



FinTech Point of Contact 2018

Enhancing innovation

05.2019

Issues about financial innovation and digitalisation have established themselves in recent years as a natural component of supervision activities both on a national and international level. The continuing extension of the FMA's dedicated work in this field is supported by the FMA's **integrated approach to supervision**. The FinTech Point of Contact has developed into a permanent fixture in Austria's FinTech ecosystem.

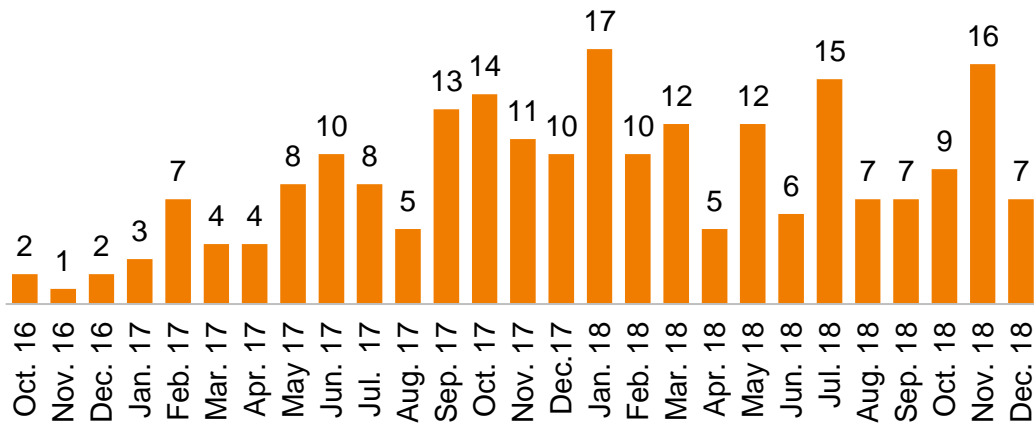
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1 SERVICE AND MARKET TRENDS

1.1 Enquiries received by the FinTech Point of Contact

The FMA's FinTech Point of Contact began operations in October 2016. It was established as a one-stop-shop service for young and innovative FinTech companies, to allow them to clarify issues relating to regulation and supervision about their business model with the FMA in a simple and straightforward manner. The service has become increasingly well received over the course of time. The FinTech Point of Contact handled 123 enquiries during the second year of its existence. This was a marked increase of 26.8% compared to the 97 enquiries handled in 2017.

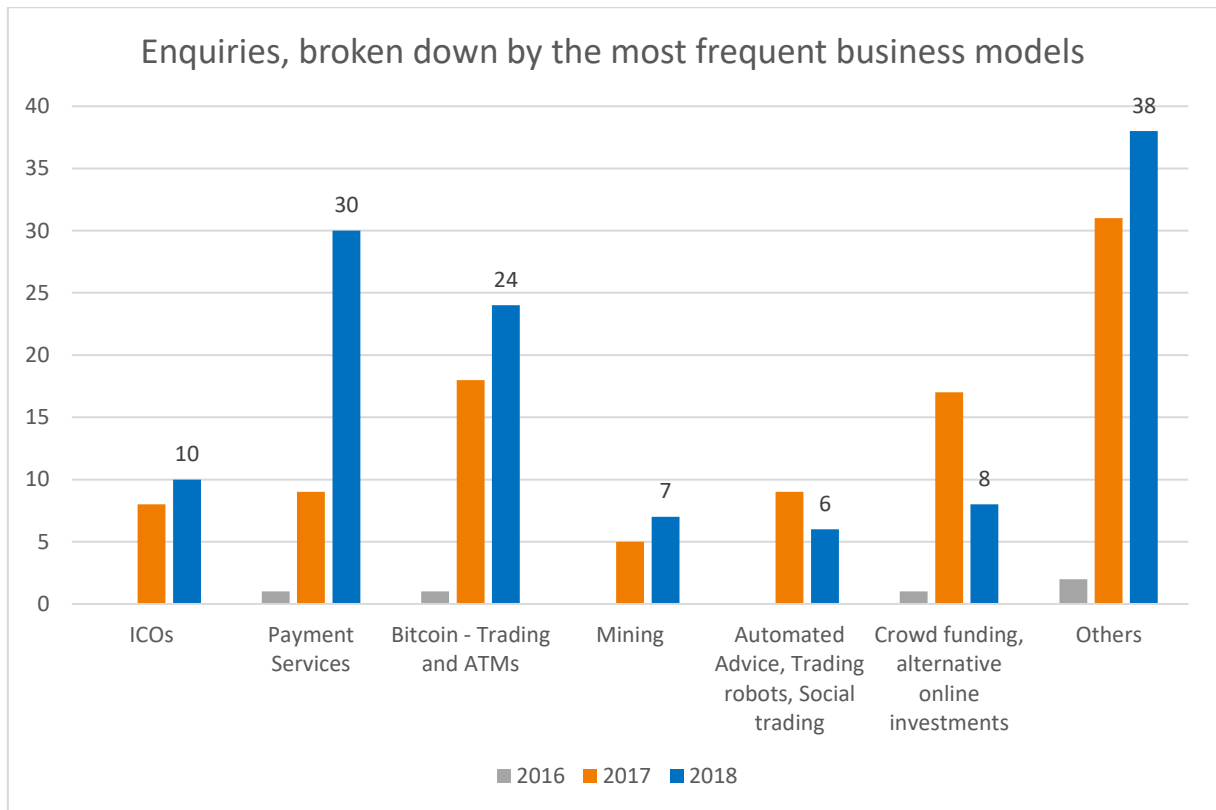


1.2 Market Trends 2018

New payment methods have been a FinTech topic that have been in high demand since the Point of Contact was established. Interest again increased in 2018 as a result of the transposition of the European Payment Services Directive II by the new Payment Services Act (ZaDiG 2018; Zahlungsdienstegesetz 2018). This new legal act allows new business models, in particularly in relation to Third Party Payment Providers that are now addressed in this law: namely payment initiation services and account information services. One observed market trend witnessed in 2018 was the development of innovative payment services solutions that are able to be integrated directly into banking services by means of interfaces.

In contrast, the very strong interest in legal enquiries about classical crowd funding business models, decreased considerably or migrated towards Initial Coin Offerings (ICOs). Such ICOs may exhibit a similar crowd funding function, but in light of the lack of a comprehensive legal basis were accompanied by a particularly large amount of unanswered issues. Enquiries were received from both Austrian and foreign potential providers, with a series of White Papers containing complex strategies about Coins and Tokens with different functions.

Crypto assets, apart from as an alternative form of financing, continue to particularly occupy the market in all their various varieties. In 2017 the topic gained particular traction internationally, and in 2018 there was once again an increase in the number of enquiries. Austrian market participants very frequently considered models for exchange or trading in crypto-assets, whether in physical form through “Bitcoin ATMs” or via platforms. The hype surrounding the mining of Bitcoin and other crypto-assets was again strongly reflected in the enquiries received in 2018.



Many FinTech enquiries related to purely technical solutions, such as regarding the identification obligations for an online platform or special questions in relation to cross-border activities. Overall the FinTech enquiries received in 2018 once again covered a broad palette of technological and financial issues. The fact that many enquiries were categorised as “other business models” shows how difficult it is to systematically capture financial innovations. Many enquiries are not easily assignable to a classical financial activity. In a legal perspective they are often not able to be clearly captured in existing categories - information related in addition to ZaDiG 2018 to the Banking Act (BWG; Bankwesengesetz), the Alternative Investment Fund Managers Act (AIFMG; Alternative Investmentfonds-Manager-Gesetz), the Securities Supervision Act (WAG 2018; Wertpapieraufsichtsgesetz 2018), and the Capital Market Act (KMG; Kapitalmarktgesetz). The broad range of business models and legal materials that apply should the necessary of an integrated perspective in relation to FinTechs. The FMA as an integrated supervisory authority stands behind the FinTech Point of Contact for the entire Austrian financial market, with its know-how in relation to all facets of regulation. This set-up enables the FinTech Point of Contact to provide a really comprehensive and optimal range of advice for young, innovative and digital companies.

1.3 FinTechs and Supervision

The path to be followed by FinTechs once an enquiry is made to the FinTech Point of Contact is a varying one. The purpose of enquiries is to clarify for specific business models whether they are required to observe specific legal requirements in the field of financial market regulation. Not every enquiry leads to a planned business model is subject to the obligation to hold a licence issued by the FMA. In 2018 this was only the case for around one-fifth of all enquiries. All other FinTechs nevertheless received qualified information in regard to their enquiry, thereby ensuring greater legal clarity for their further development.

After making an enquiry to the FinTech Point of Contact, FinTechs took various different paths:

- **Licence applications:** Two entities decided to offer their business model as a regulated entity. They were granted a licence by the FMA in 2018. One of these entities is from the field of new payment services, with the other coming from the field of digital asset management.
- **Cooperation with entities holding licences:** a trend has already been observed internationally for several years of FinTechs cooperating with established entities in the financial market where the latter already holds the required licence. In such a cooperation the FinTech is able to concentrate on the “Tech” aspect of its business model. Cases to date have been innovative balance sheet accounting systems or an online platform for rentals. FinTechs use interfaces to licensed payment institutions in order to be able to provide payment services to their customers. The payment service requiring a licence is therefore always performed by the supervised entity. On the other hand having determined that an obligation to hold a licence existed in the FinTech enquiry, a robo advisor was affiliated under the umbrella of liability to a licensed investment services provider as a tied agent. In this way supervisory law is duly observed, since the entity already holding a licence is responsible for the observance of regulatory provisions towards the FMA.
- **Activity without the necessity to hold a licence:** In cases of a website for comparing the terms of a mediation of loans and an App to support investors in their dealings regarding their securities account, information was provided that an obligation to hold a licence does not exist. The entities continue to remain outside of the competence of the FMA, but are active in a field that falls under the supervision by the trade authorities.

In most cases the FinTech was able to make the decision easier an easier one to decide by seeking legal advice. This is not however strictly compulsory with regard to FMA procedures.

1.4 The FinTech Point of Contact and the FinTech Ecosystem in Austria

The “FinTech Directory Austria” provided by the association FinTech Austria offers a concise overview about the FinTech ecosystem in Austria. Out of the 92 FinTechs listed in the directory, not all of them operate a business model that is relevant on a regulatory or supervisory basis (one such example is in the case of “Education” sector). There are 69 companies in the sectors that are closer to the FMA’s activities such as “Crypto”, “Accounting”, “Payments”, “Investing” and “Insurance”. Out of these companies, over half have already been in contact with the FMA. Awareness about making use of the FinTech Point of Contact is clearly apparent, and has increased commensurately with the number of enquiries received.

One particularly positive trend is to be observed: Companies now approach the FinTech Point of Contact at an early stage and pro-actively in order to clarify the requirements under supervisory law for its business models. By doing so it is also possible to avoid that the initial contact between the company and the FMA is during the course of a procedure in relation to unauthorised business operations, in which business operations are then required to be altered with the threat of an administrative penalty. This aspect has clearly shown that the FinTech Point of Contact has enabled a transformations of new financial market players into a productive channel for both sides.

2 DIALOGUE

An important aspect of the FinTech Point of Contact is to make information available about the prevailing regulatory and supervisory frameworks. The FinTech Point of Contact has made a comprehensive set of information available on the FMA website over the course of the last two years.

In so doing, the FinTech Point of Contact also actively promotes its services to the market as and the FinTech ecosystem in Austria. 2018 has demonstrated that the increasing awareness about the FinTech Point of Contact, its services as well as its staff members has also increased the openness of FinTechs towards making contact with the FMA.

2.1 FinTech Navigator

The FinTech Navigator is one of the FinTech Point of Contact's material instruments for transparency in relation to supervisory law. It is regularly updated on the basis of dynamic developments, as well as developments regarding legal materials and business models.

The FinTech Navigator enables potential market participants to inform themselves in advance about issues in relation to supervisory law and in the case where uncertainty exists to make a more specific FinTech enquiry. Its new clear structure allows the desired information to be found quickly. New illustrations help to made complex issues in relation to supervisory law more tangible. This approach has received a lot of positive resonance.

In 2018 the FinTech Navigator was updated and additional information included particular in relation to ZaDiG 2018 and WAG 2018. Most recently, following across various supervisory divisions, comprehensive **information about ICOs** was placed online to allow providers prior to making an enquiry or a market entry to inform themselves in a comprehensive and cross-sectoral manner about supervisory questions specifically relating to this topic. In this way unauthorised business operations are prevented, which in turn also increases consumer protection.

2.2 FinTech Network Meeting

The FMA has continued to hold its regular network meetings with FinTechs and interested stakeholders. The open invitations to participate are intended to ensure lively communication and constitute an important source of information for the FMA which regard to the issues that occupy and drive the market. The circle of participants has been varied, with both start-ups as well as representatives from FinTech initiatives, universities as well as lawyers accepting the invitations. Frequently asked questions have included the FMA's legal opinion about the issue of mining, in relation to PSD II as well as about the possibility of a sandbox.

2.3 FinTech Week

During the Vienna FinTech Week, which was held in November 2018 by the Austrian Bankers' Association (Verband österreichischer Banken und Bankiers), the FMA invited participants to attend a half-day modular workshop featuring experts drawn from its various supervisory departments. "How to do FinTech – an update based on the FMA's practical experience" was well attended and in particular demonstrated the integrated treatment of FinTech issues in the FMA. In addition to questions in relation to issues relating to licensing law, topics relating to the prevention of money laundering and securities compliance were also addressed. This information is on the one hand important for holders of licences, to be able to ensure that their business relationship with FinTechs is conducted correctly with regard to supervisory law, while also providing FinTechs that do not hold a licence the possibility, to establish their business model in line with supervisory law. The FinTech Point of Contact also makes a contribution towards ensuring a financial market with integrity by means of such information. Furthermore, the FinTech Week also provided the FinTech Point of Contact itself with an opportunity by participating to collect market impressions and for intensifying its exchange.

2.4 Expert Corners at the FMA Supervisory Conference

Issues relating to digitalisation were particularly well represented at this year's FMA Supervisory Conference. For the first time, conference participants had the opportunity to visit Expert Corners. The FinTech Point of Contact hosted an expert corner about FinTech, at which the representatives of entities already established in the market were able to gain an impression about the objectives of and the work of the FinTech Point of Contact, and was able to show them a wide range of new info graphics as well as self-created chat bot to allow a lively initial exchange with the FinTech Navigator on the website.

2.5 Academia and Research

Crypto assets have also been addressed intensively for a long time by both academia and research. The FMA was also given the opportunity to expand its own knowledge by means of workshops with the Austrian Institute of Technologies (AIT) and the Research Institute for

Cryptoeconomics at Vienna University of Economics and Business. The FMA is a cooperation partner of the Austrian Blockchain Center.

2.6 Events

As a proactive supervisory authority the FMA endeavours to be close to the action and to enter into dialogue with market participants, supervisory authorities, academia, and stakeholder interest groups. Staff members from the FinTech Point of Contact have participated at seminars and several panels on ICOs and crypto-assets by given presentations, such as at Blockchain-Real 2018 or the University of Innsbruck's Bitcoin Symposium; furthermore they have participated at conferences and expert meetings held at the Austrian Economic Chambers (WKO), the Oesterreichische Kontrollbank (OeKB), the Oesterreichische Nationalbank (OeNB), the Federal Ministry of Finance (BMF) as well as at the University of Vienna, at a kick-off event of a Blockchain initiative, at several interdisciplinary events and symposia on Distributed Ledger Technology as well as at the presentation of a new FinTech lab. There were also participations at the BaFin's Tech 2018 event as well as a high level conference on regulation and digital innovation in Brussels. However, the perspective of the Austrian FinTech scene remains particularly relevant: Regular attendance at the FinTech Meet-ups held by FinTech Austria has in the meantime become a matter of course.

2.7 International knowledge exchange

International knowledge exchange continues between the authorities. A cross-department exchange in relation to experiences and policy was held with other German-speaking sister authorities on the thematic issue of crypto-assets.

There was a particularly active involvement in the Europe-wide agreement at EBA/ESMA on crypto assets, as well as the EBA Roadmap on FinTech that was published in March as well as the implementation of the European Commission's FinTech Action Plan. Under its auspices, work is currently under way for European regulation on crowd funding, and driving SME policy in the future. The FinTech Point of Contact participated in the ESMA "Task Force on ICOs and VCs", which has been pursuing a convergent European approach by supervisory authorities in relation to crypto assets since February 2018. The tasks of the Task Force covered the analysis of business models and practices for ICOs, the assessment of risks and benefits, as well as drawing up key components for an appropriate regulatory regime for ICOs. Initial experiences and assessments in relation to investment products based on crypto assets have been exchanged, resulting ultimately in the publication of ESMA Advice about this matter. This ESMA advice also clarifies when crypto assets already fall under existing supervisory law. Furthermore it also considers alternatives to regulation, which form the basis for an in-depth discussion by policy-makers at European level. Following the first use cases in relation to enquiries and investigative procedures in the FMA, valuable inputs were able to be obtained, and on the flip side outcomes forming inputs for the FMA's new publications on the topic, both in the FinTech Navigator as well as the FMA Focus on ICOs.

The discussion and analysis of the supervisory tools for FinTechs currently being developed among the supervisory authorities is just as exciting. The ESAs evaluated the Innovation Hubs and Regulatory Sandboxes in the Member States. The FMA was able to make its contribution from the findings from the FinTech Point of Contact. In turn these findings were able to be fed directly into the drawing up of an Austrian sandbox solution.

3 OUTLOOK FOR THE FINTECH POINT OF CONTACT

The motors continue to turn at high speed. The political initiative towards the establishment of the Austrian Regulatory Sandbox is currently in the final stage of its design. Following the establishment of the FinTech Point of Contact at the FMA, the starting of the sandbox constitutes a decisive further development for the FMA's work with FinTechs. FinTechs that are looking to obtain a licence, as well as entities that already hold a licence (also in cooperation with innovative companies) are being prepared for supervision by means of an intensive dialogue with the FMA and are able to test its business models. In this context, there has been a close and personal exchange with the British Financial Conduct Authority (FCA), with the FCA already having several years of experience with regard to the operation of a sandbox.

The other initiatives which are being discussed in the FinTech Advisory Board also remain exciting: how can digitalised customer identification be optimised, how crypto assets may develop in the areas of conflict that exist between alternative financing methods, investor protection and taxation as well as what the securities of the future may look like are all innovation-related themes at which the FMA is currently at the forefront about.

The FMA will continue to be closely integrated academia, in particular by its partnership with Vienna University of Economics and Business as part of a European Commission supported programme "A FINancial supervision and TECHnology compliance training programme" in which universities, regulators, supervisors, FinTechs and FinTech hubs from the 28 Member States are participating. There is also considerable potential for this project to find creative interdisciplinary solutions by FinTechs to problems related to supervisory law. The FinTech Point of Contact ensures that there is a single channel for such initiatives at the FMA.

We would also like to involve you, our readers, in the intensification of our work in the coming year. We look forward to your feedback as well as your active communication with us, so that we are able to extend our FinTech offering while further improving legal requirements through dialogue with all stakeholders.