

Legal Framework for Digital Innovation in Financial Services: AI and Data in EU and the Czech Republic

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25th May 2021

Ministry of Finance
of the Czech Republic

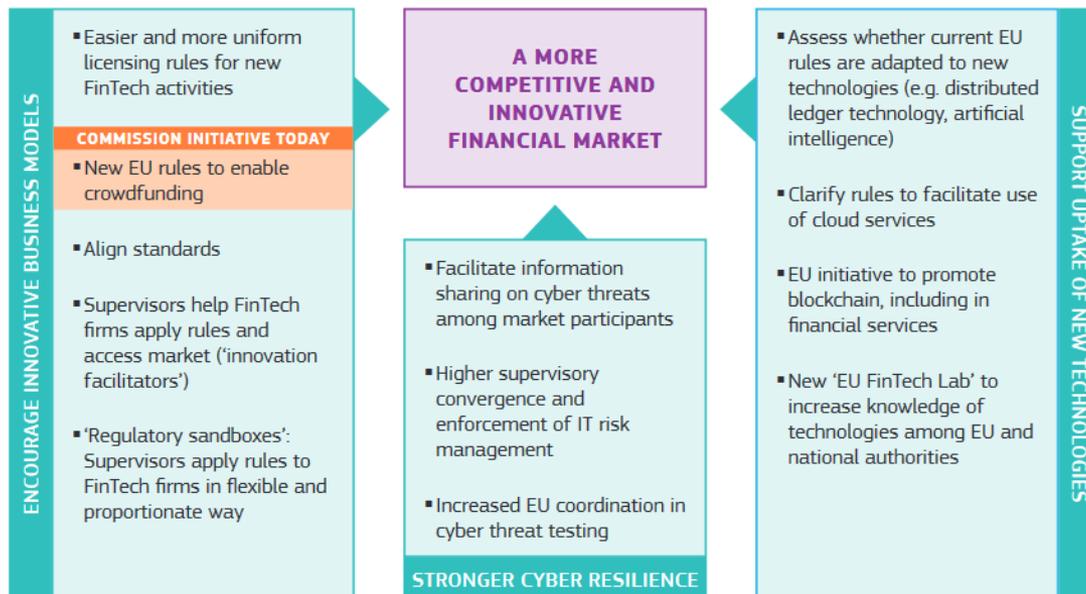


EU and Financial Innovations



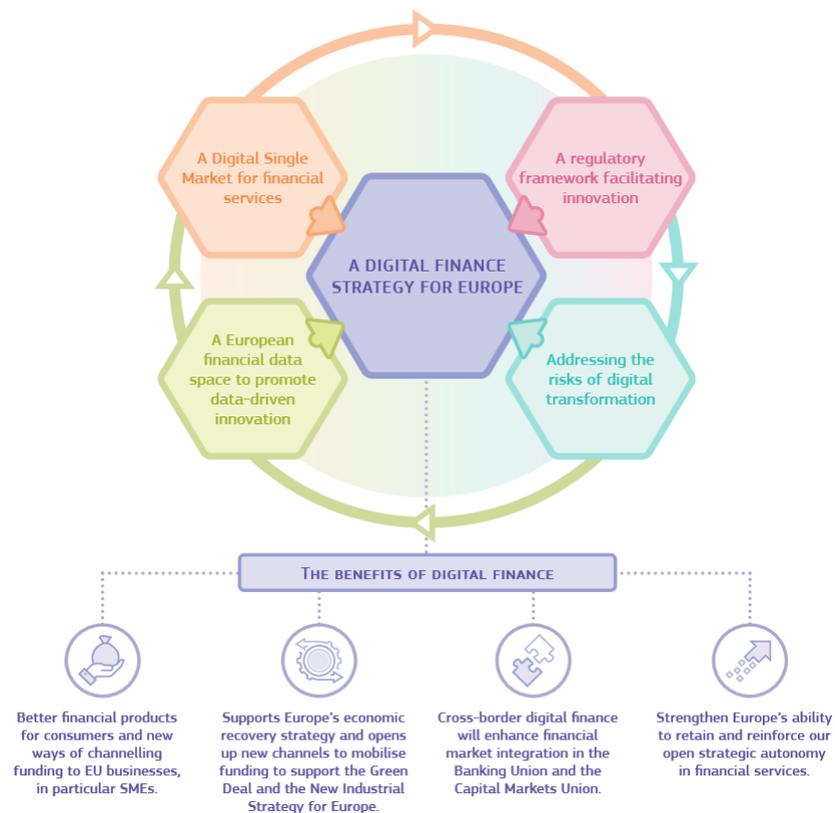
FinTech Action Plan (2018)

- sets out **concrete steps** on how to make the most of rapid advances in technology
- includes forward-looking measures designed to **encourage and simplify the emergence of new FinTech solutions**
- the aim is to foster a **more competitive and innovative European financial sector**, while maintaining **high levels of consumer and investor protection**



Digital Finance Strategy (2020)

- sets out general lines on **how Europe can support the digital transformation** of finance in the coming years, while **regulating its risks**
- sets out **four main priorities**:
 - removing fragmentation in the Digital Single Market;
 - adapting the EU regulatory framework to facilitate digital innovation;
 - promoting a data-driven finance;
 - addressing the challenges and risks with digital transformation, including enhancing the digital operational resilience of the financial system



EU and Artificial Intelligence



EU approach towards AI – non-binding instruments

- so far only **non-binding** instruments have been adopted:
- **Declaration on Cooperation on Artificial Intelligence (2018)**
 - non-binding agreement between EU member states on cooperation in the field of AI
- **Communication from the Commission on Artificial Intelligence for Europe (2018)**
 - highlights the transformative nature of AI technology for the world and calls for the EU to lead the way in the approach of developing AI on a fundamental rights framework
 - motto: *AI for good and for all*
- **Ethics guidelines for trustworthy AI (2019)**
 - sets 7 key requirements that AI systems should meet in order to be deemed trustworthy: (1) human agency and oversight, (2) technical robustness and safety, (3) privacy and data governance, (4) transparency, (5) diversity, non-discrimination and fairness, (6) societal and environmental well-being, (7) accountability



EU approach towards AI – non-binding instruments

- **White Paper On Artificial Intelligence - A European approach to excellence and trust (2020)**
 - a complex non-binding document giving a definition of AI, underlining its benefits in different areas, as well as identifying its potential risks
- **Communication from the Commission on a Digital Finance Strategy for the EU (2020)**
 - the objective is to embrace digital finance for the good of consumers and businesses
 - sets out four priorities for the digital transformation of the EU financial sector: (1) to tackle fragmentation in the Digital Single Market for financial services, (2) to ensure that the EU regulatory framework facilitates digital innovation in the interest of consumers and market efficiency, (3) to create a European financial data space to promote data-driven innovation, (4) to address new challenges and risks associated with the digital transformation
- **Communication from the Commission on Building Trust in Human-Centric Artificial Intelligence (2019)**
 - purpose of this document is to launch a comprehensive piloting phase involving stakeholders on the widest scale in order to test the practical implementation of ethical guidance for AI development and use



EU approach towards AI – non-binding instruments

- **Coordinated Plan on AI 2021 Review (2021)**
 - revision of 2018 Coordinated plan – on the basis of this plan, national AI strategies were adopted by the member states
 - the review puts forward a concrete set of actions on how to create EU global leadership on trustworthy AI (cooperation, research, establishment of testing environments, funding, promotion of AI etc.)
- **Communication from the Commission on Fostering a European approach to Artificial Intelligence (2021)**
 - emphasizes the role of AI in fighting COVID-19 pandemic and its other contributions
 - states risks (particularly to fundamental rights) and opportunities of AI
 - the aim is that EU will be spearhead the development of new ambitious global norms



Draft regulation on a European Approach for Artificial Intelligence: Introduction

- issued in April 2021
- if adopted, it would be the **first binding AI legislation in the EU**
- creditworthiness one of the high-risk:
 - „AI systems intended to be used to evaluate the creditworthiness of natural persons or establish their credit score, with the exception of AI systems put into service by small scale providers for their own use“
- applies to (1) the placing on the market, (2) putting into service and (3) use of **high-risk AI systems**
- also lays down rules for **AI systems intended to interact with natural persons** and **AI systems used to generate or manipulate** image, audio or video content



Definitions

- definition of **AI system**: *software that is developed with one or more of the listed techniques and can, for a given set of human-defined objectives, generate outputs such as content, predictions, recommendations, or decisions influencing the environments they interact with*
- **list of prohibited artificial intelligence practices**
 - AI systems designed or used in a manner that manipulates human behaviour;
 - AI systems designed or used in a manner that exploits information in order to target; vulnerabilities or special circumstances, causing a person to behave, form an opinion or take a decision to their detriment;
 - AI systems used for indiscriminate surveillance applied in a generalised manner to all natural persons without differentiation;
 - AI systems used for general purpose social scoring of natural persons



High-risk AI systems

- **high-risk AI systems**
 - *AI systems intended to be used as safety components of products, or which are themselves products, specified by Annex II, if the product in question undergoes the conformity assessment system*
 - e.g. AI systems used to save lives, for recruitment, for awarding grants, for verifying credibility, for predicting crime, for visa procedures, AI systems used in courts, **AI systems designed to assess the creditworthiness of individuals**
- **requirements for high-risk AI systems**
 - **risk management systems** must be established
 - evaluation of risks and adoption of risk management measures
 - high-risk AI systems must be tested in advance
 - the **outputs** of AI systems must be **possible to verify and trace back**



Draft regulation

- natural persons must be notified when interacting with an AI system
- **an authorisation system** must be put in place for the use of **remote biometric identification systems in publicly accessible spaces**
 - remote biometric identification must serve the objective of preventing, detecting or investigating serious crime and terrorism and be limited to a temporal scope and a geographical scope
- providers must establish and document a **post-market monitoring system**
 - the system must actively and systematically collect, document and analyse relevant data on the performance of high-risk AI systems throughout their lifetime
- providers of high-risk AI systems must **report any serious incidents or any malfunctioning of the AI system** which constitutes a breach of obligations intended to protect fundamental rights
- **codes of conduct** intended to foster the voluntary application of the requirements to AI systems other than high-risk AI systems should be drawn up
- the most serious infringements will be subject to **administrative fines** up to 30 000 000 EUR, or up to 6 % of the total worldwide annual turnover of the preceding financial year, whichever is higher



Draft regulation : support and supervision

- **European Artificial Intelligence Board** (new EU body) will be established
 - **tasks:** supervision of the consistent application of the Regulation, collecting and sharing best practices among member states, providing advice and expertise, monitoring technical and market developments related to AI etc.
- **AI regulatory sandboxing schemes** may be established by national competent authorities and/or the European Data protection Supervisor to facilitate the development and testing of innovative AI systems under strict regulatory oversight before AI systems are placed on the market or otherwise put into service
- states must take special measures to **reduce the regulatory burden for small-scale providers and users (incl. start-ups):**
 - priority access to the AI sandboxes (if they are of similar value compared to proposals of larger companies)
 - specific awareness raising activities tailored to the needs of the SMEs and start-ups
 - establishing hubs within the national competent authorities' organisational structure for informal communication with SMEs and other innovators to provide guidance



Related horizontal EU legislation



Digital Single Market

- DSM is a market in which the free movement of persons, services and capital is ensured and where the individuals and businesses can seamlessly **access and engage in online activities** under **conditions of fair competition**, and a **high level of consumer and personal data protection**, irrespective of their nationality or place of residence
- **strategy of the European Commission** for the best possible access to the online world for individuals and businesses
- three pillars:
 - (1) better access for consumers and businesses to digital goods and services across Europe;
 - (2) creating the right conditions and a level playing field for digital networks and innovative services to flourish;
 - (3) maximising the growth potential of the digital economy
- **related draft legislations: Digital Market Act, Digital Service Act, Data Governance Act**
- **related planned legislation: Data Act**



DMA, DSA

- **Digital Markets Act (DMA)**

- establishes a set of narrowly defined objective criteria for qualifying a large online platform as a so-called "**gatekeeper**"
- gatekeepers have extra **responsibilities** (they must allow third parties to inter-operate with the gatekeeper's own services in certain specific situation, allow their business users to access their data etc.) and **prohibitions** (must not prevent consumers from linking up to businesses outside their platforms, prevent users from un-installing any pre-installed software or app if they wish so etc.)

- **Digital Service Act (DSA)**

- **new rules for online intermediary services** (e.g. transparency reporting, measures against abusive notices and counter-notices or reporting criminal offences)
- the obligations of different online players match their role, size and impact in the online ecosystem (according to a system of four categories)



DGA, Data Act

- **Data Governance Act (DGA)**
 - its main focus is sharing data between individual sectors and EU Member States
 - supporting the development of credible data sharing systems and voluntary data sharing in the public interest, and their recycling
 - creating a system to ensure data neutrality
 - **European financial data space** – the aim is to make Europe's financial services more digital-friendly and to stimulate responsible innovation and competition among financial service providers in the EU
- **Data Act**
 - expected in 2021
 - in order to foster business-to-government data sharing for the public interest, support business-to-business data sharing, and evaluate the IPR framework with a view to further enhance data access and use
 - additional measures regarding rights on access and use of data



Czech Republic

- **National AI Strategy (2019)**
 - covers different areas: support and funding of science and research, the impact of AI on education and the social system, ethical rules, consumer protection, international cooperation
 - introduces tools to support the development of AI in the academic, public and private spheres
 - part of Innovative Strategy of the Czech Republic



<https://www.aiczechia.cz>



Czech Republic: huge amount of FinTech companies



source: <https://fintechcowboys.cz/fintech-scena-2021/>



Ministry of Finance

- **supports financial market innovations**, which will be taken into account when preparing new regulation
- monitors the introduction of the financial market innovations, continuously evaluates their impacts and related risks for consumers, as well as the need for possible legislative changes
- **offers innovation creators the opportunity to consult the compliance** of the intended innovation with the valid or expected legislation and to pass on any legislative and non-legislative initiatives (innovation@mfcz.cz)
- **public consultation** of MoF on financial market innovations
 - March 2020
 - aim: to obtain the professional public opinion on the need and possibilities of innovations' legal regulation in the financial market and the consumer protection
 - the supervisory authority, professional associations, academics and law firms were involved



Thank you for your attention.

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