

## LICENCING DIVERGING COMPLIANCE REGARDING OBLIGATIONS ACCORDING TO CERTAIN MNB DECREES

Regarding the application to the Financial Innovation Testing Environment (hereinafter: FITE), the MNB has constructed a preliminary consultation procedure as a preceding step before the submission of the request for the licencing (hereinafter: FITE licencing procedure). The MNB recommends the participation in the consultation for every financial entity that plans to submit a request to conduct a FITE licencing procedure based on the MNB Decree on diverging rules of compliance with obligations under certain MNB Decrees (hereinafter: Decree).

Based on subpoint (a) (aa) and point (b) of Article 9(1) of Act CCXXII of 2015 on the General Rules for Trust Services and Electronic Transactions, Articles 17(1) and 19(1) of Government Decree 451/2016 (XII. 19.) on The Detailed Rules of Electronic Administration and Article 3(1) of Decree 36/2017 (XII. 27.) on Rules of Electronic Communication in Proceedings Instituted by the Magyar Nemzeti Bank as a Public Authority, and based on Article 58(2) of Act CXXXIX of 2013 on the Magyar Nemzeti Bank (hereinafter: the MNB Act), the company subject to mandatory electronic communication and the applicant's (hereinafter: applicant) legal advisor shall submit their request or other petition through an electronic form provided for the FITE licencing procedure available in the information technology system supporting the electronic administration services of the MNB (hereinafter: ERA system), in the manner and with the content specified therein by submitting the other documents defined by the Decree and the MNB in this document.

Requests in the FITE licencing procedure shall be submitted via an electronic form through the MNB's ERA platform under the Financial Innovation Testing Environment service, attaching certified electronic copies of the annexes. Decisions, requests for the application to be put in order, information and other communications of the MNB are delivered to financial entities or their legal advisors via the mail delivery storage.

Information can be found on general rules of the FITE licencing procedure at the following address (currently in Hungarian):

<https://www.mnb.hu/letoltes/engedelyezesi-eljarasra-vonatkozó-eljarási-szabályok.pdf>

Documents with information can also be found on the MNB website regarding electronic administration and the submission of attachable annexes (electronic documents) during the FITE licencing procedure (currently in Hungarian):

<http://www.mnb.hu/felugyelet/engedelyezes-es-intezmenyfelugyeles/engedelyezes/e-ugyintezes-az-engedelyezesi-eljarasokban/2018-januartol-hatalyos-szabalyok>

### I. PRELIMINARY CONSULTATION PRIOR THE FITE LICENCING PROCEDURE

The MNB has constructed a preliminary consultation procedure as a preceding step before application to FITE. During this procedure, the financial entity concerned prepares the appropriate documentation for the components of the request for the FITE licencing procedure, according to

the form<sup>1</sup> which can be found at the Innovation Hub subpage of the MNB website at the Regulatory Sandbox section.

Based on the form received, the MNB contacts the financial entity who has filled in the form. During the consultation procedure, the MNB is prepared to consult with the applicant on the specific content of the documents necessary to verify the content of the request and the documents' eligibility for the licencing procedure prescribed in the Decree for the FITE licencing procedure.

## II. THE FITE LICENCING PROCEDURE

An MNB licence is required for the financial entity for diverging compliance on obligations under certain MNB decrees. The FITE licence is provided by the MNB for up to 12 months, which period may be extended by a maximum of 6 months, upon the justified request of the financial entity (Articles 2(2) and 4(1) of the Decree). The submission of the request shall be conducted via filling in the 'FITE licencing procedure' form.

### 2.1. Objective of FITE licencing procedure, the scope of provisions concerned

The objective of the FITE is that financial entities provide their clients services with innovative solutions, especially with regard to renewing of the way of and the enhancement of the efficiency of the usage of financial entities' services. According to Article 1(1) of the Decree, innovative solution shall mean a technology, business model, product or service which is novel in the given sector of the financial intermediary system and is advantageous for the clients (e.g. through providing a more quickly accessible or cheaper service).

In line with this, Articles (2) and (3) of the Decree determine which for obligations of MNB decrees the MNB may authorise the applying of the innovative solution with diverging compliance from certain MNB decrees.

### 2.2 Contents of the request

The request on the licencing of the deviation shall contain the following, based on Article 3(2) of the Decree:

- a detailed description of the innovative solution, including detailed functional and security specifications of the technology of the innovative solution,
- the provisions (with an accurate reference to the relevant legal provisions) with regard to which the financial entity requests the authorisation of the deviation according to Section 2.1
- reasons supporting the granting of the FITE licencing, with a special regard to the way the innovative solution would serve the objective of the FITE,
- a full risk analysis of the innovative solution and the way the financial entity would manage the risks identified, and the extent and method of client compensation by the financial entity, should the risks eventually materialise, together with the related procedure,

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<sup>1</sup> <https://mnbpoll.mnb.hu/Survey.aspx?surveyid=97598435&lng=en-US>

- the maximum planned number of clients and transactions related to the innovative solution (according to Article 2(2) of the Decree, up to 10 000 clients can be affected) and the criteria based on which the financial entity would determine the clients and transactions regarding which it would apply the innovative solution,
- content of the information given to clients before contracting and the content of the information planned to be included in the contract to be made with the client that meets the criteria of comprehensibility (subpoint (cd) of Article 3(1) of the Decree), on the following:
  - about the innovative solution, the deviation of the innovative solution from the legislative provisions, the related specificities, especially regarding the eventual risks affecting the client, the procedures and measures aiming at the management of the risks,
  - the procedures and actions that ensure the management of risks, and – should such risks eventually materialise – the extent and way of client compensation under paragraph (2)(d) by the financial entity, and the related procedures,
  - the management of the termination of the service and an eventual amendment of the client contract in this regard following the expiry or withdrawal of the FITE licence.
- based on Article 59(2) of the MNB Act, applicants shall declare that they have disclosed to the MNB all relevant facts and data required for the FITE licencing.

### **2.3 Documents to be submitted**

According to point (g) of Article 3(2), the request shall contain those documents that support the compliance with the conditions determined in Article 3(1), according to the following:

- declaration of the financial entity stating that:
  - it wishes to provide an innovative solution that matches the objective of the FITE,
  - it undertakes a commitment towards the MNB according to which it shall make available for the clients or apply the innovative solution in the domestic market after participating in the FITE if this is in line with the legislative provisions,
  - it undertakes a commitment for the duration of participating in the FITE that it shall immediately notify the MNB in writing in case of a technical departure from the request that was the basis of the resolution concerning the innovative solution, which is either substantial or does not qualify as substantial, may become necessary,
  - it ensures client compensation, should risks affecting clients eventually materialise; in case of the engagement of a third party (e.g. insurance company), this third party shall be marked suitable for identification,
  - it shall undertake responsibility for compliance with subpoints ca) and cb) of point (c) of Article 3(1) of the Decree with regard to the implementation of the innovative solution also for the activity of a company in a contractual relationship with it, and the data of the companies concerned,

- upon submitting the request, the innovative solution is of a readiness level appropriate for practical application and substantial assessment by the MNB,
- the document compiled by the financial entity that summarizes the procedures and measures of the financial entity with regard to the innovative solution in order to ensure that it manages the legal fate of client contracts according to the relevant laws even in the case of the expiry or withdrawal of the FITE licence, as well as a copy of the documents containing the corresponding contracting terms (Business Rules, General Terms and Conditions, sample contract),
- draft of internal rules that set
  - under what procedure the financial entity will comply with the points included in subpoints (cd) and (ce) of point (c) of Article 3(1)
    - on the obligation to provide information to clients,
    - on requesting clients to make a declaration, enclosing the form provided for making the declaration or other documents summarizing the content of the declaration,
  - under what procedure it ensures the compliance with reporting obligations towards the MNB regarding informing clients in accordance with subpoint (cd) of point (c) of Article 3(1) of the Decree and the client declaration according to subpoint (ce) of point (c) of Article 3(1) of the Decree, also addressing the description of document management systems in which the documents needed for compliance with reporting obligations towards the MNB are managed,
  - the procedure of ensuring client compensation, should risks affecting clients eventually materialise,
- the document containing the description of the planned supporting IT system for the FITE participation, from which it can be examined that material conditions to comply with obligations towards the MNB set by the Decree (e.g. reporting, information) are ensured,
- the sample document informing the clients (subpoint (cd) of Article 3(1) of the Decree),
- the procedure of ensuring client compensation, should risks affecting clients eventually materialise; in case of the engagement of a third party for ensuring the client compensation, the commitment of the third party to contract with the financial entity if the FITE licence is granted, and the document containing the contract terms,
- the declaration based on Article 59(2) of the MNB Act.

#### **2.4. Administrative deadline of procedure**

The administrative deadline in the proceeding shall be three months; however, MNB is dedicated to deciding on the resolution in the shortest possible time. The proceeding and its administrative deadline shall commence on the working day that follows the date when the MNB receives the application.

The administrative deadline may be extended by the MNB once in justified cases by no more than three months.

If the application is not in compliance with the requirements provided for by the law, or it is deemed necessary to ascertain the relevant facts of the case, within forty-five days the MNB shall call upon the applicant to put the application in order, also indicating the legal consequences of non-compliance. The MNB shall be entitled to call upon the applicant to put the application in order on more than one occasions in its administrative proceeding. If the MNB has called upon the applicant to put the application in order, the administrative deadlines shall be calculated from the date when the application is fully put in order.

## **2.5. Administrative service fee**

There is no obligation to pay an administrative service fee for the FITE licencing procedure.

## **2.6. Suspension and termination of the procedure**

The applicant shall be entitled to request the proceedings to be suspended once, in justified cases; in case of more applicants involved, they shall provide this request jointly. The proceedings shall be continued at the request of any of the applicants. If the applicant does not ask for the continuation of the procedure within six months, proceedings are terminated after the six-month suspension. The MNB shall inform the applicants about the termination.

## **2.7. Request on extending the FITE authorisation**

Based on Article 4(1) of the Decree, the FITE authorisation may be extended by a maximum of 6 months once by the MNB, upon the justified request of the financial entity. The submission of the request shall be conducted via filling in the 'FITE application for extension' form; the submission should be handed in three months prior to the expiry of the authorisation to ensure continuity. The request shall contain the request on extension and the justification in which the financial entity confirms the necessity of the FITE licencing extension.

## **III. REVOCATION OF THE FITE LICENCE**

Based on Article 6 of the Decree, the MNB shall revoke the FITE licence if the financial entity,

- breaches the contents of the resolution on the FITE licence several times or in a serious manner,
- fails to apply the innovative solution,
- fails to comply with the conditions of Article 3 of the Decree