

# Future of Financial Services Week



## Expanding into Europe

26 January – 3 February 2022



# Speaking with you today



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# 1

## Introduction



## Expanding into Europe – What are we typically asked to do?

To help a client (UK or US based) which is looking to expand its financial products and services offering into the EU either for the first time or into a new EU Member State

- Can I do this from the UK or the US, or do I need an establishment in the EU?
- Do I need a licence or licences? And if so, can I partner with a licensed entity?
- If I need one, which is the 'best' jurisdiction to set up an EU licensed entity? How long does it take, and what do I need? What are the consequences of being licensed?
- What localisation do I need to make to the existing customer journey and terms?
- Are there any local requirements to be aware of (e.g. language, consumer rights, DP/privacy, AML, reporting)?
- Can you list (audit) all applicable laws and regulations? And horizon scan?



## Expanding into Europe – What are the myths?

- There is one set of European law
- There is one regime for all financial services
- Passporting is straightforward
- You can ignore the law of the 'host' Member State
- All regulators are the same
- You can have one set of European terms
- One can safely rely upon 'reverse solicitation'



# Our International FinTech Team

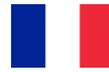


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# 2 Expanding into Europe - France



# Location

## Downside

- French competent authorities (ACPR/AMF) are not business oriented
- Long and costly processes for being licensed
- Very consumerist laws
- Frequent controls and sanctions...

## Upside

- France is catching up with the UK and Germany as well as the Northern European countries in terms of the number of unicorns. As of January 19, 2022, France has 26 unicorns with a total capitalization of more than € 49 billion
- Blockchain/crypto space and IA stamped as highly strategic businesses for France and entirely part of the politic program of the President of the French Republic
- No more 'gold plating' on the application of the EU law and one EU single rulebook advocators
- Setting-up in January 2022 of a dedicated fast-track licensing procedure for FinTechs coordinated by the FinTech-Innovation Unit of the ACPR
- New culture of sandbox with France Experimentation



# Where to go?

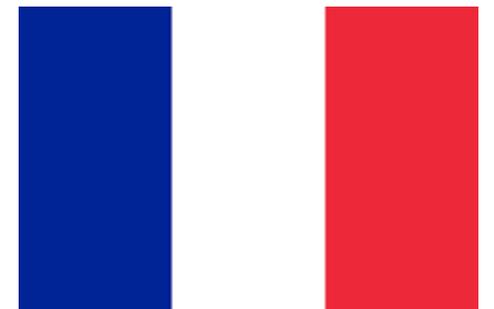
## Number of start-ups per French regions

Hauts de France	475
Normandie	442
Bretagne	359
Pays de la Loire	409
Centre Val-de-Loire	190
Nouvelle Aquitaine	929
Occitanie	782
Région PACA	821
Auvergne-Rhône-Alpes	1202
Bourgogne Franche-Comté	145
Région Grand Est	326
Corse	19
Ile-de-France	+7500

## Number of start-ups per French cities

Lille	+350
Rouen	+200
Rennes	+200
Nantes	+300
Orléans	+40
Bordeaux	+340
Toulouse	+360
Montpellier	+270
Marseille	+390
Cannes	+170
Nice	+120
Lyon	+690
Grenoble	+230
Dijon	+30
Strasbourg	+140
Ajaccio	9
Paris	+5.600

- The start-up ecosystem in France is not a Parisian ecosystem
- More and more digital champions are being born in the regions
- As of January 1, 2020, 60% of French start-ups were created outside Paris out of a total of 13,420 start-ups



# What sort of license do I need?

Status	Type of authorisation	Involvement of another authority	Legal basis for the ACPR's competence	Time limits applicable	Nature of the procedure
Credit institution	licensing	The license is delivered by the European central bank on a proposal from the ACPR	Article L. 511-10 of the French Monetary and financial Code ( <i>Code monétaire et financier</i> , hereinafter referred to as CMF)	6 months, renewable once (Article L. 511-2-1, section I, of the CMF)	Silence is deemed to signal refusal <sup>22</sup>
Financing company	licensing		Article L. 511-10, Section II, of the CMF	6 months, renewable once Article R. 511-2-1, Section II, of the CMF	Silence is deemed to signal refusal
Insurance undertaking	licensing		Article L. 321-1 of the French insurance Code ( <i>Code des assurances</i> )	6 months (Article R. 321-4 of the <i>Code des assurances</i> )	Silence is deemed to signal refusal
Electronic money institution	licensing	Opinion of the Banque de France on the security of means of payment	Article L. 526-7 of the CMF	3 months (Article R. 526-1 of the CMF)	Silence is deemed to signal refusal
Payment institution	licensing	Opinion of the Banque de France on the security of means of payment	Article L. 522-6, section I, of the CMF	3 months (Article R. 522-1 of the CMF)	Silence is deemed to signal refusal
Account information service providers	registration	Opinion of the Banque de France on the security of accesses to payment account information	Article L. 522-11-2 of the CMF	3 months (Article R. 522-1 of the CMF)	Silence is deemed to signal approval <sup>23</sup>
Investment firm	licensing	Approval of the business plan by the AMF	Article L. 532-1 of the CMF	6 months (Article R. 532-3, Section III, of the CMF)	Silence is deemed to signal refusal
Company	exemption from authorisation as an electronic money institution	Opinion of the Banque de France on the security of means of payment (Excluding Telco exemption <sup>24</sup> )	Articles L. 525-6 and L. 525-6-1 of the CMF	3 months (Articles D. 525-2 and L. 525-6, section II, of the CMF)	Silence is deemed to signal approval
Company	Exemption from authorisation as a payment institution	Opinion of the Banque de France on the security of means of payment (Excluding Telco exemption)	Articles L. 521-3 and L. 521-3-1, section I, of the CMF	3 months (Articles D. 521-1 and L. 521-3-1, section II, of the CMF)	Silence is deemed to signal approval
Agent of a payment service provider	registration		Article L. 523-1, Section II, of the CMF	2 months (Article 37 of the <i>Arrêté du 29 octobre 2019</i> )	Silence is deemed to signal approval

- Except asset management companies under the exclusive competence of the AMF, most FinTechs and other providers of regulated activities must obtain either a license or a registration within ACPR or ACPR/AMF
- Average period is 1-2 months for getting a credit broker/agent of PSP license
- Average period is 5-7 months for getting a PSP/crypto-asset services provider/crowdfunding platform license
- Average period is 8-12 months for getting a credit institution/insurance company license



## Local laws to be aware of?

### Pro-businesses

- France is the first EU jurisdiction having created a crypto-asset services provider statute in 2019 with the PACT Law (the list of crypto services is duplicated from MiFID II) - more than 55 application forms are currently being examined by the AMF and the ACPR
- Ability to be registered as a crypto-asset services provider by AMF/ACPR **without having any substance in France**
- AMF is one of the few regulators in the world to have accepted to stamp public offerings of tokens (ICOs)

### Pro-consumers (French consumer code provisions):

- Restricting canvassing and some specific advertising practices (sponsorship and patronage) for crypto-asset platforms and services and for ICOs
- Digital platforms must disclose the conditions and criteria for ranking and referencing third-party offers and the nature of the intermediation service
- T&Cs and pre-contractual information (as users' guidance) must be translated into French



# 3 Expanding into Europe - Germany



# Location

## Downside (rumours)

- BaFin strict and formal
- Authorities sometimes slow
- BaFin is old-fashioned – not flexible towards new technologies

## Upside

- BaFin has high reputation ("quality seal" in EU)
  - *Wirecard* did not significantly harm
- Open-minded towards financial innovations
- BaFin has implemented FinTech departments / working groups



# Where to go?



# Labour market

...reputation as rather strict/protective German labour law, however...

- Good labor and employment market conditions in Germany
- Skilled workforce
- Attracts qualified employees from abroad
  - high standard of living
  - international ecosystem / flair in major German cities
- Flexibility to structure employment relationships according to needs



## Resource commitment BaFin licence

- German branch or German entity required
  - “substance” required – no letter box entities
- Capital requirements (depending on services being offered)
- Business plan
- 1 or 2 reliable (*zuverlässig*) and professional (*fachlich geeignet*) MDs:
  - no requirement for German citizens or residence in Germany
  - however, certain time availability on-site to ensure proper regulated business
- approx. 6-9 months for BaFin licence (depending on structure and services)



# Financial services based on EU regulation

Passportable throughout EU	Not passportable throughout EU
<ul style="list-style-type: none"> <li>– Banking business               <ul style="list-style-type: none"> <li>➤ deposit business (<i>Einlagengeschäft</i>)</li> <li>➤ investment banking (<i>Emissionsgeschäft</i>)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>– Banking business / P2P lending               <ul style="list-style-type: none"> <li>➤ lending business (<i>Kreditgeschäft</i>)</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>– (Online) securities / crypto trading platform               <ul style="list-style-type: none"> <li>➤ investment broking (<i>Anlagevermittlung</i>)</li> <li>➤ operation of MTF/OTF (<i>Betrieb von multilateralem Handelssystem</i>)</li> <li>➤ proprietary trading (<i>Eigenhandel</i>)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>– Wallet services               <ul style="list-style-type: none"> <li>➤ crypto custody business (<i>Kryptoverwahrgeschäft</i>)</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>– Transfer of money               <ul style="list-style-type: none"> <li>➤ money remittance services (<i>Finanztransfergeschäft</i>)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>– Cash advance services               <ul style="list-style-type: none"> <li>➤ factoring</li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>– Services re crypto securities register               <ul style="list-style-type: none"> <li>➤ crypto securities register maintenance (<i>Kryptowertpapierregisterführung</i>)</li> </ul> </li> </ul>



# 4 Expanding into Europe – The Netherlands



## Downside (the bad) – what should you be aware of before opting for the Netherlands?

- Local market depth is just 17 million people
- Debit cards over credit cards, online and mobile payments dominated by iDeal
- Substance requirements - rule of thumb is that the majority of the board must be Dutch residing → the Dutch business must be performed in the Netherlands
- Requirement to get indirect shareholders of Dutch regulated entities (controllers) approved goes all the way up in the corporate chain to indirect UBOs with 10% or more
- Dutch local remuneration rules (bonus cap) apply almost across the entire regulated financial sector, and can be a challenge for non-Dutch professionals
- Fairly strict AML/CTF/Sanctions regime, outsourcing of transaction monitoring requires attention
- Keep an eye on local regulations around mediating in e-money, payment accounts and insurance distribution



## Upside (the good) – what speaks for the Netherlands as a FinTech?

- Home to major Dutch banks and more than 50 international banks, FinTechs like Adyen, Modulr, CurrencyCloud, Uber Payments, World First, Azimo, ReWire and many more who have opted for Amsterdam following Brexit
- 200,000 jobs in finance & FinTech in the Amsterdam Area, 26% of total employment
- #1 worldwide in English proficiency → regulators speak English
- Regulators reasonably friendly towards crypto, home to Bitvavo, AMDAX, Bitfury, Icoinic, Cyber Capital, BUX Crypto and many more
- FinTech focused Amsterdam municipality, easy to reach out to regulators
- B2B credit, lease, factoring all unregulated, limited gold-plating of EU laws
- Acquiring PSPs allowed to perform pseudo EMI services
- EMI regime embraced by regulators, driven by Brexit (now 10 EMIs and counting)



# 5 Concluding remarks



## Concluding remarks

- Europe is a huge market, offering clear opportunities
- Go in with your 'eyes open' – beware the myths...
- Choose your jurisdiction not on regulatory licence considerations
- You can have a 'European' product, with a thoughtful approach
- You will need advice in specific/all EU jurisdictions



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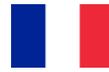
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# Any questions?



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