



Fintech 2020

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Belgium

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Approaches and developments

Belgium is referred to as one of the largest FinTech countries by Forbes in the article “*Four Reasons Belgium Punches Above Its Weight When It Comes To Fintech*”. Forbes mentions four reasons for this classification. Firstly, Belgian politics stimulates the growth of start-ups within finance and tech. Examples are the Digital Belgium policy from 2015 and the Belgian Startup Manifesto from the same year. These two initiatives had an immediate effect: the turnover and number of deals within FinTech grew strongly in the following year. From a fiscal point of view, Belgium is also an attractive country for FinTech companies. Secondly, Belgium is home to the most important European bodies in the field of finance and legislation. The European Commission, the European Council and the European Parliament, for example, are located in Brussels. This simplifies the dialogue between European authorities and the market. Thirdly, 80% of European purchasing power is located within a radius of 500 miles from Brussels. Moreover, Europe’s most important financial centres, such as London, Zurich and Amsterdam, are very easily accessible from Brussels. Lastly, compared to the size of the country, Belgium has an unrivalled number of top universities. Seven universities are included in the 2018 Shanghai Academic Ranking of World Universities, and technical subjects are central to these programmes and universities. 35% of Belgium’s inhabitants are higher educated (above the OECD average) and 38% of Belgians speak English as a second language.

In 2019, Avolta Partners, Data.be and sector association FinTech Belgium published the second Belgian FinTech barometer. In short, the barometer shows that the average FinTech company is worth €6.8 million today, compared to €5 million a year ago. Over a quarter (26%) are even worth more than €15 million. However, Belgian FinTech companies grow mainly with foreign money. Over the past three years, the sector of FinTech companies has raised €118 million in 33 capital rounds, most of which came from abroad. Less than half of the investments, i.e. 44%, accounting for 30% of the amount invested, came from Belgium. The rest of the money came mainly from France (30%) and the United States (20%), which together represent half of the invested amount in Belgian FinTech companies. This is followed by the United Kingdom (8%), the Netherlands and Luxembourg (together 6%), and Germany and Switzerland (each 2%). According to the same barometer, most FinTech companies can be divided into a handful of subcategories. 22% are focused on payments, 19% on business process outsourcing, 15% on financial management, and 15% on banking and loans.

FinTech offering in Belgium

There are different types of FinTech companies operating in Belgium. Most of them operate

in one of the following subdivisions: payment services; robo-advice; crowdlending; or distributed ledger technologies (DLTs).

Payment services

According to figures from the National Bank of Belgium (NBB), the number of licences is increasing due to the new European Payment Services Directive (PSD2) and Brexit. A total of 34 companies are now licensed by and under the supervision of the NBB. By way of comparison, five years ago there were only 21. Companies that recently received a licence from the NBB not only include companies that use FinTech for making payments and/or for granting access to account information and for payment initiation, but also card processors, money transfer companies, companies offering payment services on internet platforms, and electronic money issuers. According to the NBB, the PSD2 allows new players to enter the payment services market and offer payment initiation services (PIS) and/or account information services (AIS). This leads to a new dynamism together with the FinTech developments. In 2019, the NBB has granted licences to Let's Didid (BNP Group), Accountable, BammBamm and Isabel SA, which had been active in Belgium for many years. Some other companies that were already licensed in Belgium were also recently granted permission to expand their services (PAY-NXT, Worldline, Ibanfirst). In addition to the PSD2, the United Kingdom's departure from the EU also explains the increase in the number of licences issued. In 2017, two well-known money transfer companies decided to move their EU activities from the United Kingdom to Belgium (Moneygram and eBury). In 2019, three more companies settled in Belgium because of Brexit (Worldremit, Transferwise and Prepayment Solutions NV of the Edenred group) and discussions are ongoing with other companies that are interested in relocating their EU activities to Belgium, according to the NBB. Some of these newcomers belong to groups that are among the largest money transfer companies in the world. Based on these figures, the NBB concludes that Belgium has rapidly become an important location for this activity.

Robo-advice

Robo-advice in the financial sector often pertains to the (semi-)automatisation of financial advice without or with very limited human intervention (Belgian examples: Gambit; and KeyPrivate). FinTech services active in this context will have to take the MiFID rules into account (see "Key regulations and regulatory approaches"). At the moment, this will not cause many problems since there is almost always a central financial intermediary responsible for robo-advice. But when the robo-advice is combined with DLT, there might not be any central party behind the advice as a connecting factor for imposing such regulations.

Crowdlending

Crowdlending allows people to directly lend money from the public at large instead of having to go to a financial intermediary to receive funds. The lenders are often free to choose which amount they are willing to lend and the borrowers can choose what they are willing to offer in exchange (Belgian examples: Bolero Crowdfunding; and Look&Fin).

DLT

DLTs are used in a number of different ways. They are used in combination with payment services (Belgian examples: bit4you; and Orillia) but also in RegTech solutions for, e.g., KYC requirements (Belgian example: Kube). Unlike crowdlending, DLTs are not specifically targeted by Belgian law, with the exception of a few soft law instruments.

Regulatory and insurance technology

The aforementioned second Belgian FinTech barometer also showed that a vast majority

(85%) of FinTech companies provide services to businesses and banks. Only 15% of FinTech companies provide services directly to consumers. The reason why FinTech companies often provide these services to banks is because, for example, RegTech (companies that focus on the digitisation of regulatory aspects) and InsurTech (on the digitisation of insurance processes, e.g. Qover and Generali Quick Quote) are emerging as new verticals. According to the second FinTech barometer, this is partly due to European regulations in which a lot of manual processes can be automated. Said processes must be compliant and should be user-friendly at the same time. Hence, there are opportunities for RegTech and InsurTech companies. Both RegTech and InsurTech companies account for 11% of FinTech companies, but the barometer highlights that these two are growing fairly strongly compared to the first FinTech barometer in 2018.

Regulatory bodies

FSMA

The Financial Services and Markets Authority (FSMA) supervises the Belgian financial market in cooperation with the NBB. Its job is to monitor compliance with conduct of business rules in order to ensure the fair, equitable and professional treatment of their clients. In this context it can investigate financial undertakings and issue fines. Together with the NBB it has created a Fintech Contact Point (see “Key regulations and regulatory approaches”).

NBB

The NBB is the central bank of Belgium. The NBB is responsible for maintaining the macro- and microeconomic stability of the financial system. In this context it exercises prudential supervision of individual financial institutions and has the competence to issue licences for certain financial undertakings. FinTech companies may have to apply for such a licence. In most cases this is because they provide an account information service (AIS) or payment initiation service (PIS). In this context, reference should also be made to the passporting procedure, meaning that FinTech companies are allowed to conduct activities and services regulated under European legislation in Belgium on the basis of an authorisation in its home Member State.

Economic Inspection

The General Directorate of Economic Inspection is a part of the Federal Public Service Economy. The task of the General Directorate is to monitor compliance with legislation on, for example, consumer rights, which can be found in the Belgian Code of Economic Law. This Code of Economic Law also contains relevant rules implementing PSD2 that apply to FinTech companies.

Data Protection Authority

The Belgian Data Protection Authority is a federal independent body that monitors the protection of citizens’ privacy rights when their personal data is being processed. It is the successor of the Commission for the Protection of Privacy (the Privacy Commission). The new Data Protection Authority was established by the Act of 3 December 2017 following the entry into force of the General Data Protection Regulation (GDPR). The Belgian Data Protection Authority has the power to launch investigations, give warnings and recommendations, and issue fines when companies or organisations are found to be in breach of data protection regulations.

Key regulations and regulatory approaches

FinTech companies have to take different regulations into account when offering their products and services and the applicable rules may also depend on the type of products and services. Many of these national regulations are transposed from European directives, such as Directive 2015/2366 of 25 November 2015 on payment services in the internal market (PSD2), Directive 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (AMLD IV) and Directive 2014/65/EU of 15 May 2014 on markets in financial instruments (MiFID II). Although AMLD V of 30 May 2018 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing had to be transposed into Belgian law by 10 January 2020, this has not yet been done. In addition to these European directives, Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR) should also be taken into account.

General

The Belgian Code of Economic Law (*Wetboek van economisch recht van 28 februari 2013*) contains several relevant obligations for all companies doing business in Belgium, including FinTech companies. All FinTech solutions aimed at consumers will have to comply with several rules protecting consumers, such as rules relating to providing mandatory information to the consumer, the right of withdrawal in case of information society services and specific rules relevant for financial services. If the FinTech solution is not aimed at consumers, it will still have to comply with general rules related to competition and fair commercial practices.

Data protection

Since many FinTech companies process, store or transfer personal data, they will also have to comply with the Belgian Data Protection Act (*Wet van 30 juli 2018 betreffende de bescherming van natuurlijke personen met betrekking tot de verwerking van persoonsgegevens*). The Belgian Data Protection Act implements the open provisions of the GDPR. According to these provisions, companies including FinTech companies should have appropriate organisational and technical security measures in place and must balance the right of erasure with their legal obligation to keep certain financial information for a certain minimum period of time.

Payment services

The PSD2 was transposed into Belgian law in the course of 2018 by two national laws. The first Act amended book VII of the Belgian Code of Economic Law concerning payment and credit services and the second amended the Act of 11 March 2018. This act now includes payment initiation services (PIS) and account information services (AIS). Consequently, mobile payment applications offering such services have to comply with these rules, unless an exception is applicable. For instance, the limited networks exception is applicable when a payment service can only be used to acquire a very limited range of products, but this exception is only relevant for Belgian companies (see “Cross-border business”).

Anti-money laundering

The Directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (AMLD IV) was transposed into Belgian law by the Belgian Act of 18 September 2017 on the prevention of money laundering and terrorist financing and the restriction on the use of cash (AML Act). This act stipulates that so-called obliged entities have to assess the risk of money laundering and terrorist financing during the onboarding process of a new customer. It is also worth mentioning that the AML Act stipulates that when business relationships or transactions are entered into remotely without any further guarantees

(such as electronic signatures), this constitutes an indication of a potentially higher risk. In that case, enhanced customer due diligence measures should be applied.

Financial instruments

ICOs (Initial Coin Offerings) are subject to various legal rules and regulations in Belgium. Reference should be made to the communication of the FSMA in this respect. Also, the issuer of an ICO might have to provide a prospectus as regulated by the Act of 11 July 2018 relating to the issuance of investment products to the public (*Wet van 11 juli 2018 op de aanbieding van beleggingsinstrumenten aan het publiek en de toelating van beleggingsinstrumenten tot de verhandeling op een gereglementeerde markt*). This will particularly be the case when the cryptotokens are used for investing purposes because the law stipulates an open category for investment products, i.e. all instruments that can be used to make a financial investment. FinTech services that deal with financial instruments will have to take the rules of conduct and the licensing requirements of MiFID I and II into account.

Another specific rule is the ban on the commercialisation of certain financial products to non-professional clients by the FSMA Marketing Prohibition Regulation (Regulation of the FSMA of 3 April 2014 on the prohibition on marketing of certain financial products to non-professional clients). In particular, the commercialisation of derivatives of virtual currencies (e.g. cryptocurrencies) to non-professional clients is banned. Both the FSMA and the NBB have issued several warnings in relation to cryptocurrencies. In this respect, the regulators created a blacklist of online crypto-exchanges and a webpage with information to prevent consumers from falling victim to fraud when trading in cryptocurrencies.

Crowdlending

In Belgium, there is specific national legislation that directly addresses some types of FinTech solutions. For example, the Act of 18 December 2016 on the recognition and definition of crowdfunding and containing various provisions on finance (such as crowdlending platforms). These crowdlending platforms must obtain a licence from the FSMA before starting their activities, unless they are exempted (for instance, if they have no more than 149 investors). Belgium took a leading role in adopting such legislation. Currently, the European Commission is also working on similar legislation at the European level, meaning that the Belgian legislation may be amended in the future.

FinTech Contact Point

FinTech refers to start-ups or established companies that use technology to offer innovative processes, products or services in the financial sector. Examples include crowdfunding, DLT, virtual coins, APIs (application programming interfaces) or alternative distribution models. The FSMA and the NBB regard FinTech as an important subject in their supervisory activities. Therefore, both regulators are working together to offer an online FinTech Contact Point to Belgian FinTech companies. That way, FinTech companies, whether they are start-ups or established firms, can enter into direct contact with the regulators. The online FinTech Contact Point allows companies to ask a question, to request or provide information, or to request a meeting to discuss their FinTech business line with the regulator. The FSMA and NBB aim to respond within three business days. The regulators believe that smooth contact and dialogue and a good and rapid exchange of knowledge will ultimately benefit all parties involved, such as the legislator or supervisor, the supplier and the final financial consumer.

Restrictions

For restrictions, reference is sometimes made to the difficult relationship between banks

and their agile small sector peers, FinTech start-ups. Today that relationship is better than a few years ago. In the past, FinTech start-ups were sometimes looked at with crooked eyes. They have no legacy and can take customers away, banks often argued. Meanwhile, banks realise that they also benefit from such FinTech players, because with the help of FinTech companies, banks can upsell or cross-sell their existing customers. After all, banks often have to choose between acquiring a FinTech start-up or developing a similar solution. That means that there is currently also a consolidation going on. The aforementioned barometer shows that FinTech companies are no longer start-ups that work from a small attic room, because today they are companies that are working on capital round D or E and have customers and fully-fledged solutions.

Cross-border business

It should be noted that the exception for payment instruments in limited networks is only applicable to companies incorporated under Belgian law, meaning that FinTech companies doing business in Belgium without having a Belgian sub-entity cannot rely on this exception and will therefore have to comply with the complete Act of 11 March 2018 relating to payment institutions (see “Key regulations and regulatory approaches”).

The aforementioned act concerning crowdlending will only be relevant for services provided in Belgium. So crowdlending platforms that do not operate in Belgium will not have to comply with the licensing obligation and the rules of conduct set out in the legislation (see “Key regulations and regulatory approaches”).

Reference should also be made to the aforementioned passporting procedure, meaning that FinTech companies that are authorised in a European Economic Area (EEA) Member State can carry out activities in any other EEA Member State, including Belgium.

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