Regulatory Impact

Introduction

Regulatory environment is a significant area determining conditions of business development. Modern government establishes a wide range of regulations influencing many aspects of doing business: easy to set up business, supporting programmes, tax reliefs, personal data protection, cybersecurity standards and many other things affecting directly or indirectly the position of a single company or the whole sector. After the communism collapsed, CEE countries have approached standards of legal environment of Western countries. However, the process of transformation determined the different state of legal conditions in all the countries or even caused the creation of specific regulatory solutions.

FinTech sector is currently in a very important point of time. FinTech companies as representatives of innovative branch are much less regulated than traditional financial sector. But on the other hand, taking into account the regulations' tendency to spread its impact on more and more areas, such situation can change in the nearest future. Especially, when FinTech companies will become a more significant part of the whole financial market, the regulatory pressure will rise. The situation of FinTech will be more complicated in the European Union, where companies have to comply with both domestic and European legislations. It can be a significant problem for international FinTech companies that operate in several countries with different regulatory regimes.

In this part we will focus on the state of the regulatory environment in the region as a whole and in each CEE country. We will ask the following questions:

- What are the most important regulatory areas influencing FinTech markets? What is their impact on FinTech companies in the CEE region?
- What are the main opportunities and treats connected with new European legal acts like GDPR and Digital Single Market strategy? How FinTech companies should prepare for the changes introduced by these regulations? What are the main directions of expected changes in the regulatory environment?
- What are the differences between supervision systems in each CEE country? What is the most effective system for FinTech companies development? Are supervision authorities prepared for the introduction of new solutions like regulatory sandbox?
- What are the main regulatory barriers for FinTech companies development? Which areas have already been changed in CEE countries? Which should be changed in the nearest future?

What are main regulatory areas influencing FinTech markets?

Regulatory pressure on FinTech companies is not as strong as in the traditional banking sector. Many of the new regulations implemented by European institutions after the financial crisis are not applicable to FinTech start-ups. The specifics of the activity of the most FinTech companies causes that they cannot be enclosed in traditional legal frameworks. But the role of FinTech start-ups will rise in the next years as their impact on the financial market will. The direction of new regulations will be crucial for their development and the security of their customers.

Till now, the most important regulations concerning FinTech sector and future directions of European authorities were concluded in the *Discussion Paper on EBA's approach to financial technology (FinTech)*, published on August 2017. The document shows that FinTech companies can be in the spotlight of European institutions in the next years. The discussion paper lists regulations that are currently under its scope of activity and influence FinTech companies across the European Union. These regulations are the following:

- the Payment Accounts Directive (PAD);
- the Electronic Money Directive (EMD);
- the Payment Services Directives 1 and 2 (PSD/PSD2)
- the Mortgage Credit Directive (MCD);
- the Capital Requirements Directive IV and the Capital Requirements Regulation (CRD/CRR);
- the Anti-Money Laundering Directive (AMLD);
- the Markets in Financial Instruments Directive 2 and the Markets in Financial Instruments Regulation (MiFID2/MiFIR);

- the Bank Recovery and Resolution Directive (BRRD);
- the Deposit Guarantee Schemes Directive (DGSD).[1]

The EU regulatory framework relevant to FinTech is very highly fragmented. FinTech regulatory concept is only emerging, so there are no exclusive regulations concerning FinTech firms, but a wide range of directives and regulations applied to FinTech business models. The regulatory provisions that are most clearly focused on FinTech are EMD, PSD/PSD II and AMLD. Below, we present the analyse of all of the regulations mentioned above in terms of their impact on FinTech business.

Table 1. The impact of EU regulations on different types of FinTech companies

Name of legal act	Date of the ultimate implementation in Member States	Main types of FinTech companies on which have the legal act an influence
Payment Accounts Directive (PAD)	18th September 2016	• payment services providers • payment accounts comparisons
Electronic Money Directive (EMD)	30th April 2011	• electronic money institutions
Payment Services Directives 1 and 2 (PSD/PSD2)	13th January 2018	• payment services providers • cybersecurity services providers
Capital Requirements Directive IV and the Capital Requirements Regulation (CRD/CRR);	31st December 2013	• credit institutions • insurance firms • investment firms • assets management companies
Anti-Money Laundering Directive (AMLD)	26th June 2017	• payment services providers • deposits management firms • credit institutions • authorisation services providers

Source: own research based on official documents of European Commission and European Bank Authority[2]

As we show above, many of the regulations concern different types of FinTech activity. However, the division is much more complicated because technology is developing faster than legislation. It means that in each category there are companies or even groups of firms that are out of any legal frameworks. In this case their activity depends on the supervisory authority's attitude. It creates the need of better cooperation between technological firms and public administration.

Regulations mentioned above have been already implemented in the European Union or are at the stage of implementation in the Member States. Additionally, we should add to the list two another documents: the Digital Single Market strategy and General Data Protection Regulation (GDPR). The first of them is the complex strategy of The European Commission to ensure better access to digital services for EU citizens and the second is a new law concerning personal data protection in the EU. Both of them will be crucial not only for FinTech development but also the whole technological environment in the European Union.

Supervision authorities' approach towards FinTech start-up's across CEE

Supervision authorities are very important in every sector. These institutions care about the stability of the financial markets and competition. As it was mentioned above, many FinTech companies will depend on the supervision authorities' attitude (and their position on legal aspects of companies' actions). Across CEE countries there are many different supervision systems which depend on the specific conditions of every country. Some of them are based on one, strong institution (e.g. central bank), but in another there

[1] *Discussion Paper on EBA's approach to financial technology (FinTech)*, 4th August 2017, EBA/DP/2017/02, page 12
[2] www.eur-lex.europa.eu
www.eba.europa.eu

are two or even three institutions supervising the whole financial market. Below, we present the review of all supervision institutions in the CEE region.

Table 2. The comparison of supervision authorities across CEE countries

Country	Name	Scope of activity	Main competences
Albania	Bank of Albania	Banks	Drafting and revision of regulations governing entry to the system, prudential operation of banking activities, monitoring financial companies, establishing pro-active policies and strategies for the supervision of individual banks and banking system.[3]
	Financial Supervision Authority	Other than banks financial firms	Granting license for all legal or natural persons that request to exercise their activity in the non-banking financial sector, monitoring the activity of non-banking financial companies.[4]
Bulgaria	Bulgarian National Bank	Banks	Granting license for banking activity and monitoring the activity of banks.[5]
	Financial Supervision Commission	Other than banks financial firms	Drafting and adoption of regulations and instructions provided for in the legislation, monitoring the activity of financial companies and granting licences for financial activity. [6]

Source: own research based on official websites of supervision authorities

It is important to underline that many countries have transformed its supervision authorities in the last two decades. Authorities from CEE countries joined the global trend of integrating the supervision within the framework of one institution (central bank mainly). The structure of supervision is very important especially for FinTech companies which can be classified in more than one sector (companies offering different types of services, e.g. payments and insurance). It reduces the necessity to cooperate with different institutions and the risk of contradictory statements on compliance of the FinTech company. One key institution ensures also the ability to effectively improve legal frameworks for technological firms (one authority can present the consistent legal acts and make valid decisions). The existence of two or three independent institution can be a structural problem for public administration to be as flexible as it is expected by technological companies.

[3] https://www.bankofalbania.org/web/Banking_Supervision_49_2.php
[4] http://www.amf.gov.al/pershkrim.asp?id=5
[5] http://www.bnb.bg/AboutUs/AUMission/index.htm
[6] http://www.fsc.bg/en/functions/