

Czech Republic

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Approaches and developments

Revolutionary IT solutions are changing the nature of the financial sector globally by pervading all its crucial segments – in particular banks and credit institutions, insurance, funding, capital and financial markets, capital raising, payments and payment services. The rapid growth of the regulatory burden, which accelerated after the 2008 financial crisis, significantly contributed to the evolution of Fintech. For the purpose of this chapter, we will further refer to Fintech with the meaning of technology developments and innovative solutions that are emerging in the financial services sector in any form. A prerequisite to successful and ongoing Fintech development is, without any doubt, a corresponding regulatory response. The establishment of sensible regulation which would promote a favourable level of development and mitigate the corresponding risks to the broadest extent possible at the same time is up to the relevant authorities.

Following the emergence of Fintech companies on the Czech financial market, legal professionals started to discuss the benefits and disadvantages of the implementation of new regulation in the Czech Republic. The development of new rules, however, has not gone beyond discussion among start-ups, incumbents, legislators and the Czech National Bank (CNB), the latter of which has the role of a full-scope regulator of the Czech financial and insurance market. Therefore, we have not, until now, seen a single new law (or other set of rules) reacting directly to Fintech issues, unless previously approved at the European Union (EU) level. The Ministry of Finance (MoF) also actively supports Fintech development in the country. Currently, the MoF participates in the development of the Financial Innovation Hub that is currently being prepared by participants in the Czech financial sector and Fintech companies and should serve the first Czech regulatory sandbox.

The MoF issued three public consultations regarding Fintech topics between 2018 and 2020. The first one looked more generally at various future trends and necessary changes to the regulation of the Czech capital and financial markets. The second, called “Blockchain, virtual currencies and assets (use of blockchain technology for records of securities)” (**Blockchain Consultation**) was more focused and dealt only with the implementation of Distributed Ledger Technology (DLT) into the Czech capital and financial market regulatory environment. The third one, called “The innovation on the financial market and consumer protection”, was focused on Fintech in the Czech Republic, its development and trends (such as Big Data, DLT, Artificial Intelligence (AI), robo-advisory and namely protection of privacy when offering Fintech services). This public consultation was announced in March 2020 and aims to improve current regulatory framework to decrease regulatory barriers for start-ups entering Fintech markets. The outcome of the first two consultations was not materialised in new laws or specific amendments to the current regulatory framework, but instead confirmed

the preference of the regulators that the current legislative framework should be applied also to Fintech issues. We discuss some ideas made in these public consultations below, as these provide the best picture as to what the Czech government and its legislation will likely aim for in the near future.

Besides various efforts for legislative changes, the CNB also regularly provides valuable information for participants and other stakeholders in the Czech capital and financial markets by virtue of producing and publishing official guidance (or statements) and addressing various topical legal issues, through providing answers to reasoned (so-called qualified) questions (formal Q&A tool) of such market participants, their advisers and other stakeholders active in the Czech financial services sector. Apart from creating a special department for payment services and financial innovation which shall assist market participants and the government with preparations for legislative changes, the CNB launched a Fintech contact point. The Fintech contact point aims to promote the introduction of innovative technologies in the Czech financial market through closer, non-public but more interactive communication between the CNB and the incumbent institutions or potential new entrants. According to public reports, the CNB's approach to Fintech is based on three main principles: “(i) *technological neutrality*, (ii) *consistent application of current regulatory rules* and (iii) *openness to discussing individual innovative cases*.”¹ The CNB confirmed that it prefers to deal with market participants on an *ad hoc* basis rather than creating a special innovation hub or regulatory sandbox.

However, the CNB's official guidance and statements or answers to reasoned questions (i.e., guidance available through the formal Q&A tool) are considered *soft law* only and as such do not necessarily set firm cornerstones for potential future legislation in the Fintech area. Above all, currently, while the Czech business sector is rather vocal and, as a priority, demands unification of the rules across the EU to allow start-ups and other companies or businesses to conduct their activities on a cross-border basis, we do not expect Czech legislation to take any steps that would substantially divert the Czech legal framework from any directions made at the EU level.

The minimalistic approach of Czech regulators and legislators is incomparable with regulatory leaders like China, Japan, the UK or the US, which have introduced changes and provide their market participants with ongoing support in the form of sandboxes and other practical measures, making sufficient room for further efforts in implementing new Fintech technologies. By the same token, the lack of new laws or rules does not prevent local Fintech start-ups from disrupting the incumbent local capital markets and financial and payment services environment with a broad range of unregulated technologies and practices.

A good example of a successful initiative is the project SONIA, introduced by the Czech Banking Association (**CBA**). The aim of this project is to create a digital personal identity to be used for online communication between individuals and companies or public institutions. The functionality of the system would allow distance identification of individuals via their banking identity; i.e., log-in details they use for internet banking. For the vast majority of tasks, it can replace an official identity card. In the near future, we may expect to see the possibility of logging into a personalised communications system between individuals and public sector entities or entities needing validation of the identity of their clients. Czech individuals and companies should be able to use their e-identity for identification as well as for other services such as confirmation of minimum legal age when purchasing alcoholic beverages or tobacco products online. This is not a major novelty, but is certainly an important and good step forward, whilst similar systems already function in Canada, Denmark, Sweden and the UAE.² The initiative has been widely accepted and the Czech

Parliament has approved a new Banking Identity Act. To ensure that the IT systems of all model participants will be prepared and competitive, the effectiveness of the Banking Identity Act has been set to 1 January 2021.

Fintech offering

Payments and payment services

The global banking sector has recently experienced significant transformation. Due to the gradual changes in regulation over the past few years, new players have emerged in the market, and the traditional financial institutions as we know them are facing a huge challenge. In order to retain their market power, as the competition increases, these institutions are pushed towards implementing new technologies, innovative features or setting up joint ventures or cooperative agreements with start-ups to provide final customers with high-end services.

Following the implementation of Payment Services Directive No. 2015/2366 on payment services in the internal market (**PSD2**) by the Payment Systems Act, No. 370/2017 Coll., as amended (**PSA**), the Czech banking sector has opened ancillary payment services such as multibanking, payment initiation from payment accounts or account balance verification to third party providers (**TPPs**). Due to delays in the implementation of the regulatory technical standards, the CBA has issued the “Czech Standard for Open Banking” to define more specific rules of the functioning of the open banking system among Czech stakeholders. The main reason was to allow banks and TPPs to prepare their application programming interfaces (**APIs**) and add-on applications to a common standard, and evade increased costs due to versatile implementation of PSA rules. The use of the standard is voluntary; hence, several banks have already prepared their APIs in line with its recommendations. Nevertheless, the implementation has not been made across the banking sector in completely the same manner and, as such, TPPs may need to amend their applications in line with systems of individual banks.

According to the CBA, the main benefits are the integration of TPPs’ applications into banks’ systems, uniform interpretation of the PSA, compliance with the content of the transmitted data and security elements in communication with banks, support for the unified functioning of services for clients across banks, and timely readiness for the implementation of the new regulatory rules, provided that the banks maintain a certain degree of freedom in the creation of their own systems.³ To allow communication between a TPP application and a bank’s API, the TPP must authorise itself so the bank has ensured that the TPP is indeed the party with whom the bank’s system is communicating. For this purpose, the TPP must obtain an electronic certificate containing its private identity. After preliminary discussions, the Czech payment services market has decided on the certificates that will be used. A prerequisite for successful authentication is, therefore, the use of a qualified certificate of the QSEAL (electronic seal) or QWAC (Qualified Website Certificate) issued according to the ETSI standard by company I. The Certification Authority (*První certifikační autorita, a.s.*) provides services as the certified authority for the purposes of the PSD2 and eIDAS Regulation (EU) No. 910/2014, which is implemented by the Act on Services Creating Trust for Electronic Transactions, No. 297/2016 Coll.

Virtual currencies and assets

Closely related to payment services are virtual assets recorded on a distributed ledger; i.e., virtual currencies such as Bitcoin or virtual assets (or crypto-assets) produced as utility tokens or security tokens. In January 2019, both the European Banking Authority (**EBA**) and the European Securities and Markets Authority (**ESMA**) released reports⁴ on crypto-

assets, according to which the majority of crypto-assets, potentially apart from only utility tokens and the like, would qualify as financial instruments (and potentially as transferable securities)⁵ under Directive of the European Parliament and the Council No. 2014/65 on markets in financial instruments (**MiFID2**).

Based on the ESMA report, the determination of whether MiFID2 applies is crucial, because the applicability of MiFID2 can trigger: prospectus requirements; transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, if applicable, as implemented in the Czech Republic in the Capital Market Act, No. 256/2004 Coll., as amended (**CMA**); or rules prohibiting certain trading techniques on regulated markets under Regulation No. 596/2014 on market abuse. The applicability of the conclusions set out in the ESMA report will depend on the structure and governing law of the crypto-assets to be offered and sold in the Czech Republic. In August 2019, the ESMA and the EBA (together the **ESA**) published a letter⁶ outlining some of their work streams on crypto-assets. Their strategy consists of (1) engagement with international regulatory authorities on matters such as the prudential treatment on banks' exposures to crypto-assets and the regulatory treatment of crypto exchanges and trading platforms; (2) notice of launching a new stocktaking exercise of Member State national regimes applicable to crypto-assets; and (3) discussion about the topic of stablecoins. Further, the EBA in its 2019 report⁸ categorically stated that stablecoins could be considered as e-money, if they are exchanged for fiat currency and pegged to it.

Pursuant to Czech civil law, coins or tokens, as usually issued through initial coin offerings (**ICOs**) or security token offerings (**STOs**), running on a distributed ledger, do not fall under the definition of a security and as such are not considered to be investment instruments in the meaning of the CMA.⁷ Consequently, they do not trigger prospectus requirements, transparency requirements or market abuse regulation and generally may be offered and sold to the Czech public without any further consents or licences. Although this interpretation is formalistic, the CNB has already confirmed on several occasions that it is of the same opinion.⁸ Regardless of the above, coins and any kind of tokens may be incorporated into a financial derivative and as such are to be subject to general regulation of investment instruments in accordance with the CMA.

The Czech regulation of investment services relating to virtual currencies or assets is rather less demanding; therefore, an establishment of an ICO or a crypto-currency trading platform does not trigger capital markets regulation. On the contrary, public offer of coins or tokens so issued cannot be easily extended outside the Czech Republic as passporting of their prospectus under the single EU prospectus regulation framework into another EEA Member State cannot be made. For structuring a public offer, we recommend undertaking specific legal analysis of the applicable Czech and other potentially relevant foreign rules.

The EBA report focuses more on the possibility of classifying crypto-assets as electronic money within the meaning of Directive No. 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions (**EMD2**) or as funds under the PSD2.

The CNB has not indicated its position in relation to those reports as of yet; however, various parties answering to the Blockchain Consultation called for the preparation of brand new bills, or at least some legislative amendments in the area of virtual currencies or assets, in light of and in accordance with the conclusions set out in the EBA and ESMA reports.

According to the CNB's public statements issued in 2014 and 2018,⁹ virtual currencies or STOs are not considered scriptural money or electronic money in the meaning of the PSA.

Accordingly, they are out of the scope of payment services regulation. Together with the CNB's statements as discussed above, trading with pure virtual currencies (i.e. not forming a part of a financial derivative) is not considered a regulated activity and therefore does not fall under the supervision of the CNB. This conclusion is, in our view, analogically applicable also to stablecoins regardless of the initiative pursued by the ESA.

Last but not least, pursuant to the Czech AML rules set out in the Act on selected measures against legitimisation of proceeds of crime and financing of terrorism, No. 253/2008 Coll. (**Czech AML Act**), any person who purchases, sells, keeps, manages for a third person or intermediates the purchase or sale of virtual currency, or otherwise provides other services related to the virtual currency,¹⁰ is an obliged entity for Czech AML Act purposes, and as such must comply with the AML rules enacted to help detect and report suspicious activity. It is debatable whether the issuer of tokens or coins is an obliged entity if its business activity is not sale, purchase, preservation, administration for another person, or the meditation of the purchase or sale of cryptocurrency units. While such issuers are not obliged entities according to Directive (EU) 2018/843 of the European Parliament and of the use of the financial system for the purposes of money laundering or terrorist financing (**5th AML Directive**), the current wording of the Czech draft bill implementing the 5th AML Directive actually nominates these persons among the obliged entities. The draft bill also amends the definition of a virtual currency to a virtual asset, as recommended by the Financial Action Task Force (**FATF**) to emphasise the investment function of virtual assets.¹¹ This certainly implies that further specific advice should be sought and obtained on various AML-related obligations.

Money exchange

In the case of money exchange offices, we have seen a few attempts to innovate provision of their services on the Czech market lately as well. These businesses each launched an application through which customers (both corporate and private) may exchange their money for dozens of foreign currencies and compare the exchange rate that they offer with the exchange rate of any other bank on the market.¹² No specific money exchange regulation addressing Fintech in this sector has been promoted in the Czech Republic.

Capital raising

Various forms of capital raising have originated on the Czech capital and financial markets, including P2P lending platforms or crowdfunding platforms which offer direct or indirect participations, or plain vanilla notes or structured notes (or investment certificates) issued by start-ups or other marketed companies.

The regulation of each of these platforms heavily depends on the instruments and services it offers. The P2P lending platforms usually possess a light regime licence for the provision of certain payment services under the PSA, or they may also apply for intermediation or provision of consumer loans under Act No. 257/2016 Coll., on Consumers Loan, as amended (**Consumer Loan Act**), where necessary. Crowdfunding platforms may be subject to the CMA or, if they do not offer services connected with investment instruments under the CMA, they may provide their services without an investment firm licence. However, under Section 98 of Act No. 240/2013 Coll., on Management Companies and Investment Funds, as amended (**MCIFA**) none of these platforms may collect funds from the Czech public for their further reinvestment, provided that profit from the investment is based on performance of underlying assets into which the collected funds were invested, unless done in line with the MCIFA. This rule effectively prohibits the creation of structures that economically constitute collective investments but are not registered as investment funds and prevent disruptions in the collective investments sector, unless a specific example applies.

According to the CNB's statement on collective funds and an ICO¹³, the mining process of validating transactions in a cryptocurrency network is not qualified as the provision of financial services. Thus, mining of coins or tokens would generally fall outside the regulation of collective investing under the MCIFA.

Besides the applicable regulation, the platforms must comply with civil law rules, consumer protection rules and marketing rules, and pay taxes in line with applicable legislation.

Client services and internal processes

Besides the product or service innovations described above, it is necessary to also briefly address innovation focused on customer experience when approaching financial services and related internal processes. Customers' needs are coming into the spotlight, which brings opportunity for adaptable Fintech businesses that are able to offer non-traditional and often easier ways to manage their finance and any other related services.

One of the leading Czech banks has recently implemented several bots that help to process internal data in many different areas, especially in processing clients' requests and responding to their questions. Similar systems are also planned to be implemented in the areas of human resources, employment management or advisory services regarding personal investments.

Customers' needs are further targeted by a number of Fintech start-ups that provide online applications, ranging from digital wallets for special purchases or as a replacement for pre-paid card services such as pocket-money apps for children, personal finance apps and cash-back sites to various apps in the crypto universe.

Regulatory and insurance technology

RegTech tools

The emergence of RegTech is attributable to the growth of technological solutions, which may also be applied to regulatory processes in order to address challenges that regulators face. In this sense, the CNB has implemented the so-called "MKT tool" for the purposes of supervision of behaviour of regulated entities active on the Czech capital markets. The MKT tool allows the CNB to process the huge amounts of data received under the local regulation implementing MiFID2, MAR and ancillary regulation governing actions on the Czech capital markets. The purpose of the MKT tool is to monitor potential market abuses and to protect clients active on the Czech capital markets. The participants simply deliver the CNB raw data about their trades and orders, and the CNB then controls the output processed by the MKT tool. As the participants send the data regularly, the delay between the actual trades and supervisory actions is rather short. The MKT tool is also able to include data sources from other EU information exchange mechanisms and to deliver automatic alerts generated on a daily basis.¹⁴

In the area of regulation of ICOs, STOs and other Fintech frontiers, the CNB remains rather reluctant and its cautious approach unambiguously prevails. Therefore, the crucial question of whether the ICOs shall be regulated or not remains unsettled, and the CNB has adopted a wait-and-see approach. Nevertheless, to prevent potential market disruptions, the CNB is thought to be using a special tool for initial assessment of ICOs and STOs and their potential impact on the Czech financial market. The tool is called Blackbox (ICO analysis) and shall serve as an initial assessment as to whether an ICO or a STO has a link to the Czech Republic.¹⁵ As this RegTech application is for the CNB's internal purposes only, there is not much information about its functioning available to the relevant stakeholders, let alone the general public.

InsurTech tools

The Czech insurance industry is also reshaping under the emerging technology trends. Some

Czech insurance companies have started implementing chatbots together with online sales of insurance products in their portfolios.¹⁶

Further, a cooperation between insurance companies and start-ups has started functioning in the Czech insurance sector. One interesting project has led to the creation of a new flexible life insurance product that can be purchased or terminated immediately via an online application and offers discounts on insurance premiums for a healthy lifestyle.

Another tool developed by a Czech start-up is a system that can impartially evaluate the pros and cons of each insurance contract (simply by uploading an image of the contract) and utilises a database of various insurance contracts available across the Czech insurance market. Once the contract is uploaded, the tool runs an independent assessment and notifies the client if a more suitable insurance contract was found. The client is then provided with information about the particular insurance company and the alternative insurance conditions.¹⁷

A third interesting InsurTech tool enables entrepreneurs to insure payments from invoices they issue. After submitting the invoice, the insurance start-up takes over control of its administration and undertakes to pay out a certain percentage of the issued amount to the insured entrepreneurs if the customer fails to pay it.¹⁸

All of the aforementioned projects have been made in cooperation with Czech insurance companies, whereas the start-ups participated in the cooperation schemes either as non-regulated entities or as insurance intermediaries that do not have to have such robust internal processes. Accordingly, on the basis of publicly available information, the CNB or the legislator did not have a reason to amend the relevant insurance legislation as the insurance companies are, under the Insurance Act, No. 277/2009 Coll., obliged to comply with outsourcing rules anyway.

The discussion among businesses and the professional public is currently moving towards the deeper implementation of the Internet of Things into the daily business models of insurance companies. It is, therefore, very likely that future innovations in InsurTech will be focused in this way.

Regulatory bodies

Supervision of the financial sector and system

There are two main regulatory authorities in the Czech Republic: the MoF, which is responsible mainly for preparation of legislation; and the CNB. The CNB is the central bank of the Czech Republic and the sole national competent and supervisory authority for the capital and financial markets and the entire financial sector and system in the Czech Republic.

Under the Czech Constitution, the CNB exercises its powers directly without any consultations or approvals of other Czech (or European) authorities. In accordance with the Act on the Czech National Bank, No. 6/1993 Coll., as amended (**CNB Act**), the CNB supervises, primarily, the banking sector, capital markets, insurance industry, pension funds, credit unions and payment system institutions.¹⁹ Additionally, the CNB has further powers derived under the Act on Capital Market Supervision, No. 15/1998 Coll., as amended, as well as other special laws and rules regulating the individual sectors of the Czech financial system.

The CNB, acting as the sole national competent and supervisory authority for the Czech financial sector and system, is empowered to supervise activities that are classified as regulated activities according to applicable laws and rules – i.e. activities that are subject to registration or licensing. In other words, if an activity conducted by any Fintech business or entity cannot be classified as a regulated activity, supervision of the CNB cannot be derived from the

applicable laws and rules and it is therefore simply out of its scope. The actual use of new technology or implementation of any innovative aspects is then not so relevant.²⁰

As already mentioned in the opening part of this chapter, in October 2018 a new payment services and financial innovations department was established within the CNB. This department is currently responsible, amongst others, for Fintech regulation on the national level and monitoring of developments in the area of financial market innovation, including virtual or crypto-assets and distributed ledger technology.²¹ The current approach of the CNB towards any potential Fintech regulation can perhaps best be described as active monitoring of the market, and supporting the development of Fintech through the creation of the Fintech point with the possibility to consult regulatory matters with the CNB. In any case, the CNB currently (or for the time being) does not seem to be overly active or otherwise keen to create special rules or a standalone regulatory framework for any Fintech businesses or activities, but at the same time expects that, to the extent that any such businesses or activities would fall within the ambit of the existing laws and rules, they would be complied with.²²

The approach of the CNB is, of course, significantly affected by any relevant approaches taken at the EU level. This would definitely influence the CNB's position towards Fintech. In March 2018, the European Commission released its Fintech Action Plan,²³ which aims to encourage implementation of new technologies in the financial sector and increase cybersecurity and integrity of the financial system.

In all these areas, the CNB also cooperates with the EBA, the ESMA, the European Insurance and Occupational Pensions Authority (**EIOPA**), the International Organization of Securities Commissions (**IOSCO**) and others,²⁴ whilst the CNB's longstanding best practice has been to implement and follow all opinions, guidance and other soft law documents issued or announced by these agencies in the course of its supervisory and decision-making practice.

Consumer protection

The CNB also supervises consumer protection in relation to entities, which it is obliged to supervise under the CNB Act, or entities licensed under special rules (e.g. investment funds, insurance or reinsurance companies or settlement system operators). The core areas of consumer protection law that are supervised by the CNB are: (i) prohibition of unfair commercial practices; (ii) consumer discrimination; (iii) provision of information about pricing; and (iv) overall compliance with applicable consumer protection regulation, including the consumer finance sector.

In respect of certain entities, the consumer protection supervision used to also be performed by the Czech Trade Inspection Authority (in Czech, *Česká obchodní inspekce*) (**CTIA**). The CTIA focused mainly on supervising these businesses and individuals during the negotiation of consumer credit, and their compliance with applicable legal rules.

Data protection

In the Czech Republic, the area of data protection is supervised by the Office for Personal Data Protection (in Czech, *Úřad pro ochranu osobních údajů*) (**OPDP**), which is responsible mainly for the supervision of compliance with the broad variety of obligations applicable to the entities that process personal data under Regulation of the European Parliament and the Council No. 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (**GDPR**), maintenance of the register of notified data processing operations, and dealing with initiatives and complaints from citizens relating to data protection.²⁵ In the case of breach of any obligation under GDPR, the OPDP is empowered to impose administrative fines on violators.

Anti-money laundering

The competent authority supervising the anti-money laundering activities under the Czech AML Act is the Financial Analytical Office (in Czech, *Finanční analytický úřad*) (**FAO**). Besides the monitoring of suspicious market activities, the FAO is also responsible for the preparation of various legislative acts, reports and analyses relating to AML/CFT.

Intellectual property rights

Since the Fintech area is also associated with intellectual property rights, the Industrial Property Office (in Czech, *Úřad průmyslového vlastnictví*) is empowered to provide protection in this regard. The protected right will in most cases be the right to protection of software. The Czech law provides many various possibilities for software protection; for example: copyright under Act No. 121/2000 Coll. – on copyright; patentable invention according to Act No. 527/1990 Coll. – the patent act; and its features as a utility model or registered trademark.

Protection of competition

The authority responsible for supervision of competition, public procurement and state aid is the Office for the Protection of Competition (in Czech, *Úřad pro ochranu hospodářské soutěže*) (**OPC**). If any of the predetermined events or thresholds are triggered, the OPC is empowered to act regardless of whether or not a Fintech business is concerned.

Key regulations and regulatory approaches

Since there has been no special regulation adopted so far, generally applicable laws and other rules shall apply in relation to Fintech businesses and activities. The applicable regulations are therefore fragmented and each area or particular aspects are regulated separately. This section aims to provide a general overview of the relevant laws and regulations for each area – both Czech laws and rules and directly applicable EU regulations.

Banking and insurance sector

- Act No. 21/1992 Coll., on Banks, as amended;
- Act No. 87/1995 Coll., on Credit Unions, as amended;
- Act No. 374/2015 Coll., on Recovery and Resolution in the Financial Market, as amended;
- Act No. 257/2016 Coll., on Consumers Loan, as amended;
- Regulation (EU) No. 575/2013, on prudential requirements for credit institutions and investment firms (**CRR**) including all related delegated regulations;
- Act No. 277/2009 Coll., Insurance Act, as amended;
- Act No. 170/2018 Coll., on Distribution of Insurance and Reinsurance, as amended; and
- various other related or implementing laws, decrees or regulations.

Payments and payment services, electronic money

- Act No. 370/2017, on Payment Systems, as amended;
- Act No. 89/2012, Civil Code, as amended; and
- various other related or implementing laws, decrees or regulations.

Capital markets and securities

- Act No. 256/2004 Coll., on Undertaking Business in the Capital Markets, as amended;
- Act No. 15/1998 Coll., on Capital Market Supervision, as amended;
- Act No. 190/2004 Coll., on Bonds, as amended;
- Act No. 240/2013 Coll., on Management Companies and Investment Funds, as amended;
- Regulation (EU) No. 596/2014, on Market Abuse, as amended;
- Regulation (EU) No. 600/2014, on Markets in Financial Instruments, as amended;

- Regulation (EU) No. 1129/2017, on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market; as amended; and
- various other related or implementing laws, decrees or regulations.

Anti-money laundering and combatting the financing of terrorism

- Act No. 253/2008 Coll., on Selected Measures against Legitimation of Proceeds of Crime and Financing in Terrorism, as amended;
- Regulation (EU) No. 2015/847, on information accompanying transfers of funds, as amended;
- Decree of the CNB No. 67/2018 Coll., on Selected Requirements for the System of Internal Rules; and
- various other related or implementing laws, decrees or regulations.

In the Czech Republic, the idea of regulatory sandboxes set by the regulator where Fintech businesses may test their products or services in a controlled environment is currently (or for the time being) only a matter of public debate and discussion among relevant stakeholders. There have been several attempts to bring this up with more parties or the general public – especially various public discussions and conferences organised and realised by the Czech Fintech Association or Institute of State and Law of the Czech Academy of Sciences – but these calls remain, in most cases, unheeded.

The good news is that the CNB holds quite a liberal view on regulatory sandboxes, innovation hubs and other similar initiatives, as long as the principle of equal treatment is sustained and technological neutrality ensured. On the other hand, according to the CNB, since there is no clear distinction between financial institutions in the traditional meaning and Fintech businesses, there is no reason to create a “softer” regulatory environment and more vague conditions for selected market participants. Hence, there are no innovation hubs, Fintech incubators or any other similar concepts that have been implemented by the CNB so far.²⁶

We are not aware of any shift in attitude in the way the Czech Republic has historically approached Fintech regulation. That is also very likely the reason why there is no big push for changes in the applicable Czech financial sector and system regulation.

Restrictions

The major advantage of the CNB being a bit reserved, or more relaxed, is that no specific restrictions and limitations that would have been imposed over Fintech businesses were created. Therefore, the standard licensing requirements and procedures will have to be applied.

Any Fintech business providing payment services or issuing electronic monies as contemplated by the PSA is obliged to obtain a licence from the CNB. The same applies to potential licensing obligations under the CMA with respect to services and activities that are regulated thereunder, such as provision of investment services dealing in investment instruments or execution of orders in relation to investment instruments. On the other hand, those Fintech activities that do not fall within the applicable rules under incumbent laws and regulations will very likely not trigger any other administrative requirements, such as a necessity to obtain permissions or licences.

Cross-border business

EU regulation generally provides EEA (Fintech) companies with the opportunity to provide regulated services or conduct regulated activities in any other EEA Member State on the basis of a passport. A passport operates as a single licence concept which enables EEA

companies to provide their services on the territory of another EEA Member State without the obligation to obtain any licence or permission. The traditional licensing requirement is replaced by notification of the home-state regulator, addressed to the host-state regulator. There are two ways that passporting can happen – the company may establish a branch in the host-state or provide its services on cross-border basis. Entities that may passport their licence include, for instance, credit institutions, payment institutions, investment firms and credit intermediaries. Besides the general laws of the host-state, the home-state prudential rules will apply in respect of passported activities. To the contrary, entities that are not allowed to passport their licence (entities from third countries in particular) need to establish a branch in the Czech Republic and obtain the relevant licence from the CNB in order to conduct the regulated activities on the territory of the Czech Republic.

There is no doubt that Fintech requires proper cross-border regulatory co-operation. Globally, there have been several bilateral memoranda of understanding established and adopted in order to facilitate regulatory cooperation in the area of Fintech. Most of these activities relate to the activities of the IOSCO. Even though the CNB is an IOSCO member, cooperation in the area of Fintech has not affected the Czech Republic in any regard so far and, formally, there have been no Fintech bridges created between the Czech Republic (or the CNB) and any other country (or its relevant authority) yet.

The CNB closely cooperates with several EU bodies and agencies which subsequently play a significant role in its decision-making. The influence of its approaches is significant, especially when it comes to EBA and ESMA. Both EBA and ESMA are empowered to adopt technical standards in relation to specific regulations or directives which are binding for all EU Member States, as well as non-binding soft-law documents like guidelines, recommendations, opinions and reports that serve as useful sources of information not only for the regulators.

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Endnotes

1. Available at: https://www.cnb.cz/export/sites/cnb/en/public/.galleries/media_service/conferences/speeches/download/tomsik_20180907_sochi.pdf, p. 3.
2. Press release available at: <https://www.czech-ba.cz/cs/media-servis/tiskove-zpravy/projekt-sonia-bankovni-identita-jako-nova-digitalni-obcanka-pro-sluzby-statu-i-soukromych-firem> and article available at: <https://www.lupa.cz/clanky/prihlasovani-k-sluzbam-pres-internetbanking-jak-bude-fungovat-sonia/>.
3. Available at: <https://cbaonline.cz/cesky-standard-pro-open-banking>.
4. EBA: <https://eba.europa.eu/documents/10180/2545547/EBA+Report+on+crypto+assets.pdf>. ESMA: https://www.esma.europa.eu/sites/default/files/library/esma50-157-1391_crypto_advice.pdf.
5. The term “transferable security” has the same meaning as in MiFID2.
6. Available at: https://www.esma.europa.eu/sites/default/files/library/esma50-164-2554_joint_eba_esma_reply_to_vp_dombrovskis_re_crypto-assets.pdf.
7. The term “investment instruments” imitates the term “financial instruments” in MiFID2 without relevant changes, and as such they may be understood interchangeably in this chapter.
8. Also Dědič, J. *et. al.*, *Proč podle českého soukromého práva nelze uvažovat o (ICO) tokonech jako cenných papírech*. Právní rádce, 15-16/2018, pp. 554–556.

9. Available at: https://www.cnb.cz/export/sites/cnb/cs/casto-kladene-dotazy/.galleries/stanoviska_a_odpovedi/pdf/regulace_investicnich_fondu.pdf and https://www.cnb.cz/export/sites/cnb/cs/casto-kladene-dotazy/.galleries/stanoviska_a_odpovedi/pdf/k_obchodovani_s_prevodnimi_tokeny.pdf.
10. Pursuant to Section 2(1)(l) of the Czech AML Act, virtual currency means an electronically stored unit, whether or not it has an issuer, and which is not a payment instrument under the PSA, but is accepted as payment for goods or services by another person different from its issuer.
11. Recommendation 15 sets out that “to manage and mitigate the risks emerging from virtual assets, countries should ensure that virtual asset service providers are regulated for anti-money laundering and counterterrorist financing purposes, and licensed or registered and subject to effective systems for monitoring and ensuring compliance with the relevant measures called for in the FATF Recommendations”.
12. Available at: https://www.cnb.cz/export/sites/cnb/cs/casto-kladene-dotazy/.galleries/stanoviska_a_odpovedi/pdf/regulace_investicnich_fondu.pdf.
13. More information is available at: <https://www.roklen.cz/roklafx/jak-to-funguje>.
14. Available at: https://www.cnb.cz/export/sites/cnb/en/public/.galleries/media_service/conferences/speeches/download/tomsik_20180907_sochi.pdf, p. 8.
15. *Ibid.*
16. See, e.g.: <https://www.lupa.cz/aktuality/axa-v-cesku-spousti-chatbota-pro-messenger-sjedna-vam-cestovni-pojisteni/>.
17. More information is available at: <https://www.mujsok.cz/>.
18. More information is available at: <https://pojistenafaktura.cz/#jak-to-funguje>.
19. More information is available at: <https://www.cnb.cz/cs/dohled-financni-trh/>.
20. The CNB’s Report on performance of supervision on the financial market, 2017.
21. Available at: <https://www.cnb.cz/cs/cnb-news/tiskove-zpravy/Agendou-FinTech-se-bude-v-CNB-zabyvat-sekce-regulace-a-mezinarodni-spoluprace/>.
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25. Available at: <https://www.uouu.cz/dozorova-cinnost/ds-1277/p1=1277>.
26. Available at: <https://www.ilaw.cas.cz/uvod/aktuality/regulatory-sandboxes.html>. See also <https://www.cnb.cz/en/public/media-service/speeches-conferences-seminars/speeches/balancing-fintech-opportunities-and-risks-implementing-the-bali-fintech-agenda/>.

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