proceeding with Caution - a Survey on Central Bank Digital Currency](#). Across the world, central banks are reportedly thinking about how new central bank digital currencies (CBDCs) could replace traditional money (CPMIMC (2018)). There is significant public interest in such a fundamental potential change, and this paper takes stock of central banks' current work and thinking. It is based on a recent survey of

central banks to which 63 responded (representing jurisdictions covering close to 80% of the world population). The survey asked central banks about their current work on CBDCs, what motivates that work, and how likely their issuance of a CBDC is. The survey shows that, although a majority of central banks are researching CBDCs, this work is primarily conceptual and only a few intend to issue a CBDC in the short to medium term.

ESAs: joint report on regulatory sandboxes and innovation hubs

On 7 January 2019, the ESAs [published a joint report on innovation facilitators \(regulatory sandboxes and innovation hubs\)](#). The report sets out a comparative analysis of the innovation facilitators established to date within the EU. The ESAs also set out best practices for the design and operation of innovation facilitators. The number of innovation facilitators in the EU has grown rapidly in recent years. As at the date of the report, 21 EU Member States and three EEA States have established innovation hubs and five EU Member States have regulatory sandboxes in operation. A comparative analysis of these national innovation facilitators is set out in the report and, based on this analysis, a set of best practices has been prepared. The best practices are intended to: (i) promote consistency across the single market in the design and operation of innovation facilitators; (ii) promote transparency of regulatory and supervisory policy outcomes from arising from interactions in the context of innovation facilitators; and (iii) facilitate cooperation between national authorities, including consumer and data protection authorities.

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