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# Romania

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## Approaches and developments

### General trends

In line with the strong expansion trend at global level, the Romanian Fintech ecosystem has been on continuous growth over the past years. Recent Fintech mapping initiatives<sup>1</sup> report over 60 projects, from both native and international companies with local presence, which operate in several niches such as personal finance, payments & wallets, financial infrastructure, investments & wealth management, Insurtech, crowdfunding and blockchain & cryptocurrencies.

Although the Romanian Fintech ecosystem is relatively small by reference to nearby benchmark countries, such as Poland, Romania has managed to reach a spot in the top 20 European countries ranked by the number of Fintech funding rounds.<sup>2</sup> Recent views of local venture capitalists<sup>3</sup> report the Fintech sector as well-positioned to thrive in the future and showcase their investment appetite in this field. The recent successful listing on the NYSE of the USD 35bn Romanian software technology unicorn, UiPath,<sup>4</sup> a leader in Robotic Process Automation (“RPA”), has also set an unprecedented landmark in Romania’s tech innovation history, boosting the local tech innovation. In addition, the 2020 promotion of Romania to the emerging market status by FTSE Russell came with a set of international investment advantages, also triggering new financing opportunities for local Fintechs.

The significant growth over the last years and the encouraging perspectives prompted some of the most important local Fintech companies to join forces and set up the first Fintech professional association early in 2020 – the Romanian Fintech Association, supporting Fintech companies to access markets, capital and financing resources, as well as human resources to contribute to the development of the industry. Several accelerators (e.g. *Techcelerator*, *Innovation Labs*, *Spherik Accelerator*, *Risky Business*) and business angels (e.g. *TechAngels*) are also active in the Fintech landscape.

More generally, Romania has built a strong reputation over the years in holding impressive IT capabilities, both in terms of human resources and in terms of being a top-ranking country as regards broadband internet speed.<sup>5</sup> These capabilities enabled Romania to win the race to host the European Cybersecurity Competence Centre and contribute to a stimulating environment for the growth of Fintech companies.

### Approach of the Romanian supervisory authorities

Romanian regulators in the banking and non-banking financial sector, the National Bank of Romania (“NBR”) and the Financial Supervisory Authority (“FSA”), respectively, recognise the importance of Fintech and seek to leverage on the benefits thereof to support innovation in their fields of supervision. To this end, both the NBR and the FSA developed

dedicated Fintech hubs to encourage dialogue with interested parties and create a favourable environment for the development of innovative products and services, namely FinTech Innovation Hub – NBR and Fintech Hub and InsurTech Hub – FSA. At the end of 2020, the NBR engaged in discussions with experts from the Development Facility for the European Fund for Southeast Europe to explore the implementation of a Fintech regulatory sandbox. The FSA appears to also be considering the opportunity of developing a regulatory sandbox as part of its 2021–2023 strategy.<sup>6</sup>

In terms of the regulatory framework, the Romanian banking and financial laws as well as Fintech-related legal developments stem primarily from the EU directives and regulations. Very few legal proposals addressing the Fintech emerging trends have been initiated at domestic level and, so far, none have entered into force – for example, a draft law on crowdfunding services entered the legislative process in 2015 and was finally rejected by the Romanian Parliament in May 2021.

In the environment above, traditional banks still dominate the local regulated banking and payments sector. While Fintechs aim to take full benefit of the opportunities brought by the open banking era under the PSD 2,<sup>7</sup> only one local fintech (*Smart Fintech*) has recently managed to obtain a licence as a payment institution also covering payment initiation services. Many local Fintechs operate in an unregulated environment and some of them provide the relevant infrastructure and services (outsourcing Fintechs) to traditional players in the market. The latter, in their turn, contribute to the growth of the Fintech phenomenon by developing dedicated acceleration programmes (e.g. Elevator Lab Partnership Program by Raiffeisen Bank International or InnovX-BCR by Banca Comerciala Romana), offering opportunities to test new ideas, building partnerships and offering financing opportunities to Fintech companies.

The lack of a dedicated legal framework translates into limited Fintech offerings in certain niches, where the EU legislation is yet to be implemented (such as crowdfunding – the EU Crowdfunding Regulation) or is in the process of being created (such as blockchain and cryptocurrencies – the draft EU laws on cryptoassets and distributed ledger technology (“DLT”)<sup>8</sup>).

As a result, the Romanian Fintech landscape is fragmented and seems to be dominated by companies active in the payment & wallets sector, financial infrastructure and personal finance. Additionally, there are some limited but important developments in crowdfunding services where the current operating platforms structure their business model outside the capital markets regulations perimeter, as well as growth in the blockchain and crypto niche.

## **Fintech offering in Romania**

### Payments-related solutions

Payments-related solutions represent the largest segment of the fintech offerings in Romania and tackle a wide spectrum of customers’ needs. These include mobile apps-based solutions allowing in-app (bulk) payments for utility bills, insurance, public services, etc. to various service providers and merchants integrated in the product (*Pago, mobilePay Wallet*), decentralised payment solutions for closed-loop environments (*Oveit*) or fast and customer friendly peer-to-peer (“P2P”) money transfers (*Moneymailme, Volt*), some also showcasing digital wallet features allowing for NFC/QR-based payments, as well as software solutions (licensed via API or white label). Such innovative payments-related solutions are usually developed and/or provided by the Fintech companies in partnership with regulated entities that ultimately carry out the credit/debit card payments and credit transfers facilitated by

means of the Fintech products. Only one local Fintech company (*Smart Fintech*) entered the open banking ecosystem as a PISP with its plug-and-play payment initiation service for e-commerce merchants – Smart Pay. API-based shopping platforms offering customers cash-backs on purchase and “buy now, pay later” features have become a popular online shopping alternative (*Beez*).

### Personal finance

Several personal finance products have worked their way up in the Romanian Fintech market (e.g. *ThinkOut*, *Cash Control*, *Finboard*). Both B2B- and B2C-oriented, web or mobile-based, Fintech products in this niche provide cashflow analysis and forecasting, income and expenses monitoring and other similar functions. Generally, the source of data used is either the accounting data imported and processed by the app, figures inserted by the user or actual money movements from the users’ accounts. The latter feature involves regulated account information services under PSD 2 and may be provided by the Fintech companies as registered/licensed account information service provider (“AISPs”) or in partnership with AISPs.

### Lending and crowdfunding

Loans as well as factoring and invoice discounting are currently products that may be accessed online from regulated entities, based on fast and customer-friendly processes and approvals. Certain Fintech companies target the instant lending market and some short-term lending products also integrate “buy now, pay later” technology solutions for online and offline purchases (*Revo Technology*). Non-regulated entities target the B2B lending landscape via online platforms for invoice trading and factoring (*iFactor*).

Despite the absent dedicated legal framework, equity-based crowdfunding has an important exponent in Romania – SeedBlink, which is the largest equity crowdfunding platform in Southeast Europe.

The current regulatory regime leaves little or no room for lending-based crowdfunding platforms – the lending activity is subject to the monopoly of the regulated financial institutions. As such, lending-based crowdfunding platforms are not yet active in Romania. However, the upcoming application of the EU Crowdfunding Regulation is expected to change the regulatory environment and bring more (local and EU-based) players in this niche.

### Wealth management

Local tech solutions on wealth management contemplate the use of AI algorithms for building investment strategies and tools for sharing and accessing practical knowledge built by trading experts (*Vestinda*) as well as the use of robo-advice as an automatic wealth management solution for retail investors (*Optimus*). When the Fintech services cover the investment advice, MiFID 2 rules will need to be considered. While Optimus obtained its MiFID 2 relevant licence, none of the local examples mentioned above appear to be operational yet.

### DLT and cryptoassets

In line with the global trend, the interest in cryptoassets and DLT-based technologies is also widespread in Romania. Cryptoassets enthusiasts have access to several global cryptoexchanges and trading platforms as well as to locally developed exchange facilities (such as *Tokero* (formerly LDV)). In terms of raising funds, ICOs/IEOs were used for accessing finance either by locally-founded (*Restart Energy*) or Romanian-based (*Elrond*) companies, the latter being the developer of the public blockchain ecosystem for various financial-related utilisations (including the *Mayar* wallet, for their *eGold* native cryptoasset).

Blockchain-based solutions are developed for utilisations in several other fields (*Sablier* as real-time payment in crypto); local authorities (the FSA) appear to be exploring the use of this technology in the exercise of their supervisory powers (as a Regtech solution), according to the FSA Strategy for 2021–2023.

#### Financial infrastructure and enablers

Financial infrastructure providers and Fintech enablers (developers of tech solutions for financial services) are well represented (e.g. *FintechOS*, *Typing DNA*, *Druid*) and are expected to maintain traction within the Romanian Fintech ecosystem (some of them actually managing to also export their solutions to other EU countries recently). Solutions in this niche vary from open banking API-related (such as API aggregators/hubs, testing tools for PSD 2 APIs), authentication (including biometric) tools (such as typing biometrics authentication), full-process onboarding platforms and chatbots, to platforms that enable banks and insurers (as Insurtech solutions) to create end-to-end digital customer journeys (e.g. in the case of banks, from onboarding to accessing banking products). While the business of the companies active in this niche is not itself regulated, their end-services and products are usually dedicated to regulated activities and may need to ensure compliance with several requirements, such as the strong customer authentication rules under PSD, anti-money laundering (“AML”), KYC onboarding standards, eIDAS Regulation and/or GDPR. Also, all applicable outsourcing rules need to be complied with by the relevant regulated entities in their relationships with these entities.

### **Regulatory and insurance technology**

#### Insurance technology

The tech innovation in the insurance market has recently become more visible as an increasing number of insurers have integrated Fintech solutions in their activities to close the digital gap and hold on and increase their customer base. Implemented Insurtech solutions are aimed at providing tailored insurance offerings and streamlining the insurance process. These include telematics/usage-based insurance options, chatbots that facilitate interaction with customers and offer 24/7 assistance, online underwriting processes, digital-first notices of loss and also end-to-end digital customer journeys (that cover quote and underwriting, policy issuance, payment and policy management processes). Insurance-dedicated solutions by Fintech enablers include, in general, digital claims notice and processing, appointments of repair shops/selection of treatment facilities as well as features to facilitate the settlement invoices/claim completion.

The InsurTech Hub set up by the FSA is aimed to facilitate the interaction between traditional players in the insurance markets (insurers, brokers) and tech innovators to explore further developments in this niche.

#### Regulatory technology

While the visible focus in the use of Fintech solutions by the regulated entities has been towards meeting customers’ needs and improving interaction with customers, ensuring compliance with regulatory requirements is also covered by various Fintech solutions. Fintech solutions in the open banking era also have a Regtech component, as the technology should enable compliance with several requirements, e.g. under PSD 2 and/or the AML legal framework. Certain Regtech solutions cover client identification processes (via electronic means) and secured client authentication protocols. Despite the relatively limited local offerings in this field (e.g., Reporting Centre offering regulatory reporting solutions), the use-cases of Regtech are expected to continuously extend to the mid- and back-office internal processes of the regulated entities to serve, amongst others, compliance and risk

management (e.g., automatic evaluations of the regulatory environment, data aggregation), fraud detection and regulatory reporting.

Both the NBR and the FSA support the development of the Regtech ecosystem and the FSA itself undertook in its 2021–2023 strategy to explore the use of innovative technologies (such as DLT and blockchain, AI and machine learning) to strengthen its supervisory capabilities.

### **Regulatory bodies**

Under the Romanian law, there is no single regulatory and supervisory authority for Fintech companies. Depending on their business models and whether part of such amount to regulated activities, the activities of Fintech companies may be authorised and supervised by the NBR (payments, e-money and banking business) or the FSA (financial services firms or crowdfunding services providers).

Also, from an AML and international sanctions legislation perspective, relevant authorities include the National Office for Prevention and Control of Money Laundering and the National Agency for Fiscal Administration. Additionally, the National Consumer Protection Authority may also supervise the relevant activity of Fintech companies offering B2C products and services.

In connection with the providers of services related to cryptoassets, relevant authorities also include the Authority for the Digitalization of Romania, as well as the Ministry of Public Finance.

The competent authority in Romania for data privacy matters is the National Supervisory Authority for Personal Data Processing, which is a public authority, having the legal power to launch investigations and apply sanctions.

As regards cybersecurity matters, companies are supervised by CERT-RO, which is responsible for preventing, analysing, identifying, and reacting to cyber incidents, having the legal power to apply sanctions under the Romanian Cybersecurity Law.<sup>9</sup>

### **Key regulations and regulatory approaches**

Under the Romanian law, there is no dedicated piece of legislation aimed at regulating Fintech companies. Unlike other European lawmakers, which have adopted certain special regulations aimed at covering the quick market developments in this sector, the Romanian legislator has not taken such a stance until now, the limited legislative initiatives to regulate this area, such as the draft law regarding crowdfunding, having been aborted during the legislative process.

The regulations applicable to Fintech companies very much depend on the type of business carried out by such companies. Depending on such business models (e.g., B2B, B2C), Fintech companies may need to comply with multiple layers of rules and regulations in order to provide their services and products in Romania. As regards the financial services legislation, including payment services, insurance, e-money, and financial investment services, the Romanian legislation has substantially implemented the relevant EU directives, namely PSD 2, Solvency II, the E-Money Directive and MiFID 2. To the extent that Fintech companies' activities fall under the scope of licensed activities, namely payment services or e-money business, banking business or financial services, the Fintech companies should obtain the relevant licences prior to actually carrying out their business. Also, such companies are deemed as reporting entities under the relevant AML legislation and should accordingly comply with international sanctions regulations in force in Romania.

Additionally, we note that EU directives relevant for a B2C business, such as the Distance Marketing of Financial Services Directive, the Unfair Contract Terms Directive, as well as the Consumer Credit Directive are also implemented under Romanian law, and Fintech companies carrying on a B2C activity must comply with the relevant provisions thereof.

Apart from the special legislation above, the activity of a Fintech company is subject to the general legislation applicable to companies including the Civil Code, Company Law no. 31/1990, data protection laws (including GDPR) and the legislation on e-commerce and prohibiting unfair practices.

### Payment services

In terms of payment services, since 13 December 2019 they have been regulated by Law 209/2019 on payment services and for the amendment of certain regulatory acts, transposing PSD 2 in the Romanian law. The law regulates the main principles of PSD 2 regarding the regulation, the authorisation of payment institutions, the registration of AISP and their supervision, while the technical conditions regarding the authorisation of payment institutions or the registration of account information services providers and other similar matters, including from the relevant EBA guidelines, are mainly regulated by NBR Regulation 4/2019 on payment institutions and dedicated providers of account information services in force since December 2019. Also, e-money and e-money institutions are regulated by Law 210/2019 on e-money issuance activity in force since November 2019 and implementing regulation of the NBR 5/2019 in force since December 2019. Of interest in the area of payments is also NBR Regulation 2/2020 regulating the security measures related to the operational and security risks and the reporting requirements for payment services. These main regulations are further supplemented by the relevant EBA guidelines adopted in furtherance of PSD 2.

Payment services can be performed in Romania by credit institutions, payment institutions (including third-party providers carrying out payment initiation services), e-money institutions, all these players being subject to prior authorisation by the NBR, capital requirements and prudential supervision. Also, under Law 209/2019, the AISP exercising only such payment services may provide these services in Romania subject to a prior registration with the NBR registers (following consultation by such authority with the National Authority for Consumer Protection and other competent authorities) and compliance with certain conditions.

Unfortunately, the Romanian legal framework does not regulate a lighter authorisation procedure for PISPs and the first such authorisation was obtained by a Romanian fintech company (*Smart Fintech*) only in April 2021, after a nine month-authorisation procedure. It is, however, expected that the following authorisation procedures of third-party providers will go smoother, with two other authorisation procedures pending with the NBR. Also, as of the end of May 2021, no AISP has been registered in the corresponding section of the register kept by the NBR, no public information being available in connection with the ongoing procedures carried out by third parties for such registration.

When assessing the need for an authorisation as a payment institution, Fintech companies must carefully consider whether the services contemplated to be provided actually amount to regulated payment services (including payment initiation services) or whether they could be assimilated only to technical services providers which are exempted from the obligation of an authorisation in accordance with Art. 4 (j) of Law 209/2019 (transposing Art. 3 (j) of PSD 2).

According to available public information, open banking imposed by PSD 2 was required to be finalised in Romania by 31 March 2021 – the final deadline assumed by the NBR to EBA being 30 April 2021. Currently, a few Romanian banks have adopted API systems created

by a Romanian Fintech company, allowing access to the account information of other main Romanian credit institutions, taking thus advantage of the opportunity of open banking offered by PSD 2. According to recent comparative data regarding the implementation of open banking in the European States,<sup>10</sup> as of June 2021, Romania achieved one of the weakest rankings, open banking being deemed “*a very low priority for regulators*”.

#### AML and international sanctions legislation

Payment services, e-money and, more generally, banking and financial services businesses are also subject to Romanian AML legislation, consisting mainly of Law 129/2019, as subsequently amended, including by GEO 111/2021, transposing under the Romanian law the 4<sup>th</sup> AML Directive, as well as the 5<sup>th</sup> AML Directive. The related secondary legislation includes the dedicated regulation applicable to credit institutions, payment institutions, e-money institutions and non-banking financial institutions also qualifying as payment institutions, namely NBR Regulation 2/2019, as well as the one applicable to the regulated entities under the FSA supervision including insurers, investment funds, alternative investment funds managers, investment firms and others, namely FSA Regulation 13/2019. The implementation norms to Law 129/2019 adopted by the National Office for Prevention and Control of Money Laundering apply, *inter alia*, to providers engaged in exchange services between virtual currencies and fiat currencies and custodian wallet providers. Essentially, all such reporting entities should have KYC procedures in place and apply KYC measures in relation to their clients.

Relevant for the development of Fintech activities in Romania is the recent amendment of Law 129/2019 under GEO 111/2021, transposing the 6<sup>th</sup> AML Directive with effect from July 2020, allowing now for the identification and verification of a client’s identity based on documents, data and information obtained from secure and independent sources, including, if available, means of electronic identification and relevant trust services regulated under eIDAS Regulation no. 910/2014 or via any other secure identification process at a distance or electronically, regulated, recognised, approved or accepted at a national level by the Authority for the Digitalization of Romania. Theoretically, this amendment regulates the digital identification of the reporting entities’ clients as part of the KYC process, encouraging the development of online businesses such as those developed by Fintech companies.

In furtherance of this amendment, in February 2021 the Authority for the Digitalization of Romania submitted to public consultation a draft emergency ordinance regarding the identification of a person at a distance by video means. It is likely that the draft undergoing public consultation will be subject to significant amendments before its enactment by the Government, numerous comments including from the representatives of the Fintech sector criticising its scope (aimed to apply only to payment services providers, public institutions and trust services providers), requesting that such services should be provided by a broader range of service providers submitted to public consultation and requesting a longer implementation deadline.

Finally, the reporting entities subject to AML legislation should also comply with the international sanctions legislation consisting in Romania of both the relevant European regulations and Government Emergency Ordinance 202/2008 as subsequently amended and its application norms enacted under Government Decision 603/2011, as amended under Government Decision 292/2021.

#### Cryptoassets and financial instruments

Similar to the status of the EU legislation, there is no specific financial regulatory regime dedicated to cryptoassets under the Romanian law. In line with the 5<sup>th</sup> AML Directive,

the relevant Romanian legal framework defines the concept of cryptocurrency and digital wallet providers related to virtual currencies, and the fiscal legislation regulates the rules applicable to income tax generated by transfers of virtual currency. Also, for the purpose of implementing the Non-Cash Directive,<sup>11</sup> a draft law is currently undergoing the legislative process for the purposes of amending the Criminal Code to cover specific sanctions related to the fraudulent use of cryptocurrency and e-money.

As such, digital wallet providers and cryptocurrency exchanges qualify as reporting entities under the Romanian AML legislation and are also subject to authorisation/registration requirements with the Commission for the authorisation of the foreign exchange activity within the Ministry of Public Finance, as well as to the requirement to obtain a technical endorsement from the Authority for the Digitalization of Romania, but are not regulated as such (e.g., no specific conduct of business rules, organisational requirements being applicable). Currently, the application norms regulating the procedure for obtaining the authorisation/registration with the Ministry of Public Finance and the endorsement of the Authority for the Digitalization of Romania have not been adopted and, consequently, there is no entity authorised/registered as a digital wallet provider or cryptocurrency exchange in Romania. Providing such services without authorisation/registration may trigger criminal liability.

The key piece of legislation transposing MiFID 2 in Romania is Law no. 126/2018 on markets in financial instruments (“**Romanian MiFID 2 Law**”), on the basis of which the FSA issued Regulation no. 5/2019 regarding the regulation of the provision of financial services and activities.

To the extent that Fintech companies issue or trade in cryptoassets that may qualify as transferable securities or financial instruments, as defined under the Romanian law implementing MiFID 2, the legal regime governing the provision of financial investment services would apply, including the Prospectus Regulation, the Romanian MiFID 2 Law and the Market Abuse Regulation.

The definition of financial instruments under the Romanian MiFID 2 Law is substantially similar to the one included in Section C of Annex I of MiFID 2, no additional type of instrument linked to cryptoassets being expressly included in such list under the Romanian MiFID 2 Law. Absent any specific guidelines to date from the FSA on the qualification of cryptoassets as financial instruments, it is to be expected that the relevant advice and guidelines provided by ESMA<sup>12</sup> will play an essential role in the case-by-case analysis to be performed by the Romanian authority.

Considering the lack of a dedicated legal framework on cryptoassets, the FSA has issued another warning in 2021 re-stating that cryptoassets are extremely risky and speculative, and that the majority of such assets do not qualify as financial instruments, leaving investors without the corresponding legal protection. The NBR issued similar warnings over the years in connection with the risks of financial losses posed by investments in certain cryptoassets (i.e., virtual currencies). However, the latest warning issued in April 2021 indicates that the NBR is ready to view more favourably certain types of activities connected with cryptoassets. Specifically, as compared to its initial warnings which expressly discouraged credit institutions to provide any banking services to entities involved in the cryptocurrency business, the latest warning expressly confirms that there is no legal provision prohibiting banks from offering account services to cryptocurrency exchanges or custodian wallet providers, if the AML legislation is complied with.

In the absence of any local initiatives to address the risks and clarify the legal regime of cryptoassets, the use of cryptocurrencies as actual payment means as well as the financing

opportunities for fintech start-ups through ICOs and blockchain-based capital markets infrastructure is expected to reach their full potential once the future EU regulations on cryptoassets are enacted.

### Crowdfunding

There is no bespoke legal regime in Romania governing crowdfunding. To date, certain limited steps have been taken in view of enabling the application of the EU Crowdfunding Regulation (applicable as of November 2021), namely a draft law was submitted for public consultation aiming to amend the Romanian MiFID 2 Law in consideration of the EU Crowdfunding Regulation. However, we expect that a broader set of amendments to various pieces of legislation is required in order to allow for a proper conduct of business in Romania of the equity-based and of the lending-based crowdfunding platforms.

The crowdfunding landscape in Romania is fragmented and seems to be dominated by certain equity-based crowdfunding platforms (such as *Seedblink* dedicated to tech start-ups), as well as by some donation and reward-based crowdfunding platforms (e.g., *Startarium* and *Consolid8*), the latter not being generally subject to licensing requirements in Romania.

In the current legal environment, investment-based crowdfunding is permitted on a non-regulated basis only to the extent that the used business model does not trigger the applicability of the legislation governing financial instruments and financial services, including the Romanian MiFID 2 Law and the Prospectus Regulation, as well as the legislation implementing PSD 2, AIFMD and the Romanian legislation governing alternative investment funds. To the best of our knowledge, there are no Romanian entities holding a MiFID 2 licence operating investment-based crowdfunding platforms in Romania.

On the other hand, lending-based crowdfunding platforms are not operational in Romania due to some major regulatory hurdles that seem impossible to overcome in the current regulatory framework without the involvement of a licensed entity. Essentially, the lending of money within the crowdlending platform carries the risk of being qualified as a professional lending activity, which is subject to a banking licence in Romania pursuant to GEO no. 99/2006 on credit institutions and capital adequacy. Providing lending activities for interest by a non-authorised person (the law does not distinguish between legal entities and individuals) is considered as usury and is criminally sanctioned under the Criminal Code.

### Data protection

All Fintech companies that process personal data must comply with the GDPR;<sup>13</sup> in addition, there are certain national requirements that must be observed; for example, conducting a data protection impact assessment when large-scale processing of personal data is conducted by using innovative/new technological solutions, particularly where such operations limit the ability of data subjects to exercise their rights – which may be the case for a vast number of Fintech companies. Also, Law no. 190/2018 on the measures for the application of GDPR defines the concept of national identification number as a sensitive category of personal data encompassing the personal identification number, number of the identity document, passport number, driving licence number, social health insurance number, etc. The processing thereof is subject to particular requirements if it is based on the controller's legitimate interest.

### Cybersecurity

According to the Romanian Cybersecurity Law, all essential service operators (including a wide array of essential services, such as digital infrastructure, banking and financial market infrastructures) are required to comply with specific obligations, including the obligation

to (i) notify CERT-RO in order to be registered within the Registry of essential service operators, and (ii) comply with the technical norms on the minimum requirements for ensuring the security of computer networks and systems.

### Restrictions

The Romanian law does not contemplate specific restrictions, nor does it create a privileged regime for Fintech companies.

As such, the main restrictions from a regulatory perspective derive from the authorisation/licensing requirements if the business model targeted by the Fintech companies falls under the scope of the regulatory regimes set out above or from the lack of a dedicated legal framework or of any authority guidance (e.g., P2P/P2B lending-based crowdfunding platforms and cryptoassets, which puts Romania at a competitive disadvantage as compared to other EU jurisdictions). Additionally, even when there is legal framework in place, the lengthy authorisation process and the high costs involved have proven to be significant hurdles for Fintech start-ups so far.

### Cross-border business

EEA-licensed Fintech companies that carry out EU regulated activities (as mentioned above) may enter the Romanian Fintech market based on the well-known EU passporting regime. Non-EEA-based companies with the same (regulated) business models targeting the local market will need to pass the relevant licensing test before the NBR or the FSA.

Foreign Fintech companies that carry out non-licensed businesses which may cross/overlap with the EU regulated activities (e.g. crowdfunding platforms) based on specific endorsements from local foreign authorities face risks triggered by the scarce regulatory framework in Romania. Business models will be ultimately assessed by NBR and/or FSA, as applicable, for activities carried out in Romania.

There are no particular rules to access the Romanian market by foreign Fintechs that do not carry out regulated activities (such as infrastructure provider/enabler Fintechs) – general business rules apply. On the opposite stream, several local Fintechs have already crossed borders with their solutions (e.g. *FintechOS*) targeting the EU market.

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### Endnotes

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Diana E. Ispas is a Partner with over 15 years of experience focusing on banking, finance and capital markets, financial services and corporate governance. Diana's regulatory experience covers the full spectrum of financial services (e.g., payment services, insurance, pensions, e-money), being well versed in dealing with complex financial regulatory projects and having obtained precedent-setting interpretations from regulatory authorities. In addition to the extensive experience covering virtually all types of traditional financing (from syndicated loans to corporate and municipal bond issues and IPOs), Diana provides regular advice to various players, including Fintech companies and banks in connection with alternative financing means, such as crowdfunding and DLT-based products, as well as advice on financial service digitalisation.

Diana is an active contributor to the improvement of financial services legislation and a co-author of key industry guidelines.



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Alexandru Achim is an Associate Attorney with Bondoc și Asociații SCA with over five years of professional experience in the areas of banking and finance, regulatory and compliance in financial services and capital markets. Alexandru has advised local and foreign banks as well as international finance institutions on a wide range of domestic and cross-border finance transactions and has developed knowledge on the payment and electronic money services regulatory framework, as well as sanctions and anti-money laundering legislation along with crowdfunding and cryptoassets legal challenges, by providing legal assistance in connection with certain innovative products targeting the Romanian market.

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