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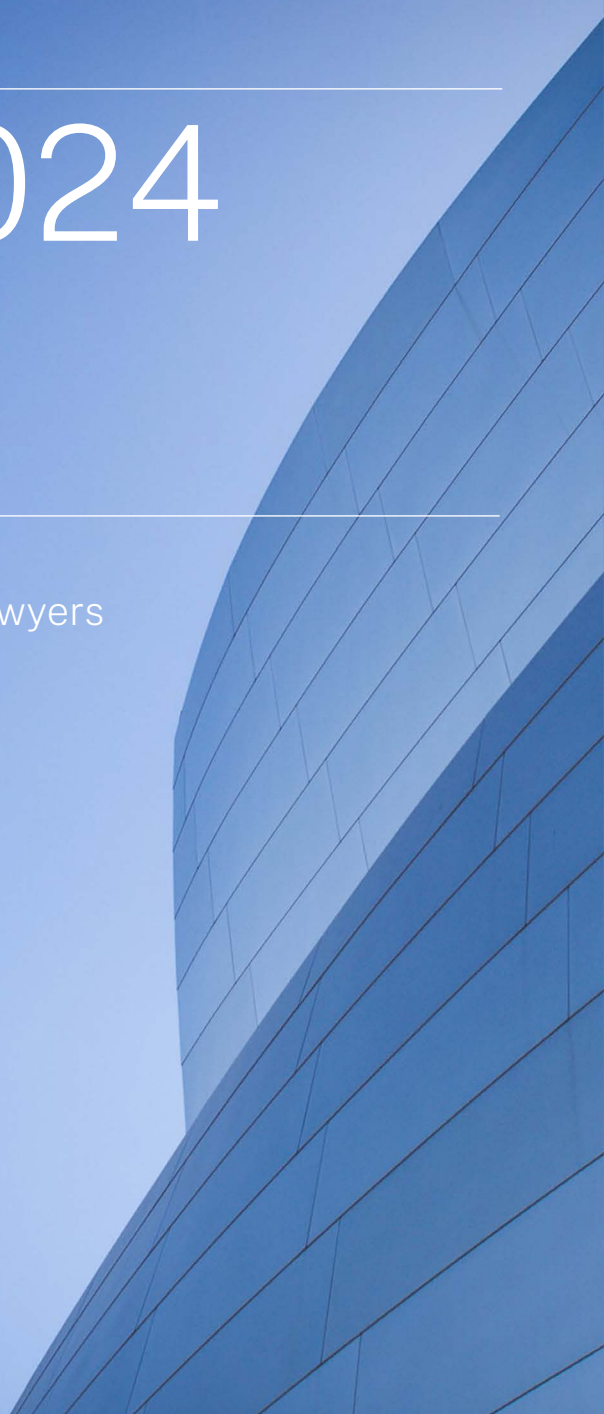
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Belgium: Trends & Developments

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Trends and Developments

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Authors



Tom Van Dyck is a partner at Liedekerke with more than 20 years' experience and has been recognised in all major legal guides as a leading practitioner. He heads the firm's FinReg Team with four lawyers dedicated to financial services advisory. The FinReg Team advises banks, insurance companies, payment institutions, e-money institutions, asset managers, financial intermediaries, fintechs and regtechs on all legal and regulatory aspects relating to their activities. It has a particular focus on ESG and SFDR implementation for financial institutions, digitalisation projects, outsourcing projects, crypto and payments, and fund regulation (UCITS and AIFMD). The team has also specific expertise in matters of regulatory enforcement.



Louise Verstraete is an associate at Liedekerke and specialises in financial regulation. Her multiple secondments to the leading insurance firm AG Insurance and other instructions by insurance firms have led her to work on projects such as the implementation of SFDR (level 1 and 2), the PRIIPs Regulation, and proposed amendments to the Insurance Distribution Directive. She was also involved in strategic discussions at another insurance group with respect to the implementation of sustainability criteria and ESG. Louise is currently involved in co-ordinating the implementation of SFDR on a Belgian UCITS. She has direct contacts with the regulator.

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Introduction

The Belgian regulatory approach towards fintech aims, on the one hand, to foster innovation, whilst, on the other hand, maintaining high levels of consumer protection. The stability and integrity of the financial system remain key objectives as well. This balance is crucial to understand current trends and developments in the Belgian fintech sector.

Regulatory Authorities

The roles of the Financial Services and Markets Authority (FSMA) and National Bank of Belgium (NBB) are pivotal in shaping the regulatory environment for fintech in Belgium.

The FSMA issues guidelines on market practices (including advertising), the provision of investment services, as well as crypto wallet and exchange providers. It oversees the compliance of financial service providers with conduct of business rules, aiming to protect investors and maintain confidence in the financial markets. The FSMA also supervises financial intermediaries.

The NBB is responsible for the prudential oversight of credit institutions, payment institutions, large investment firms and insurance companies. This includes assessing the impact of innovative technologies and business models on the traditional banking sector's stability and security.

Fintech players accessing the Belgian market should also be aware that, in addition to the FSMA and the NBB, there may be other regulatory supervisors. For instance, the Ministry of Economic Affairs plays an important role in the oversight of consumer credit, which is defined broadly under Belgian law, and in principle includes any B2C lending.

Fintech Portal

The FSMA has opened a special fintech portal on its website. Fintech companies can use this portal to contact the FSMA and submit questions in relation to rules of conduct and the applicable prudential framework. The aim is to enable the FSMA to enter more easily into contact with companies in the innovative financial technology sector.

Digital Operational Resilience

The assessment and the control of cyber and ICT risks have become key priorities for the NBB in the exercise of its supervision of financial institutions in general, and financial market infrastructures, payment institutions and electronic money institutions in particular. The NBB has closely been involved in the development of the draft text of the Digital Operational Resilience Act (DORA) and is currently involved in the development of technical standards that further underpin the DORA Regulation.

Emerging technologies such as distributed ledger technology (DLT) are closely monitored by the NBB to assess their potential impact on financial stability.

Anti-money Laundering (AML)

The transposition of the EU's AML directives into Belgian law has extended the regulatory perimeter to include fintech companies, imposing obligations such as customer due diligence and transaction monitoring. For market players intending to access the Belgian market, it is important to note that AML is at the very centre of regulatory supervision, with the NBB and the FSMA publishing guidance, providing questionnaires, or organising inspections and audits. Fintechs contemplating setting up activities in Belgium should be aware of this rigorous regulatory attention, and it is recommended to proactively anticipate the regulatory expectations in this regard.

Payment Services

The Payment Services Directive (PSD2) has been a cornerstone in the transformation of payment services, promoting competition and innovation. It introduced the concept of open banking, allowing third-party providers to access bank data (with customer consent) and initiate payments. PSD2 challenges traditional banking models and encourages collaboration between banks and fintech start-ups. It is expected that PSD3 will further stimulate open banking.

In a 2021 survey on fintech (NBB, The impact of fintech and digitisation on the Belgian banking sector, 2021), the NBB noted the following.

- Payment is often considered as the first business line where competition from fintechs and bigtechs has already materialised. Surprisingly Belgian banks did not observe significant downward pressure on overall revenues and did not expect this for the near future either.
- Based on banks' answers, volumes are to continue to increase and most banks still continue to anticipate stable margins and stable revenues.
- Based on data collected by the NBB about payments transactions of Belgian residents in the first half of 2022, a few trends have been identified (NBB, Mapping the payment behaviour of Belgians, April 2023):
  - (a) the number of transfers from a mobile device (smartphone or tablet) is growing, but the number of person-to-person (P2P) transfers (in Belgium, mainly via Payconiq) remains limited;
  - (b) more than half of card payments at retail establishments or merchants are contactless, meaning the card or smartphone does not physically touch the payment terminal;
  - (c) instant transfers, through which the payment is received in the beneficiary's account within seconds, are relatively new but already account for almost one in ten transfers; and
  - (d) in the first half of 2022, more than 80% of the value of card payments and credit transfers involved Strong Customer Authentication.

Insurance

In 2022, the NBB carried out a survey of insurance undertakings (NBB, Prudential Regulation and Supervision, 2022). This led to the following conclusions.

- The first objective of the survey was to get a picture of insurers' vision and strategy with regard to insurtech and digitalisation. Companies indicated that digitalisation had increased operational efficiency and customer

satisfaction, but that the race for talent made it difficult to pursue innovation.
- Insurance companies were also asked to provide a detailed overview of the technologies they are using or developing. The responses showed that companies clearly rely on mainstream technologies, such as the cloud. They also make extensive use of more innovative technologies, such as artificial intelligence.
- It was also found that digitalisation is present in virtually all aspects of the value chain, but mainly in distribution or underwriting and claims management. The analysis further revealed that innovation was mainly concentrated in non-life lines of business, including motor vehicle and fire insurance.
- Finally, when asked about the risks associated with innovative digitalisation, insurance undertakings reported increased cyber-risk and operational risk. They indicated that, in some cases, profitability was also affected, but that they were taking the necessary steps to manage these risks.

Crypto

In 2022, a new regulatory regime was introduced for virtual asset service providers (VASPs) established in Belgium. In 2023, new rules governing advertisements for virtual currencies were added.

The basic principle is that advertisements must be accurate and not misleading. Advertisements may not emphasise the potential advantages without also providing an accurate indication of the risks, limitations or conditions. Nor may advertisements contain any statements about the future value or return, and they must be written in comprehensible language.

Advertisements must contain mandatory information that points out the risks. More specifically, advertisements must also contain a short and clearly visible warning: “Virtual currencies, real risks. The only guarantee in crypto is risk”. All advertisements must also contain a broader warning or a link or reference to such a warning. The broader warning should sum up the various risks in greater detail.

Mass media campaigns must be notified to the FSMA at least ten days in advance. Mass media campaigns are campaigns that disseminate advertisements to at least 25,000 consumers. The prior notification is intended to enable the FSMA to intervene, if necessary, before the campaign actually begins.

FSMA study of investor behaviour

Interestingly, in light of its new powers, in November 2022, the FSMA has carried out a study of investor behaviour in Belgium. The main findings were as follows.

- It is mainly young people who buy virtual currencies. Young people (aged 16–29) were the best represented among the group of investors who buy virtual currencies and 34% of investors between the ages of 16 and 29 trade in virtual currencies.
- Trading in virtual currencies was most popular among men and in Flanders. Of those who invest in virtual currencies, 80% were men, 63% lived in Flanders, 22% in Wallonia and 15% in Brussels.
- Making money quickly (43%) and the pleasure and excitement of trading in innovative products (36%) were the main reasons for trading in virtual currencies.
- Investors who do not trade in virtual currencies said it is because of the high risk (58%) or because they do not believe in it or see the point (46%).

- More than 60% of traders bought virtual currencies worth less than EUR2,500 and 31% bought less than EUR500. Only 15% bought virtual currencies worth more than EUR10,000.
- The "cryptowinter" and the bankruptcy of FTX has hardly affected faith in virtual currencies. Only 7% said that they will no longer trade in virtual currencies as a result. More than 60% considered these events to be a "temporary correction" or will continue trading in virtual currencies and 16% of crypto traders even considered this an opportunity and were trading even more in virtual currencies than before.

Digital Finance Package

On 6 October 2023, a legislative proposal for a law concerning various financial provisions was submitted to the Belgian Parliament, transposing Regulation (EU) 2022/858 of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology (DLT). This legislative initiative, often referred to as the DLT Regulation, is part of the European Union's digital financial strategy and, among other things, provides for a legal framework that facilitates the provision of financial instruments based on DLT.

ESG

It can be expected that the EU sustainability package SFDR and CSRD will result in the emergence of new fintech players focused on delivering ESG-compliant solutions. Belgium is home to one such innovative player: Greenomy, which offers a sustainability reporting SaaS.

Conclusion

The Belgian fintech sector is at a crossroads of innovation and regulation. The collaborative efforts of the FSMA, NBB, and industry stakeholders are crucial in navigating this landscape. By fostering an environment that supports technological advancements while ensuring robust consumer protection and financial stability, Belgium aims to remain a competitive and innovative financial centre. As the sector continues to evolve, staying informed about legal and regulatory developments will be essential for fintech companies operating in or entering the Belgian market.

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