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**MINISTER FOR INDUSTRY,
BUSINESS AND FINANCIAL
AFFAIRS**

Response to the Commission's public consultation on FinTech

We welcome the opportunity to respond to the Commission's public consultation "FinTech: A more competitive and innovative European financial sector".

The current progress in the FinTech industry is showing the potential to significantly change the landscape of finance as both well-established financial institutions and new start-ups explore different ways to integrate new technologies and digital solutions into financial services. As lawmakers, we must support the efforts of the FinTech industry to create growth and jobs in Europe by providing the right framework conditions regarding digitalization and innovation while continuing to ensure financial stability and consumer protection.

The FinTech market is still at an early stage and is undergoing rapid developments. It is therefore difficult to predict which services will succeed and which will not, and generally, national and EU regulators should not assume the role of picking the winners. It is of paramount importance that the regulation is proportional and open to new market actors and innovative business models. We should therefore ensure that the legislation is simple and transparent, whereby new actors know how to navigate in the financial landscape.

The Commission's work on the Better Regulation agenda is especially relevant in this regard. Simplified regulation would benefit new market actors with little or no experience in financial regulation and is furthermore expected to foster innovation in the financial sector.

It's important to keep in mind, however, that better and simpler regulation is not equivalent to lowering regulatory standards. Financial stability should not be jeopardized in the process.

In light of the considerations above, Denmark supports the core principles laid out in the Commission's consultation paper, i.e. that EU policies should be technology-neutral, proportional and integrity-enhancing.

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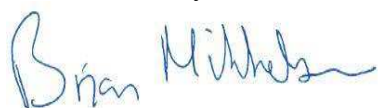
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Finally, we find that there is a need to coordinate FinTech efforts across European institutions and to share best practices among Member States. In our view, the Commission should be a strong partner in this regard.

For comments on the specific themes set out in the Commission public consultation, please see the attached annex.

Yours sincerely,

A handwritten signature in blue ink that reads "Brian Mikkelsen". The signature is fluid and cursive, with the first name "Brian" being more prominent than the last name "Mikkelsen".

Brian Mikkelsen

Minister for Industry, Business and Financial Affairs

Annex – DK answer to questions

1. Fostering access to financial services for consumers and businesses

Digital solutions have already improved access to financial services for consumers and businesses, e.g. through internet banking and new payment methods. These developments have generally brought significant improvements to the efficiency of the sector. New FinTech solutions have the potential to bring an even larger number of choice, cheaper and better products and improved access to financial services for consumers. In order to do so, however, it is important that the new business models are supported by a well-functioning legal framework. A simple and transparent regulatory framework would be especially beneficial to FinTech start-ups with little or no experience with financial regulation.

It is also important to recognise that many FinTechs provide services that are currently not regulated, i.e. by providing technical services or customer-facing interfaces on top of financial services provided by regulated financial entities. Additional regulation might not be beneficial for the development of such services.

This being said, a more precise and widely used definition of FinTech is needed in order to have a common understanding of what it entails. In the current debate the term is used to describe both the continued expansion of new digital technologies among established financial business as well as the introduction of new actors and business models. Establishing a common understanding of the concept would help focus the discussion on the best way to handle these developments in terms of the regulatory and supervisory framework.

Crowdfunding

In general, we do not believe that it is necessary to adopt specific crowdfunding regulation. However, the Commission could map existing national regimes with the aim to identify best practices.

Some Member States have developed national crowdfunding regimes while others regulate crowdfunding through directives such as PSD or MIFID. In Denmark, lending-based crowdfunding has typically been regulated through the Danish Act on Payment Services and Electronic Money, with such providers having to obtain a payment institution license to carry out their activities.

Regarding equity-based crowdfunding, a number of Member States have implemented national regulatory regimes. Even though it has been highlighted as an effective method for financing startups and SMEs and is

increasingly used in different Member States, equity-based crowdfunding has not become widespread in Denmark.

Aligned national practices may have the potential to increase investor protection and ensure easier access to financing for SMEs. In the absence of aligned national practices, equity crowdfunding might lose its potential as a user-friendly activity and feasible financing method for SMEs.

The diversified national practices are likely to have affected the development of the crowdfunding market in a number of ways. Primarily, it has made it difficult for crowdfunding to obtain a pan-European reach, as there has not been an established common understanding on the passporting regime for crowdfunding platforms. This makes it difficult for crowdfunding platforms to grow out of their respective home markets.

Following this, in our view it would be beneficial to align the national approaches to crowdfunding. This, however, does not entail a need for new legislation, but rather through a better mutual understanding and recognition of the existing regulatory framework. To this end, the Commission or the ESAs could play a role in reaching common foothold.

Data analytics in insurance

Insurance companies increasingly adopt new technologies in order to improve their businesses. European supervisors should follow the technological advancements in the insurance sector closely in order to identify potential issues which should be addressed. We have not yet identified specific areas where regulatory action is needed. If such areas are identified, however, national supervisors need a forum to exchange information and to discuss position actions, e.g. in EIOPA.

So far, we have not seen any examples that the use of sensor data analytics is providing any major changes in the market for insurance products. However, we believe that some solutions might lead to distortions in the insurance market. The obvious cases are in life-insurance, where DNA-samples (currently banned in Danish legislation) or activity bracelets, that monitor physical activity, are required to obtain insurance at a fair price. This can lead to difficulties for some groups of people to obtain insurance and hence give rise to a major challenge.

Consumers

New business models and technological developments have the potential to empower consumers to make decisions that are more informed due to more market transparency and through more tailored financial products. However, financial consumer regulation should make it possible to use technology to empower consumers. In general, the intended consumer

protection behind information disclosure requirements and the actual observed consumer behavior is often not aligned.

The rationale behind full disclosure of information is to provide adequate information in order for consumers to understand their choice and be able to make an informed decision. However, an important challenge is that according to the relevant regulations the information must be disclosed all at once, hindering the ability to create innovative solutions that could make it easier for consumers to understand the conditions of the product or service being sold to them – e.g. by presenting it in a more user-friendly way.

We believe that insights from behavioral economics could lead to better information requirements that help consumers to navigate in the disclosed information, as presented in a non-paper by the Danish Minister for Industry, Business and Financial Affairs at the Competitiveness Council meeting on May 29 2017.¹ It should therefore be considered reviewing the Directive on electronic commerce (2000/31/ED), the Directive on consumer credit (2008/48/EC) and the Directive on credit agreements for consumers relating to residential immovable property (2014/17/EU) for REFIT purposes, with a particular focus on improving the information disclosure requirements.

2. Bringing down operational costs and increasing efficiency for the industry

Digital technologies have a huge potential for increasing efficiency in financial services. However, businesses relying on digital solutions should not solely be a matter of cost-savings but need to take into account new risks arising from further digitalization. Therefore, an increased focus on technological skills will be needed both in the industry and for supervisors. Furthermore, supervisors may need to focus more on supervision with the underlying technological aspects of financial institutions. The rising digitalization of the financial sector creates new demands, also on supervisors, to address risks related to cyber security.

Outsourcing and cloud computing

Outsourcing to e.g. cloud computing services can offer a cost effective business case for financial institutions and is often used by FinTechs, avoiding the need to invest huge amounts in IT infrastructure. However, using cloud computing and other types of outsourcing introduces a tradeoff between cost and control, insight and the ability to set forth contractual requirements.

¹ The non-paper is attached to this document.

In general, we believe the current rules on safe means of outsourcing by financial institutions are adequate. We have not found them to be a hindrance on the development of new (FinTech) solutions, including concerning outsourcing to cloud services. The Danish legal requirements concerning outsourcing are principle-based rules based on a risk-based approach which we believe is the best way forward. Responsibility remains firmly with the entity performing the regulated activity, and this principle should not be changed.

In our view, there is no need for EU-level initiatives concerning outsourcing at this point in time. There are already several initiatives in progress, e.g. recommendations from the EBA concerning outsourcing. This work should be taken into account when assessing any future EU-wide initiatives.

Distributed Ledger Technology (DLT)

Distributed Ledger Technology (DLT) is a promising new technology that offers many interesting prospects for future use. However, it is far too early to determine which solutions will succeed. As with many new technologies, there are obstacles that the market needs to solve. An obvious challenge to the use of DLT solutions is data privacy. An example of this is that the General Data Protection Regulation (GDPR) prescribes the right to be forgotten, which could be difficult to implement in DLT systems, where all previous information is stored in the blockchain. In cases like this, it is important to let the market work out a solution that conforms with the general legislative aims before sound principles in legislation are changed. Other problems relate to lack of standardisation, capacity challenges and anti-money laundering issues. We believe the market should take the lead in resolving such issues.

As regards potential supervisory obstacles, we would caution against prematurely trying to adapt the legislative framework before having a clearer understanding of the issues. For now, DLT should be treated as any other new technology, and when market solutions that shed light on particular problems in the regulatory framework evolve, this can be considered on a more informed basis.

3. Making the Single Market more competitive by lowering barriers to entry

Lowering barriers to entry in financial services could improve competition in the Single Market. However, new market participants should not introduce new risks to financial stability.

We believe that interaction between FinTechs and regulators is important in order to facilitate innovation. An open dialogue between regulators and FinTechs helps to achieve two goals. One is ensuring that FinTechs are aware of, understand and comply with financial regulation. The other is that the dialogue gives the regulator opportunity to better understand and follow developments in the market, also creating a more well-informed basis for introducing potential adjustments to the regulation.

Sandboxes

It should be encouraged that regulators engage in dialogue with the FinTechs, such as in the so-called sandboxes. Many of the FinTechs are small companies and start-ups that initially focus on their home markets, but with the prospect of going international. The dialogue between FinTech and regulator is therefore usually initiated at the national level – especially because it is the national supervisor who eventually has to give an authorisation. The practical administration of the specific sandboxes and similar initiatives should therefore to a large extent be left to Member States.

However, we believe that work could be undertaken to better understand what is, and what is not, possible in such sandboxes given the current regulatory framework. The Commission could facilitate a harmonised approach to sandboxes through soft measures. This could also include facilitating the sharing of experiences from national sandboxes.

In Denmark, we have initially focussed on improved guidance and information for FinTechs, and will also look into the “softer” areas of EU legislation, where e.g. “adequate measures” can be tailored to a start-up with a closer supervisory scrutiny acting as a compensating measure. We do believe, however, that many requirements stemming from EU regulation are absolute and thus cannot be waived even in a sandbox environment. It is important to keep in mind that FinTech start-ups to a large extent deals with “real” customers and that regulation is adopted for a reason. However, the experiences of regulators working more closely with start-ups should be used in the efforts to develop simple and transparent regulatory frameworks.

Therefore, it is important to emphasize that sandboxes should not be a way for FinTechs to avoid regulation, or be used as a means to attract FinTechs to local jurisdictions in a regulatory race to the bottom. Thus we encourage a closer dialogue between regulators on the approach to FinTech – e.g. on licensing issues, risks etc. Such work is already underway within the EBA.

Interoperability and standards

Introducing standards and requirements of interoperability between IT-systems and interfaces generally involves a trade-off. Refraining from introducing standards will allow innovation and new products but often also initially leads to increased fragmentation and lower interoperability between systems and services. On the other side, harmonizing requirements will often make using existing solutions more convenient for users but also decrease innovation.

As such, efforts to standardize and introduce interoperability should not be introduced prematurely, stifling a market in continued evolution, and the timing of introducing potential standards should be carefully considered. Given our assessment of the FinTech market, we believe it is too early to consider such steps at the current juncture.

4. Balancing greater data sharing and transparency with data security and protection needs

The importance of data cannot be understated in a digital economy. This also applies in the area of financial services. Therefore, it is of utmost importance that the regulatory framework on data is robust. In this regard, we welcome the recent adoption of the GDPR and believe this will bring the legal privacy framework of the EU into the future. Undoubtedly, these rules will also impact financial services, in particular in the FinTech area. In general, we believe that legislative initiatives concerning e.g. privacy and the free flow of data should be applied throughout the economy and not only apply to financial services.

Incentives for information sharing

When incentivising data sharing it is important to respect data privacy and banking secrecy – especially when it comes to consumer data. While access to data can lay the foundation for innovative solutions, it is important to ensure sufficient protection of the consumer's data.

Cyber security

Cyber security is an issue for the entire society and cannot be isolated to the FinTech sector alone. Cybersecurity is equally important for globally systemic banks as for small start-ups. Therefore, cyber security issues should be dealt with at a horizontal level. The work on e.g. ICT Risk Assessment in the EBA is a good example of this. Currently, we do not see a need for sector specific regulation on cyber security for FinTechs or other financial institutions.

Managing cyber security within a financial institution is mainly a question of corporate governance. The best measure against cyber threats is a well-functioning cyber security set-up, focusing on the right risks (inter-

nal and external risks) and having proper checks and balances. Different forums could be set up for debating current threats, techniques, prevention measures, best standards etc. Such forums could include both public entities and industry members.