



MASTER THESIS | MASTER'S THESIS

Titel | Title

Acting within the Limits of Outsourcing - to what Extent are
Start-ups affected by the EU Regulations?

verfasst von | submitted by

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angestrebter akademischer Grad | in partial fulfilment of the requirements for the degree of
Master of Laws (LL.M.)

Wien | Vienna, 2024

Studienkennzahl lt. Studienblatt | Degree
programme code as it appears on the
student record sheet:

UA 999 082

Universitätslehrgang lt. Studienblatt |
Postgraduate programme as it appears on
the student record sheet:

Europäisches und Internationales Wirtschaftsrecht
[Vollzeit Englisch]

Betreut von | Supervisor:

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Table Of Content

Table Of Content	1
Abbreviations	2
I. Introduction - The Sharing Economy	3
II. Outsourcing	4
III. Outsourcing Regulation	16
II. Outsourcing Regulation in Finance	19
IV. Healthcare Regulations	24
VIII.Outsourcing Officer	27
IX. Improvements in the Regulatory Landscape	30
III. Outsourcing + : White Label Solution	36
I. Explanation of the Concept	36
VII. Considerations for Drafting a White Label Agreement	43
VIII.Relevance	45
IV. Going West: US Expansions from EU based start ups	56
I. Key Considerations for Expansion	56
II. Challenges for EU based Start Ups	57
Conclusion	62
Table of Literature	63
Abstract	68

Abbreviations

I. AML	Anti-Money-Laundering
II. BaFin	German Financial Authority
III. EBA	European Banking Authority
IV. EMI	Electronic Money Institution
V. GDPR	General Data Protection Regulation
VI. HIPAA	Health Insurance Portability and Accountability Act
VII. HR	Human Ressources
VIII.KYC	Know Your Costumer
IX. MDR	Medical Device Regulation
X. NDA	Non-Disclosure-Agreement
XI. SLA	Service Level Agreement

I. Introduction - The Sharing Economy

Sharing is caring - in recent years, this saying has come to symbolize a society that increasingly resorts to sharing possessions instead of always owning everything. This has led to a rise in living standards because many people can now use things that they would otherwise not have been able to afford. As a result, people between 18-39 are increasingly focussing on the sharing economy. This becomes particularly clear when you look at the most prominent examples: AirBnB, Uber or Spotify, where almost every second user is under 40 years old.¹

Why is that? The trend towards achieving a high quality of life instead of accumulating a lot of material possessions is particularly strong among the younger generation. This is attributed to the fact that, for many, the value is seen much more in the experience and the mere possession is more of a burden because you cannot develop completely freely and are always bound to a certain extent. Using Uber as an example, you can imagine that owning your own vehicle always means that you have to find a parking lot, fill up with petrol yourself and sign various contracts. It is much more convenient if you can order a driver to your front door via an app and then have nothing more to do with the car.

So, for various reasons, you don't want to own much, but you do want to enjoy the benefits of ownership: The question now is whether this behaviour can also prevail in the business environment. If you look at the company rather than the traditional employee, it quickly becomes clear that many companies no longer own everything associated with their product. This is also reflected in the statistics on the average age of founders: around 70 % of start-up founders are under 40 years old - the group in which every second person is involved in the sharing economy.²

¹ Beutin N, *Share Economy 2017: The New Business Model* (PricewaterhouseCoopers GmbH Wirtschaftsprüfungsgesellschaft, February 2018) <https://www.pwc.de/de/digitale-transformation/share-economy-report-2017.pdf> , p.9-13 accessed 29 December 2024.

² Bundesverband Deutsche Startups, 'Verteilung der Gründer von Startups in Deutschland nach Altersgruppen laut DSM¹ im Jahr 2024' (Statista, 29 September 2024) <<https://de.statista.com/statistik/daten/studie/573534/umfrage/verteilung-der-gruender-von-startups-in-deutschland-nach-altersgruppen/>> accessed 29 December 2024.

For younger companies in particular, it makes a lot of sense not to own everything immediately - both material and specialized staff - so as not to stand in the way of growth and to be able to scale better. After all, possessions cost money in both private and professional life. Money that you get from investors, among others, and which should be spent wisely.

So if, as a start-up founder, you decide to outsource because you would rather invest your resources in marketing and development, at first glance all you can do is trust the provider to deliver as agreed - similar to an Uber ride, where you also trust that the driver has a license and will take you safely to your destination. However, as with Uber, there are also certain guidelines and laws in the area of outsourcing that both must adhere to.

The question that arises here is to what extent younger companies are affected by the laws in the EU, since the EU in particular is often portrayed as over-regulated and therefore no longer competitive, which is why the current legal situation and the associated challenges are analyzed and evaluated in more detail. Subsequently, the extent to which outsourcing can help companies to discover new markets and the role played by the special form of 'white labelling' in the financial sector will be examined. These are presented in more detail below.

II. Outsourcing

I. Definition of Outsourcing

In order to get a deeper understanding on what to consider in outsourcing agreements, it has to be made clear, what outsourcing actually is. Outsourcing refers to the practice of delegating certain business functions, processes, or services to an external company or third-party provider, rather than handling them internally. The goal of outsourcing is often to reduce costs, access specialized expertise, improve efficiency, and allow a business to focus on its core competencies.³ Outsourcing is a strategic decision often made to gain

³ Gabler Wirtschaftslexikon, 'Outsourcing' (Springer Fachmedien Wiesbaden GmbH) <<https://wirtschaftslexikon.gabler.de/definition/outsourcing-42299/version-265650>> accessed 29 December 2024.

access to resources or expertise that would be expensive or difficult to develop internally, or simply to focus on activities that are central to the company's core business benefits like cost reduction, increased efficiency, and access to new technologies, but it can also present challenges, such as communication barriers, loss of control, and potential risks related to data security and quality. Therefore, businesses must carefully manage their outsourcing relationships through clear agreements and ongoing monitoring.

It is controversially discussed in many countries as some believe that it leads to a decrease in domestic jobs, while others believe that it allows the company to allocate assets to companies where they can be used most effectively.⁴

Generally speaking, outsourcing seems very good for start ups: usually, the founding idea doesn't usually include payroll activities or tax advisory, so it is only needed at some point but not necessarily all the time. By outsourcing of these activities, they could focus more on their idea and their product and maybe hire someone to actually build their product. Also within the building phase, the company might see that they need a specialist for a very short time, so they could hire a freelancer for the exact time rather than hiring a full time employee who has potentially nothing to do at the firm once his special skills are not needed anymore.⁵

When thinking about outsourcing, we have to talk about where the name derives: the term has its origin in „Outside“ meaning outside of the company, „resource “ and „using“. With that derivation as such, it gets clear that the whole process of outsourcing must include another resource outside of the company, so a outsourcing within the group is not within the scope of outsourcing. Of course, there are exceptions here too, but this usually falls under the concept of using synergies, i.e. when activities are centralized within a group.⁶

Basically, the main distinction is made in terms of proximity to the next processing step: in offshore outsourcing, the activity is carried out in another country, in nearshore outsourcing in a neighboring country and in onshore outsourcing in the same country as

⁴ The Economic Times, 'Definition of Outsourcing' (The Economic Times) <<https://economictimes.indiatimes.com/definition/outsourcing>> accessed 29 December 2024.

⁵ Investopedia, 'Outsourcing' (Investopedia) <<https://www.investopedia.com/terms/o/outsourcing.asp>> accessed 29 December 2024.

⁶ Schwazer C, *Outsourcing: Eine strategische Betrachtung und Analyse* (Masterarbeit, Universität Innsbruck 2017) <<https://diglib.uibk.ac.at/download/pdf/378411>> accessed 29 December 2024.

the client. In principle, outsourced activities that do not require a high level of knowledge intensity and proximity to the core business are particularly suitable. These include IT outsourcing, i.e. the outsourcing of IT administration, software development and network maintenance, as well as the outsourcing of business processes such as customer service, accounting and HR. In addition, it can be said that there are no differences in the legally relevant distinctions between the various terms and manifestations; it is mostly a matter of categorising content.⁷

II. Benefits of Outsourcing

So, punctual needed skills are one reason for getting into outsourcing but there are some more:

One of the most significant benefits of outsourcing is cost savings. By outsourcing the mentioned non-business-related tasks to companies or freelancers, the company can save the money in terms of budget for staff or budget for plants. Especially in the early stages of a start up, it is very helpful to not have this sort of fix costs. Thanks to digitalization, many services -mainly in the tech sector- can even be outsourced in a different country, which might have significantly lower labor cost. Bearing this in mind, businesses can reduce expenses related to salaries, training, and infrastructure. Think of a payroll specialist: that person does not require any onboarding session, in which time a normal employee couldn't perform his actual work for what he is paid for. According to a report by Deloitte, 59% of companies cite cost reduction as a primary driver for outsourcing decisions.⁸

Moreover it gives companies the chance to focus on their core activities, such as product development, customer relationships, and strategic growth. This helps companies to invest their resources in areas that directly impact their competitive advantage, while third parties handle the more routine or specialized tasks.

⁷ Wirtschaftsverträge: *Marzi/Testor* in *Knauder/Marzi/Temmel* (Hrsg), Handbuch Wirtschaftsverträge (1. Lfg 2011) IT-Servicevertrag (Managed Services/Outsourcing/Outtasking) S.1

⁸ Deloitte, '2021 Shared Services and Outsourcing Survey' (Deloitte) <<https://www2.deloitte.com/us/en/pages/operations/articles/shared-services-survey.html>> accessed 29 December 2024.

Additionally, companies get easier access to innovation: Outsourcing makes specialized skills and technologies more accessible which might be difficult or costly to develop in-house. By partnering with experts, businesses can enhance the quality of services and products. This is particularly beneficial for startups looking to leverage cutting-edge technologies or industry-specific expertise without having to develop it from scratch.⁹

Furthermore, by having an outsourced solution it could lead to a situation in which companies can quickly scale operations without the burden of hiring and training new staff. This might be especially important for startups that need to adjust their operations in response to market demands or seasonal fluctuations.

On top of that, startups aiming to expand into international markets, outsourcing enables them to tap into global talent pools, navigate new regulatory environments, and localize their offerings without establishing a physical presence in each market. In the section xyz of this thesis, this topic will be discussed in more detail.¹⁰

III. Challenges of Outsourcing

The largest challenges for European start-ups in outsourcing stem from a mix of legal, operational, and strategic complexities. One of the primary risks of outsourcing is the potential loss of control over the quality of work. Third-party providers may not always meet the company's standards or align with its values, which can lead to inconsistent results or customer dissatisfaction.¹¹ Moreover, outsourcing, especially in sectors like fintech or healthcare, businesses may face increased risk regarding data security and privacy. Sharing sensitive information with third parties can lead to data breaches or non-compliance with regulations like GDPR or HIPAA. Ensuring robust data protection measures is essential, and businesses must assess the security practices of outsourcing

⁹ Schwazer C, Outsourcing: Eine strategische Betrachtung und Analyse (Masterarbeit, Universität Innsbruck 2017) (p.15)<<https://diglib.uibk.ac.at/download/pdf/378411>> accessed 29 December 2024.

¹⁰ Forbes Business Council, 'How Outsourcing Can Be an Effective Solution for Startups' (Forbes, 27 April 2021) <<https://www.forbes.com/councils/forbesbusinesscouncil/2021/04/27/how-outsourcing-can-be-an-effective-solution-for-startups/>> accessed 29 December 2024.

¹¹ European Commission, *EU SMEs and Subcontracting: Final Report* (European Commission, June 2016) (p.50) <https://single-market-economy.ec.europa.eu/system/files/2016-06/eu-smes-subcontracting-final-report_en_0.pdf> accessed 29 December 2024.

partners carefully. Start-ups must ensure that outsourcing providers comply with the GDPR. This is particularly challenging when outsourcing to non-EU countries with different data privacy standards.¹²

Depending on which sector the business is conducted, some sectors like finance, or healthcare, additional legal guidelines such as the EBA's outsourcing guidelines or the MDR for healthcare must be followed. The compliance with these laws is of special interest for the risk teams, as Outsourcing can expose start-ups to cyberattacks or data breaches, especially if providers lack sufficient security measures. Especially, when a start up has many service providers, the Over-reliance on external providers can be risky if the provider faces operational disruptions.¹³

But be aware of the fact that although outsourcing is often seen as a cost-saving measure, hidden expenses such as contract management, legal fees, and quality checks can inflate budgets. Sometimes, for international outsourcing, currency fluctuations can unexpectedly increase costs.

Additionally, Outsourcing to offshore providers can lead to communication challenges due to language differences, time zone discrepancies, or differing work cultures. Misunderstandings and delays may arise if clear communication channels are not established. Additionally, for customer-facing services, cultural differences may affect how well the outsourced team interacts with end customers.

Effective communication can be hindered by language differences and time zone gaps, leading to misunderstandings or delays. Different work ethics and approaches to problem-solving can affect the efficiency and quality of the work.¹⁴

¹² Horn in *Jahnel* (Hrsg), Datenschutzrecht (2019) Datenschutz beim Outsourcing – Datenschutzrechtliche Rahmenbedingungen und Vertragsgestaltung beim Einsatz von Auftragsverarbeitern

¹³ *Völk*, Was ist "Outsourcing"?, ÖBA 2019, 279

¹⁴ Schwazer C, Outsourcing: Eine strategische Betrachtung und Analyse (Masterarbeit, Universität Innsbruck 2017) <<https://diglib.uibk.ac.at/download/pdf/378411>> accessed 29 December 2024.

Generally speaking, every company should avoid strong dependencies. These make the company somewhat vulnerable to blackmail and at the mercy of the provider's volatility. Imagine that the provider is affected by supply bottlenecks, staffing difficulties or financial difficulties and is unable to fulfill its agreed obligations. This could be a major problem for companies that outsource large parts of their business activities. It therefore seems to be in the company's own interest to have a good overview of the situation of the individual partners and to be able to demonstrate appropriate alternative options. It could become particularly difficult if the partner is unable to keep up with the pace or growth of the company and thus these difficulties arise. It is important to bear in mind, that outsourcing contracts may not allow for rapid adjustments in case of market changes or pivots and this could go against the initial aim of outsourcing. This volatility is also shown somewhere else: Identifying outsourcing partners who align with the start-up's goals and culture can be challenging, especially in terms of trade secrets or other institutional knowledge when processes are managed externally.

On top of that, Outsourcing can expose companies to the risk of intellectual property (IP) theft or misuse. When partnering with third parties, especially overseas, protecting proprietary technology, designs, and trade secrets can become more challenging. Legal agreements and IP protections are necessary to ensure that the business retains control over its intellectual assets. Start-ups must take steps to protect their intellectual property, as outsourcing can expose sensitive business strategies and data to third parties.¹⁵

Being exposed to the mentioned risks, can be very frightening but being aware of these risks and taking care of proper mitigation measures can help to a thriving partnership:

Firstly, it is import to conduct detailed due diligence on the provider's track record, certifications, and financial stability. With that, roles, responsibilities, deliverables, and compliance requirements can be defined explicitly.

What sounds a bit corporate is in fact in use in at start ups like *Scalable Capital*: very helpful is establishing oversight mechanisms to monitor performance and ensure compliance.

These mechanisms are based on the evaluated risks, particularly related to data security and IP, and implement protective measures. It is very helpful to ensure continuous

¹⁵ CBI Ministry of Foreign Affairs, 'Buyer Requirements for Outsourcing Services' (CBI) <<https://www.cbi.eu/market-information/outsourcing/buyer-requirements>> accessed 29 December 2024.

monitoring and improvement of outsourced functions. By addressing these challenges proactively, European start-ups can leverage outsourcing to achieve efficiency and scalability while minimizing risks.

So, while outsourcing offers cost savings, access to expertise, and scalability, it also presents challenges in terms of quality control, data security, and dependency on external providers. For startups, it's crucial to weigh these benefits and challenges carefully. With the right legal protections, clear communication, and due diligence, outsourcing can be a valuable tool for businesses looking to grow and expand efficiently.

IV. Considerations before Outsourcing

When a startup decides to outsource a service or function, the experience shows that there are several key steps and considerations to ensure the process is smooth, cost-effective, and legally compliant.

The first and probably most important step is to define the Scope and Objectives by clarifying the need: companies should start by clearly defining what you need to outsource. This could range from IT development, customer service, accounting, to marketing. Make sure the scope is specific to avoid ambiguity. Knowing this, they are able to determine the goals they want to achieve with outsourcing, such as cost reduction, access to specialized skills, scalability, or faster time-to-market.

By doing a really good research on the service provider's market, potential providers can be identified: Not every company in the market will fulfill their requirements to a 100 %, so it is crucial to research companies that offer the specific services the company need. This can be done by using networks, attending industry events, or browsing online platforms to find trusted outsourcing providers.

Before making a final decision, the start up should evaluate based on criteria like the experience, reliability, reputation, past work, and cost of the provider. It's crucial to choose a partner with a proven track record.

Even if all of the criteria are met, it is about to investigate the vendor's financial stability, compliance with relevant regulations (such as GDPR for data security in the EU), and capacity to meet your requirements. A proper due diligence can save a lot of costs.

When entering in the negotiations, some legal and regulatory considerations should be taken: for the agreement as such it is valuable to work with legal professionals to draft a detailed outsourcing contract. This should outline the scope of services, timelines, payment terms, and performance metrics. Usually, these professionals do know about the relevant industry regulations the parties should be compliant with.

But also for the clients own sake, the company should ensure that the provider follows robust security measures and complies with data protection laws.¹⁶

As every agreement can end, it might be helpful to outline conditions for terminating the contract, ensuring that there is a clear process for both parties in case things don't work out. For cases which might not end in a terminating scenario but disrupt the process, it is recommended to prepare for potential risks, such as disruptions in service delivery or vendor insolvency. Make sure the outsourcing contract includes contingency provisions.

In order to reach the aimed goal of the whole outsourcing process, start ups should regularly track the performance of the outsourcing provider using metrics agreed upon in the SLA and establish communication channels for problem resolution. It is important to bear in mind, that this can be a bit challenging if the provider is incorporated in a different country or time zone. Therefore, a company should maintain consistent communication with the outsourcing team to stay updated on progress and address any issues promptly. In the daily work with the outsourcing provider, the outsourced process should be integrated into your existing operations in a way that the process is running completely smooth. This could involve setting up communication tools, ensuring proper knowledge transfer, and aligning teams.

If it comes to cost saving measures, it is helpful to evaluate how big the impact of the agreement is: this includes performance checks, efficiency improvements, or quality of service. This should be done after a specified period to check whether the outsourcing arrangement has met your objectives. In the best case the partnership is successful, so

¹⁶ Duy/Heilingner, Checkliste Auslagerungen für die Bankenpraxis, ÖBA 2019, 353

the parties could consider negotiating long-term agreements, with the possibility of expanding the services provided or deepening the collaboration.¹⁷

By following these steps, a startup can ensure that outsourcing is a strategic tool for scaling operations, accessing expertise, and focusing on core business activities, while minimizing risks and complications. It's important to carefully select the right vendor, ensure legal compliance, and continuously manage the outsourcing relationship for optimal results.

V. Legal Considerations for an Outsourcing Agreement

All the benefits of an outsourcing activity can turn upside down, if the agreed service is not as defined. Therefore, before entering into an outsourcing agreement, start-ups should carefully take the following aspects into consideration to make sure that a beneficial and secure arrangement can be in place. Clearly defined contracts are essential, outlining the scope of work, performance expectations, IP rights, and termination clauses. Several notable legal cases and evolving regulatory landscapes illustrate the challenges outsourcing can present. In both Europe and the U.S., disputes around outsourcing have frequently touched on issues such as contract scope, labor law, and compliance with legal and ethical obligations. Here are some relevant aspects to consider:

Firstly and in line with the business perspective, it is important to specify the tasks, services, or processes being outsourced in a clear way in order to really get the product that the company needs. In this agreement, the deliverables should include performance metrics, such as timelines, quality standards, and volume expectations. For that, it is helpful to establish key performance indicators and service level agreements to monitor the performance. Pre-outsourcing due diligence and continuous oversight are critical to avoid disputes over non-compliance or service failures. If that fails, the Business Continuity strategy could prevent the defined risks of unfolding threat. Therefore, potential risks should be identified, which includes data breaches, service interruptions, and

¹⁷ Schwazer C, *Outsourcing: Eine strategische Betrachtung und Analyse* (Masterarbeit, Universität Innsbruck 2017) <<https://diglib.uibk.ac.at/download/pdf/378411>> accessed 29 December 2024

compliance failures. In order to be on the safe side even if the business continuity plan fails, it might help to include indemnity clauses for mitigating liability for failures caused by the outsourcing partner. When it comes to failures, it is important to communicate them as soon as possible in order to ensure that every party knows what is going on. For that, it could help to implement a clear governance structure, including points of contact and reporting protocols or to define the frequency and method of communication, such as regular meetings, performance reviews, or audits. Particularly at start-ups, which are very likely to grow or shrink given the current product market fit, it makes sense to include terms for scaling services up or down as needed. This ensures that the agreement allows flexibility to adapt to the start-up's growth or changes in strategy.¹⁸

Organizations must ensure their outsourcing agreements align with EU regulations, including GDPR, AML directives, and sector-specific guidelines. Usually, the outsourcing provider needs some data from the company's clients and with that, it is very important to include a clause that ensures, that the service provider has robust data protection measures in place, particularly, if sensitive or personal data is shared. A common way of doing so is to implement confidentiality and non-disclosure agreements (NDAs) to safeguard proprietary and sensitive information and clarify the data ownership and rights, ensuring that the start-up retains control over its data.¹⁹

Especially in sensitive industries like finance and healthcare, robust data security measures must be integrated to any outsourcing agreement. The data privacy clause is even more important, if the company works in a sector which is heavily regulated such as banking. When operating in this field, the agreement should contain a clause that the provider complies with relevant laws, such as GDPR for data protection in the EU, or industry-specific regulations like the EBA Guidelines for financial services or MDR for healthcare.

The 2019 EBA Guidelines on outsourcing arrangements have significantly shaped how financial institutions manage outsourced functions, deeper insights in chapter II. Compliance failures can lead to disputes, particularly when critical or important functions

¹⁸ Marzi in *Knauder/Marzi/Temmel* (Hrsg), *Handbuch Wirtschaftsverträge* (2. Lfg 2013) Offshore/Nearshore Outsourcing Agreement (Englisch)

¹⁹ CBI Ministry of Foreign Affairs, 'Buyer Requirements for Outsourcing Services' (CBI) <<https://www.cbi.eu/market-information/outsourcing/buyer-requirements>> accessed 29 December 2024.

are outsourced without proper risk assessment or due diligence. These guidelines emphasize accountability and the need for institutions to manage risks effectively, including operational and data privacy risks. Outsourcing in the healthcare sector often raises legal concerns related to patient data protection, given the stringent requirements under the GDPR. Any mismanagement of sensitive data by outsourcing partners can result in significant penalties and disputes over liability.²⁰

I. Intellectual Property Rights (IP)

Particularly in the tech-scene, the intellectual property of the ideas and solutions is a huge part of the business and is a crucial factor when it comes to funding rounds with VCs. If the company doesn't have proper measures in place to protect their IP, it could mean the end of a not even started success journey. One of this measure could be, that in such agreements, the IP ownership should be clearly defined, especially for deliverables or innovations created during the outsourcing process and clauses should be implemented that prevent the misuse or unauthorized sharing of proprietary IP. These disputes often arise when trade secrets are misused by outsourced partners or their subcontractors.²¹

II. Pricing

The biggest benefit of outsourcing might be the factor cost savings. In order to reach this goal, the payment terms, including costs, billing cycles, and penalties for non-performance need to be outlined in the agreement. Also hidden costs such as integration, training, and monitoring should be taken in consideration, as these factors can add up.²²

III. Termination and Exit Strategy

If, for whatever reason one of the parties want to step away from the agreement, it is necessary to define the conditions under which the agreement can be terminated, including for non-performance or breach of contract. This should include an exit plan to ensure a smooth transition, such as the return of data, IP, and assets. Actually, this should be clear, but it is anyways worth mentioning it, just as a reminder: Address continuity of

²⁰ Latham & Watkins LLP, *Outsourcing: The Legal and Regulatory Framework* (Latham & Watkins, 2024) <<https://www.lw.com/admin/Upload/Documents/Thought%20Leadership/outsourcing-the-legal-and-regulatory-framework.pdf>> accessed 29 December 2024.

²¹ EuGH C 666/18 = wbl 2020/24, p 82

²² *Marzi/Testor in Knauder/Marzi/Temmel* (Hrsg), Handbuch Wirtschaftsverträge (1. Lfg 2011) IT-Servicevertrag (Managed Services/Outsourcing/Outtasking), p. 75

services during the transition phase because even if the contract is about to end, both parties are still obliged to pull their part of the weight and deliver on their agreed tasks.

If the worst case happens, it makes sense to define a dispute resolution in the contract: this should specify the jurisdiction and governing law for resolving disputes and include mechanisms for alternative dispute resolution, such as mediation or arbitration.

These examples underscore the importance of strategic planning and legal safeguards when engaging in outsourcing, especially for start-ups or businesses entering heavily regulated sectors. By paying attention to these critical factors, start-ups can build a strong foundation for their outsourcing relationships, minimize risks, and maximize the value derived from such partnerships.²³

IV. International Set-Up

Another important aspect on how to draft an outsourcing agreement is a clear set-up, on how the service provider is integrated within the company: for example, a freelancer is more likely to be directly involved in the day-to-day operations than an external payroll-provider.²⁴ This has an impact on the labor-law-related side of things: digital platforms like Glovo have faced lawsuits regarding their employment models, which often involve outsourcing or gig work arrangements. In Glovo's case, labor disputes culminated in a landmark decision in Spain that classified certain gig workers as employees, challenging the company's outsourcing model.²⁵

²³ Marzi in *Knauder/Marzi/Temmel* (Hrsg), *Handbuch Wirtschaftsverträge* (2. Lfg 2013) Offshore/ Nearshore Outsourcing Agreement (Englisch)

²⁴ Marzi/Testor in *Knauder/Marzi/Temmel* (Hrsg), *Handbuch Wirtschaftsverträge* (1. Lfg 2011) IT-Servicevertrag (Managed Services/Outsourcing/Outtasking), p. 10

²⁵ Mediavilla A, *Platform Couriers and Self-Exploitation: An Analysis* (European University Institute, 2023) <https://cadmus.eui.eu/bitstream/handle/1814/75616/Platform_couriers_self%E2%80%90exploitation_Art_2023.pdf?sequence=3&isAllowed=y> accessed 29 December 2024.

III. Outsourcing Regulation

In order to address the question of the extent to which start-ups are affected by outsourcing, we must first look at the regulatory environment within the EU. It is noticeable that there is not one set of rules that regulates outsourcing, but that the topic of outsourcing is essentially determined by a large regulation - exceptions here include the financial sector.

I. General Data Protection Regulation (GDPR)

Probably one of the most famous regulations within the EU is the GDPR and this is for several reasons: It applies to any outsourcing involving the processing of personal data of EU citizens. It governs how data controllers (the party outsourcing) and processors (the outsourcing party) handle personal data. It also restricts data transfer outside the EU: Transfers to non-EU countries require mechanisms such as Standard Contractual Clauses (SCCs), Binding Corporate Rules (BCRs), or adequacy decisions. Furthermore, it outlines the accountability of the parties: the data controller remains responsible for ensuring compliance, even if the processor violates GDPR rules. Additionally to their 'real' agreement, controllers and processors must formalize their relationship through contracts that specify responsibilities, security measures, and compliance standards.²⁶

Data protection plays a crucial role in outsourcing within the European Union, particularly due to the requirements of the GDPR. The GDPR ensures that personal data processed during outsourcing activities is protected and that clear responsibilities are defined between the principal (data controller) and the outsourcing provider (data processor). Here are the key considerations:

²⁶ Völkl, Was ist "Outsourcing"?, ÖBA 2019, 279)

II. Compliance with GDPR Requirements

Via a processing agreement, the data controller must ensure a written agreement with the service provider that specifies the nature of data processing, purpose, data categories, and security measures (Article 28 GDPR). The regulation sets clear standards for accountability: The processor may only act under the instructions of the controller. Ultimately, the controller is accountable for GDPR compliance which means for start ups, that they have the additional obligation to check whether their outsourcing provider is compliant with these laws.

To ensure secure data transfers, Technical and Organizational Measures (TOMs) have to be implemented: The outsourcing provider must implement measures to protect data against loss, unauthorized access, or misuse.

There are some specialties for cross-border data transfers: For data transfers to countries outside the European Economic Area (EEA), additional safeguards like Standard Contractual Clauses (SCCs) or EU Commission adequacy decisions must be in place.²⁷

I. Risks of Third-Party Data Processing

Outsourcing can lead to a loss of direct oversight of data processing. Regular audits and monitoring are necessary to ensure the provider adheres to GDPR standards.

Despite all efforts to prevent data breaches, it still does happen: in this case, the controller is responsible for reporting it, even if the breach occurred at the provider's end.

II. Transparency Requirements

Companies must disclose their use of outsourcing, especially to data subjects. This includes informing them about which providers are involved and how compliance is maintained.

III. Sensitive Data and Sectoral Regulations

According to Article 9 GDPR, special categories of data, such as health data, require additional protections. This is in particular relevant for the financial sector or the medical area. Next to the GDPR, there are sector specific rules, for instance, in finance (EBA

²⁷ Sedef/Steiner, Internationaler Datentransfer (Stand 13.9.2024, Lexis Briefings in lexis360.at)

Guidelines on Outsourcing) or healthcare (e.g., GDPR extensions, MDR), stricter regulations may apply.²⁸

IV. Penalties for Non-Compliance

Breaches of GDPR can result in severe penalties, up to €20 million or 4% of the annual global turnover, whichever is higher. Thus, selecting and evaluating outsourcing providers carefully is critical.

In summary, data protection forms the legal and organizational backbone of outsourcing agreements in the EU. Businesses must ensure that outsourcing partners are not only operationally competent but also compliant with data protection laws to mitigate liability risks.²⁹

²⁸ Horn in Jahnel (Hrsg), Datenschutzrecht (2019) Datenschutz beim Outsourcing – Datenschutzrechtliche Rahmenbedingungen und Vertragsgestaltung beim Einsatz von Auftragsverarbeitern

²⁹ Sedef/Steiner, Internationaler Datentransfer (Stand 13.9.2024, Lexis Briefings in lexis360.at)

II. Outsourcing Regulation in Finance

Outsourcing in the financial sector is subject to strict regulations to safeguard the integrity of financial systems, protect consumers, and ensure compliance with national and European legal frameworks. These restrictions aim to manage operational risks, maintain data security, and ensure the accountability of financial institutions.

I. EBA Guidelines on Outsourcing

The second regulation, which restricts a specific sector in outsourcing in Europe, are the EBA Guidelines on Outsourcing Arrangements (2019). These guidelines apply to financial institutions, including banks and investment firms, within the EU. They are issued by the European Banking Authority (EBA) and are discussed in further detail a bit later in this thesis.

They include some key restrictions, especially for the critical functions, third-country outsourcing and the supervisory access. According to these Guidelines, institutions must ensure that outsourcing critical or important functions does not interfere with their ability to comply with regulations or to manage risks effectively. Moreover, additional assessments are required when outsourcing to entities located outside the EU, particularly for compliance with GDPR and continuity of service. In order to ensure the transparency of the financial industry, contracts must ensure that regulators have access to outsourced data and services for auditing purposes.

The EBA Guidelines on Outsourcing Arrangements (2019) introduced significant changes to how outsourcing is managed across the financial sector, including the FinTech industry. These guidelines provided a harmonized framework for managing outsourcing risks, emphasizing operational resilience, governance, and regulatory compliance. Here's how they impacted the FinTech sector:³⁰

³⁰ PricewaterhouseCoopers, *EBA Outsourcing Guidelines 2019* (PricewaterhouseCoopers, 2019) <<https://www.pwc.ch/en/publications/2019/EBA-outsourcing-guidelines-2019.pdf>> accessed 29 December 2024.

I. Emphasis on Critical and Important Functions

Firstly, the EBA Guidelines defined in Art. 4 critical functions and introduced stricter requirements for outsourcing activities deemed "critical or important" to an institution's operations. FinTech companies relying on banks or third parties for payment processing, IT services, or compliance support had to reassess the criticality of these partnerships. Given that definition, Start ups or FinTechs need to ensure that their outsourcing partners comply with regulatory expectations and are capable of delivering reliable and resilient services which sets another hurdle for the growth of a company.

II. Governance and Oversight Enhancements

Further, it sets stronger governance requirements for financial institutions, including FinTechs: according to section 14, they must maintain robust governance frameworks, ensuring senior management and boards are accountable for outsourced activities. For that, Institutions must conduct detailed due diligence to evaluate potential outsourcing providers, including assessing their financial stability, operational capacity, and regulatory compliance. Due to that, FinTechs had to formalize their outsourcing strategies, demonstrating robust internal oversight and compliance mechanisms, which is generally a good idea, especially in the financial sector because the players have a lot of responsibility for their clients money, so it makes sense, to have a very good oversight over the agreements with third parties. According to section 13, the guidelines mandated that outsourcing agreements clearly define roles, responsibilities, and accountability between the outsourcing institution and the provider.

These outsourcing contracts must grant financial regulators access to data and premises of the outsourcing provider. Also FinTechs must ensure all agreements align with these requirements, potentially requiring renegotiation of contracts to ensure compliance.

III. Risk Management and Contingency Planning

The guidelines require FinTechs to assess the risks associated with outsourcing and develop appropriate risk mitigation measures. Further, Institutions must establish contingency plans to address potential failures of outsourcing providers, ensuring continuity of service (Section 13). Also younger companies needed to strengthen their risk management processes and develop detailed exit strategies, which can be resource-intensive. This can be critically discussed: as the failure of smaller companies doesn't

have that much of an impact as a failure of a system-relevant bank, the extend of risk assessments could be decreased.

IV. Third-Country Outsourcing

As an additional hurdle for non-EU providers, the guidelines introduced stricter rules for outsourcing to third-country (non-EU) providers, including assessing compliance with data protection laws (e.g., GDPR) and ensuring equivalent regulatory oversight.

This has also an impact on young companies because the outsourcing to international cloud providers or tech partners faces additional compliance burdens and the need for stricter monitoring. As FinTechs often rely on cloud-based services, the guidelines provided detailed expectations for cloud outsourcing, including ensuring resilience, security, and compliance with data protection laws. As Cloud providers became more integrated into the regulatory ecosystem, FinTechs have to reevaluate cloud usage in light of new security and audit requirements.³¹

On the first glance, one might think that another guideline is the kiss of death for the somewhat heavily regulated financial environment, but as a matter of fact, the guidelines sought to harmonize outsourcing practices across EU Member States, reducing discrepancies in how outsourcing is regulated. FinTechs operating in multiple jurisdictions benefit from clearer and more consistent rules, but on the other hand, they have to invest resources to meet higher compliance standards.

Especially small or early-stage FinTechs faced challenges implementing the governance, monitoring, and risk management frameworks required by the guidelines. Also meeting the EBA's requirements involved significant investments in legal, IT, and compliance infrastructure which might be the opposite of what companies were aiming when looking for an outsourcing provider. But also existing outsourcing agreements often required modifications to meet the new standards. FinTechs operating as third-party providers for banks faced higher scrutiny and had to align with stringent expectations but this usually pays off in the truest sense of the word because usually, these kind of cooperations are

³¹ Popp, IT-Outsourcing und Cloud Computing - zwei neue Herausforderungen für die Criminal Compliance, JSt 2012, 30

met, if the fintech already has a bigger size and these sort of services are usually remunerated by the bank.³²

Overall, the EBA Guidelines of 2019 reshaped how outsourcing is conducted in the FinTech industry, driving improvements in governance, risk management, and operational resilience. While these changes increased compliance costs and administrative burdens for FinTechs, they also enhanced the stability and trustworthiness of outsourcing arrangements, benefiting the broader financial ecosystem.

I. Other Regulations in Finance

Probably the hardest thing about outsourcing in the financial sector is the accountability: Even when outsourcing, financial institutions remain fully responsible for outsourced activities. Furthermore, institutions must have contingency plans to handle the failure of an outsourcing provider without disrupting services

On top of the EBA Guidelines, there are several other regulations in the European financial markets, which are worth mentioning: the MiFID II (Markets in Financial Instruments Directive) applies to financial service providers and investment firms, setting stringent rules for outsourcing critical functions, such as risk management and trade execution.

It requires firms to maintain oversight and ensure outsourcing does not harm operational quality or compliance.³³

Throughout this thesis, the term ‚Venture Capital Fund‘ is frequently used: these institutions -in particular at a specific size- are also regulated within the EU and have their own directive, called the AIFMD (Alternative Investment Fund Managers Directive).

It regulates outsourcing by alternative investment funds, particularly for portfolio management and risk management and mandates that outsourcing must not prevent the fund manager from fulfilling their regulatory obligations.³⁴

³² Schellner/Dellinger, EBA-Leitlinien – rechtlich verbindliches, (un)anfechtbares soft law?, ÖBA 2020, 18

³³ Sylle/Pichler, Die Auslagerung von wesentlichen bankbetrieblichen Aufgaben unter Berücksichtigung der Bestimmungen des § 25 BWG sowie der EBA-Leitlinien, RWZ 2020/20)

³⁴ Majcen/Zahradnik, Stärken und Schwächen der österreichischen Regulierung von AIF und AIFM, ÖBA 2023, 632

Last but not least, the Solvency II, which governs the insurance sector, focusing on the outsourcing of critical functions like actuarial work. It requires insurers to ensure outsourcing agreements do not interfere with their ability to manage risks or comply with laws.³⁵

The PSD2 (Payment Services Directive 2) regulates outsourcing by payment institutions, especially in areas like transaction processing and fraud prevention. According to the Directive, institutions must ensure outsourced providers meet security and compliance standards. Further, Institutions must demonstrate that outsourcing does not compromise their financial resilience. Moreover, Banks must ensure that outsourcing does not impair their compliance with capital adequacy and operational risk requirements, which goes back to the Capital Requirements Regulation (CRR).

II. Cybersecurity and Operational Resilience

Financial institutions must comply with operational resilience guidelines, such as those in the DORA (Digital Operational Resilience Act). Its requirements include ensuring outsourced IT services (e.g., cloud services) meet cybersecurity and operational standards.³⁶

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³⁵Stangl/Ebner in Weinberger (Hrsg), Aufsichts- und Bilanzierungsrecht der Versicherungen² (2020) Governance-Funktionen

³⁶ Wolfbauer, Gemeinsame Leitlinien über die behördliche Zusammenarbeit beim Vollzug von DORA, ZFR 2024/244

³⁷ Majcen/Zahradnik, Stärken und Schwächen der österreichischen Regulierung von AIF und AIFM, ÖBA 2023, 632

outsourcing agreements do not interfere with their ability to manage risks or comply with laws.³⁸

III. Labor Laws

As mentioned in the section above, Employment and Labor Laws can play a crucial part in outsourcing: especially, when it comes to Cross-Border Employment. Outsourcing involving the relocation of jobs may be subject to national labor laws, which can restrict layoffs or impose obligations such as employee retraining. Also the right of workers must be taken into account: Outsourcing contracts must account for laws that protect workers' rights, including collective agreements and union negotiations.³⁹

Outsourcing in the EU is constrained by comprehensive legal frameworks, including GDPR for data protection, EBA Guidelines for financial institutions, and sector-specific laws. Companies must conduct thorough risk assessments, draft robust contracts, and ensure ongoing compliance to navigate these restrictions effectively.

In some sectors, there also several regulations, which restrict the usage of outsourcing. In the Healthcare-Sector, Outsourcing must comply with strict patient data confidentiality laws, including GDPR and specific national laws. This will be discussed later on in further detail.

IV. Healthcare Regulations

In the European Union, outsourcing in the healthcare sector is regulated to ensure compliance with key legal frameworks, particularly regarding patient safety, data protection and quality assurance. The following outlines the main areas of regulation and their implications for outsourcing

³⁸Stangl/Ebner in Weinberger (Hrsg), Aufsichts- und Bilanzierungsrecht der Versicherungen² (2020) Governance-Funktionen

³⁹ Joint Research Centre, 'Outsourcing, Working Conditions and Inequality' (European Commission, 2023) https://joint-research-centre.ec.europa.eu/scientific-activities-z/employment/outsourcing-working-conditions-and-inequality_en accessed 29 December 2024.

I. Clinical Trials and Pharmaceuticals

Regulation (EU) No 536/2014 on clinical trials requires that outsourced clinical trial functions, such as data monitoring or patient recruitment, maintain high standards of safety and ethics.

The key requirements include Contract Research Organizations (CROs), often used in pharmaceutical outsourcing, must comply with Good Clinical Practice (GCP) standards.

Moreover, the outsourcing party retains ultimate accountability for patient safety and trial integrity, even when tasks are delegated.

This is implicated because clear agreements are necessary to define roles, responsibilities, and compliance obligations.⁴⁰

II. Medical Devices and Manufacturing

The Medical Device Regulation (MDR) 2017/745 governs outsourcing in the manufacturing and servicing of medical devices. The key requirements include that manufacturers of outsourcing production or maintenance must ensure contractors meet MDR standards for quality and safety. Notified bodies can audit both the manufacturer and their outsourcing partners.

Implications are that healthcare organizations must perform due diligence on suppliers and implement strict quality assurance protocols.⁴¹

III. Quality Standards in Service Delivery

Probably known in every other industry, also the healthcare sector needs to be compliant with ISO standards: Healthcare outsourcing is often subject to compliance with ISO standards, such as ISO 9001 (Quality Management Systems) and ISO 13485 (Medical Devices). This impacts service providers in cleaning, maintenance, or logistics must

⁴⁰ Klingmann I, Paul M, Bereczky T, Plate A, Breithaupt-Grögler K, Schindler TM, Geissler J, 'Veränderungen durch die neue EU-Verordnung 536/2014 zu klinischen Prüfungen aus Patientensicht' (2023) 66 Bundesgesundheitsblatt 68 <https://www.bfarm.de/SharedDocs/Downloads/DE/BfArM/Publikationen/Bundesgesundheitsblatt/2023-01-klingmann_paul_bereczky_plate_breithaupt-groegler_schindler_geissler.pdf?__blob=publicationFile> accessed 30 December 2024.

⁴¹ MedTech Europe, 'Impact of Changes under the New EU Medical Devices Regulation (EU 2017/745) to International Registrations' <https://www.medtecheurope.org/resource-library/impact-of-changes-under-the-new-eu-medical-devices-regulation-eu-2017-745-to-international-registrations/> accessed 29 December 2024.

demonstrate compliance with relevant standards. Also contracts must include quality control clauses and allow for audits.

IV. National Regulations

EU Member States have additional national laws that apply to healthcare outsourcing, often based on public health priorities or labor laws.

For example, Germany's SGB V (Social Code Book V) mandates that any outsourcing of statutory health insurance services must comply with the principles of efficiency and quality. And also France limits outsourcing of clinical services in public hospitals to protect national healthcare quality standards.

V. Cross-Border Healthcare

The Directive 2011/24/EU on patients' rights in cross-border healthcare impacts outsourcing arrangements that involve services delivered across borders.

The key requirements include transparency in pricing, quality, and outcomes as well as equivalence in standards between the outsourcing and the host country.

This impacts Healthcare providers, because they must ensure outsourced cross-border services align with EU-wide and national quality benchmarks.

VI. Ethical and Security Concerns

Outsourcing in healthcare also faces ethical scrutiny, particularly concerning: The outsourcing of patient care functions, which might affect the continuity and quality of care. Also the ensuring cybersecurity for digital healthcare solutions, such as telemedicine or AI diagnostics plays an important role.

VII. Challenges and Future Trends

Meeting stringent regulations increases the cost of outsourcing arrangements.

Like in the GDPR, the healthcare provider retains legal accountability for outcomes, even when outsourcing occurs. With emerging technologies like AI and machine learning in healthcare requires new guidelines for outsourcing these technologies responsibly.

By adhering to these frameworks, healthcare providers and their outsourcing partners can ensure compliance while safeguarding patient rights and maintaining high standards of care.

VIII. Outsourcing Officer

According to section 38 of the EBA GL 2019 on Outsourcing, it is demanded to appoint an Outsourcing Officer.

An Outsourcing Officer is responsible for overseeing and managing an organization's outsourcing relationships and ensuring compliance with relevant regulations and internal policies. This role is especially critical in regulated industries like finance, healthcare, and technology, where outsourcing agreements can have significant legal and operational implications.

His key responsibilities include the vendor selection and management. This means, that he should conduct due diligence on potential outsourcing partners, evaluating their reliability, security, and compliance capabilities while maintain effective communication and coordination between the organization and outsourcing providers.

Related to this is the contract management. The OO must negotiate and draft clear outsourcing agreements, including Service Level Agreements (SLAs) to ensure that contracts address risk management, performance metrics, and legal compliance.

He also has to keep an eye on the regulatory compliance by ensuring that outsourcing arrangements comply with applicable laws and regulations, such as GDPR in the EU, AML directives, or sector-specific guidelines like the EBA Outsourcing Guidelines and act as the main point of contact for regulatory bodies regarding outsourcing practices.

In terms of the risk management, he should monitor and manage risks associated with outsourcing, such as operational risks, data privacy issues, and vendor failures. Furthermore, he develops contingency and exit plans in case of outsourcing disputes or disruptions.

He is also responsible for the performance monitoring by doing regularly review the performance of outsourcing providers against agreed benchmarks and SLAs and address and resolve performance issues or contract violations promptly.

In practice, his duties include further, the documentation and reporting: as he is maintaining detailed records of outsourcing arrangements, including decision-making processes, risk assessments, and compliance audits he has to report on outsourcing risks and compliance to senior management and regulatory authorities.

Next to the authorities, he has more stakeholders to report to: he has to work with internal departments (legal, compliance, IT, etc.) to ensure outsourcing aligns with organizational goals and communicate effectively with external vendors to build strong, transparent relationships. As an improvement one could think about giving this task to someone from the legal team who also covers the reporting and data privacy duties: it makes sense to have a basic legal knowledge as an Outsourcing Officer because he has to oversee the implementation of data protection measures by outsourcing providers to safeguard sensitive information and needs to ensure that outsourcing practices adhere to the organization's data security policies and legal obligations.

In regulated industries, regulators often require organizations to demonstrate control over their outsourcing arrangements. For example, under the EBA Guidelines on Outsourcing, financial institutions in the EU must designate a function or officer responsible for managing and monitoring outsourcing arrangements to ensure compliance and minimize risks.⁴²

An effective Outsourcing Officer helps organizations leverage the benefits of outsourcing while safeguarding against operational, financial, and reputation risks. However, as there are many overlaps with the activities of a DPO, these two functions could be combined so that the DPO, who is mandatory from a certain company size, also takes care of the

⁴² Bird & Bird, Pan-European Outsourcing Guide (Bird & Bird, June 2021) <https://www.twobirds.com/-/media/pdfs/news/articles/2021/global/bird--bird-pan-european-outsourcing-guide_june-2021.pdf> accessed 29 December 2024.

overview of the partners in addition to the data protection provisions of the outsourcing activities.

IX. Improvements in the Regulatory Landscape

I. Why does the the EU regulate things at all?

There are multiple reasons for the high amount of regulations within the European borders, but the origin of the problems is usually the governmental model which is based on the fundamental principle to ensure a fair, unified and safe internal market for its member states.

The diversity of them leads to a high need for harmonization because bigger economies like Germany or France have different requirements for their regulations than others. For sure, every country could have their own regulation but this would be in conflict with the main idea of a unified market. This means, that every state has their own regulation but this must be in line with the European one in order to ensure that there is no barrier between the states. This also ensures that there is no unfair competition caused by different levels of regulations in several countries.

On top of that, these countries also have a different legal and cultural background which is really a difference in the global context. The regulatory framework has to somehow bridge them by providing a common foundation to ensure equality and fairness across the jurisdictions.

We also must not forget that the existing regulations were not established in the financial crisis which has led to a higher demand on more regulation in the financial sector and was a deciding moment in the EU regulation: the EU introduced very strict financial regulations like the CRD or MiFID to ensure the stability of its financial system and protect against systemic risks. The EU's high regulatory standards aim to build trust in its governance, markets and institutions, particularly important in areas like financial markets, food safety and healthcare.

By adopting stringent regulations, the EU positions itself as a global standard-setter. This "Brussels Effect" ensures that EU norms influence international standards in areas such as data protection, environmental policy, and competition law.

While regulations bring many benefits, they can also be burdensome for businesses, especially startups, due to compliance costs and bureaucratic complexities. However, initiatives like regulatory sandboxes and simplified processes for SMEs aim to mitigate these challenges.

II. Valuation of the EU regulatory set up

One might be deemed to say, that there are only bad things about the current set up of the regulatory side of things in Europe and that they cannot be changed. What a lot of critics do forget about, is the fact, that the laws made by the EU came for a good reason and are not here to annoy companies. But as usual in law, it is necessary to listen to the other side:

The latter may only see their competitive disadvantages coming from that amount of regulation: the regulatory compliance can create a very high barrier to entry the market, which makes it difficult for start-ups to compete with established companies, which have more resources to manage these requirements. This also leads to a favoring of larger players because they usually have the legal and financial infrastructure to handle the regulations while start ups tend to struggle to keep up. The ironical reason for the regulation in Europe is the aim to harmonize the regulation of the member states in order to prevent different levels of regulation and regulatory arbitrage. This pay-off could lead to unfair competition between companies residing in states with differing regulatory standards. But for sure, the prevention of unfair competition in the bigger picture of the whole economic situation within the EU has lead to an unfair competition in the micro-economic sense, meaning different size-companies.

Following that argument, one could also say, that this unfair competition leads to a suppression of innovation, which is the second biggest argument of the critics: in my opinion, this is more a consequence of the competition argument than a new point, but lets stay with the reason: the strict rules tend to hinder creativity, especially in the emerging industries like FinTech, healthcare and AI, where the regulations are even more stringent than usually. This limits the possibilities of experimentation, because the sandbox environments for testing new solutions may not be available or the participation thereof could involve significant red tape.

The high requirements also make business models less flexible: by being focussed on compliance, start ups might need to adjust or completely redesign their business models to align with the requirements and may lose their competitive advantages, if they were able to defy the competition caused by other start ups or bigger companies. It'S important to note, that the regulatory requirements have to be met by everyone in the same way, so in the end , no one really profits from the „illegal“ competitive advantage.

On top of that, criticism is likely to use the argument, that the use of technology is too restricted in Europe, due to the data protection laws. Of course, tech companies are more affected by this than others because their business often relies on data-driven models. In Especially the GDPR causes a lot of discussions because on the one hand, the majority of the people is so used to the data privacy standards that the public outcry is immense whenever a company -no matter the size- has a data breach, but on the other hand, this regulation is in the way of a lot of innovation- for good reason. The privacy standards are really a twisted sword because no-one would like to be tracked like in China and have sanctions on their behavior, but on the other hand many people think, that the GDPR is just tedious and without any benefit. True is, that the EU has a global leadership role within setting privacy standards because the EU really cares about consumer protection in many ways and protecting private data like financials or bio data is on top of that list.

Speaking of financials, the financial crisis of 2008 has played a major role for the strict rules within the financial industry because the EU legislative wants to grant the financial stability because they are e.g. aware of the fact, that a working finance sector supports the economic side. Furthermore and in line with the common opinion on data privacy rules: no one likes their money „gambled away“ from greedy bankers but one of the most frequent asked questions on the FinTech's websites is „Is xyz safe?“.

What are we going to do about it? It could help to think about regulations in a different way: the guidelines are giving a framework to ensure the balance between compliance and growth. But as usual, there is some room for improvement:

To address the challenges posed by regulations, it's essential to shift our perspective on how we view and implement these rules. Instead of seeing regulations solely as obstacles, they can be reframed as guidelines that provide a structured framework. This framework aims to maintain a delicate balance between ensuring compliance and fostering growth within an industry or business. Regulations, when viewed this way, can act as a foundation that supports stability, trust, and sustainable practices.

However, like most systems, there is always room for improvement. By identifying areas where regulations can be more flexible or adapted to evolving business needs, particularly in fast-paced sectors like technology or finance, we can create a more enabling environment. Simplifying processes, reducing redundancies, and aligning rules

across jurisdictions can make compliance less burdensome. Furthermore, engaging with policymakers to share the challenges faced by startups or smaller businesses can lead to more practical and scalable regulatory solutions.

Ultimately, addressing this issue is about collaboration: businesses need to adapt to regulations, but regulators must also understand the real-world impact of their frameworks. A forward-looking, iterative approach to regulation can ensure that compliance becomes a tool for growth rather than a barrier.

Improvements could start with simplification and streamlining of laws by building one central station on the EU side for regulation which deals with all regulatory matters like licensing etc. The problem might be that this station would require really good and versatile personal for the various topics. In a way, this is already sort of implemented because especially in the finance sector the respective national banking authority is obliged by the ECB to do so: they are also responsible for granting licenses and so on. This is due to the principle of subsidiarity.

Also mentioned above, there is a concept called regulatory sandboxes: this means, that companies partner with the regulatory authority and trying to balance out the product and the sequential regulation to ensure that the laws are not hindering the innovation.⁴³

The guidelines already incorporate a principle of proportional regulation, which allows for a differentiated application of rules based on the size, complexity, and risk exposure of the company. This approach recognizes that it would be unreasonable to require a startup with only 35 employees to adhere to the same extensive regulatory framework as a large, established universal bank with vast resources and decades of operational history. Smaller firms typically have fewer operational complexities and lower systemic risk, so applying the same stringent rules would likely place an undue burden on their ability to innovate and grow.

On the surface, proportional regulation makes sense as it seeks to ensure fairness and efficiency in compliance requirements. However, upon deeper consideration, complications can arise. If both entities—be it the startup and the universal bank—are conducting the same business and offering identical services, applying different rules

⁴³ European Commission, 'Digital Regulatory Sandbox' (European Commission) <https://commission.europa.eu/projects/digital-regulatory-sandbox_en> accessed 29 December 2024.

could inadvertently create an uneven playing field. In such cases, the startup could gain an unfair competitive advantage by facing fewer compliance costs and reduced scrutiny compared to the larger bank. This disparity could distort the market, incentivizing regulatory arbitrage where firms intentionally position themselves to exploit laxer rules.

Striking the right balance in proportional regulation is critical. On one hand, it must prevent overburdening smaller entities; on the other, it should ensure that all players adhering to the same business model are subjected to comparable standards to maintain fair competition. Achieving this balance requires thoughtful implementation, regular evaluation of the proportionality criteria, and a flexible regulatory approach that adapts to the evolving business environment.

Evidently, amending or reforming regulatory frameworks is a complex and time-intensive process. Instead of focusing solely on changing the rules themselves, a practical alternative could involve improving the execution of these regulations. A key challenge for businesses lies in navigating the complex legal landscape, often resulting in uncertainty about whether regulation A or B applies to their specific circumstances. Addressing this uncertainty can be achieved by enhancing access to expertise and creating systems that provide clearer, more accessible guidance.

One effective approach is fostering collaboration through incubators or accelerators. These innovation hubs, such as the programs run by institutions like TU München, offer startups and companies access to shared knowledge resources, mentorship, and legal expertise. Because these hubs often have direct links to universities and academic institutions, they serve as an excellent bridge to legal professionals and regulators. Startups participating in these ecosystems can benefit from real-time advice, workshops, and direct connections to authorities, reducing ambiguity and streamlining compliance efforts.

Another promising route aligns with modern business practices: outsourcing compliance tasks to specialized companies, particularly in the burgeoning field of RegTech. Regulatory technology firms provide "compliance as a service," offering tools and platforms designed to simplify adherence to regulatory standards. For example, in the

realm of anti-money laundering (AML), outsourcing processes such as know-your-customer (KYC) checks has become a common practice. By delegating these labor-intensive processes to RegTech firms, businesses can ensure accurate compliance with regulations while freeing up resources to focus on their core operations.⁴⁴

These two strategies—collaborative hubs and RegTech solutions—are not mutually exclusive but can complement one another. Incubators can help startups understand which compliance tasks might be outsourced efficiently, while RegTech firms provide the operational support to meet those needs. By fostering an environment of shared knowledge and leveraging technological solutions, companies can achieve a more agile and effective approach to regulatory compliance. This combined strategy not only reduces costs but also enhances legal certainty and ensures a more seamless execution of regulatory obligations.

⁴⁴ Forbes Business Council, 'How Fintech and Regtech Players Can Boost AML Adoption' (Forbes, 2 August 2024) <<https://www.forbes.com/councils/forbesbusinesscouncil/2024/08/02/how-fintech-and-regtech-players-can-boost-aml-adoption/>> accessed 29 December 2024.

III. Outsourcing + : White Label Solution

Even if these regulatory requirements seem high, they are the best possible result of long negotiations. If you now recall the advantages, there is one point that harbours a great deal of potential:

Since there are almost no limits to the quantity or intensity of the outsourced activity, one could come up with the idea of using this for expansion purposes: the problem often arises that younger companies in particular do not want to bear the risk of a failed expansion, but still want to conquer the new market for themselves. An intermediate step could then be to look for a local outsourcing provider to facilitate market entry. The problem with this is that the product is then usually marketed under the name of the outsourcing provider, which is not in the interests of the company. It would be much better if a local manufacturer, who knows the product preferences of the country better, took over the production and the client could print its logo on it. With the resources that are not needed, the company can build its brand abroad, which does not necessarily require a local presence. After many companies have already faced this problem, there is a suitable and proven solution: the white label solution.

The following section delves deeper into the legal framework underpinning White Label Solutions. It will explore the contractual principles, regulatory considerations, and intellectual property arrangements that govern these agreements, offering a comprehensive understanding of how this strategy can be leveraged effectively.

I. Explanation of the Concept

The contracting parties in a White Label Agreement typically include a manufacturer and a reseller. This arrangement is based on the principle of one company producing goods or services and another company marketing and selling them under its own brand identity. The White Label model is a versatile and popular strategy employed across various industries, including electronics, food production, software development, and increasingly in the realm of e-commerce.

In the case of e-commerce, the White Label approach is especially prominent. Many online retailers use pre-designed website templates or fully operational e-commerce platforms created by specialized third-party companies, without disclosing the original developer's brand. This allows businesses to maintain their unique branding while leveraging the expertise and infrastructure of others.

What makes this strategy particularly transformative is its ability to dismantle the traditional barriers associated with international trade. By using White Label solutions, businesses can efficiently expand across borders without the significant investment and logistical challenges that often come with physical operations. This model empowers companies to access markets that would otherwise be out of reach, enabling them to operate on a global scale. Unlike traditional brick-and-mortar businesses, White Label solutions provide the scalability and flexibility to explore and penetrate diverse markets without the overhead of maintaining a physical presence in each region.⁴⁵

As mentioned, the technical and operational infrastructure plays a major role: if the White Label partner abroad has a fully developed product or service, the expanding company can brand it as its own. This means that the start-up no longer has to worry about developing the platform or new technologies from scratch and therefore has more time to think about a suitable marketing strategy.

Startups can fully focus on building their brand presence in the new market. The white label solution allows them to market services under their own name while relying on the expertise and infrastructure of the provider.

The fact that the White Label partner already has this infrastructure and is familiar with local laws means that this is often used as a selling point. This significantly reduces the complexity of an expansion, as local experts can deal with such problems much more efficiently and are more familiar with the extent and regulatory requirements. White label providers often have existing licences and regulatory knowledge in various regions. For startups entering highly regulated industries (like fintech or healthcare), this provides a shortcut to compliance.

⁴⁵ sevDesk, 'White Label' <<https://sevdesk.at/lexikon/white-label/>> accessed 28 December 2024.

Thanks to the existing structure and product, the start-up no longer has to worry about the development of these and therefore saves on development costs, but can make better use of these resources in marketing, personnel or customer service in the new country if these are not also borne by the WL partner, which would make particular sense for customer service.⁴⁶

Ultimately, White Label Agreements are reshaping the way businesses approach market expansion, fostering innovation, and enabling companies to maximize their reach and profitability while focusing on their core strengths.

II. Reseller's Perspective

The reseller benefits significantly from a White Label partnership by gaining the ability to rapidly enter new markets while drastically reducing expenses associated with establishing and managing production processes. This arrangement eliminates the need for the reseller to invest time, money, and expertise in developing production infrastructure or manufacturing capabilities. Instead, the reseller can focus their resources on core business functions such as marketing, sales, and customer relationship management.

This strategic redirection allows the reseller to generate additional income streams by leveraging the manufacturer's established expertise and product lines, avoiding the financial and operational risks involved in developing new or complementary products from scratch. By participating in the partnership program, the reseller can expand their offerings without overextending their resources, enabling them to grow more sustainably and efficiently.

However, the reseller's role is distinctly defined within this relationship. Their primary responsibility revolves around the distribution and promotion of the products, leaving the manufacturing, technological development, and product design entirely in the hands of the manufacturer. This division ensures that the manufacturer retains full control and responsibility over production processes and the quality of the end product.

⁴⁶ Whitelabel Wonder, 'White Label' <https://whitelabelwonder.com/white-label/> accessed 29 December 2024.

Consequently, the reseller does not have the authority to modify or influence the manufacturing process. This delineation of responsibilities safeguards the integrity and innovation of the manufacturer while providing the reseller with a ready-made product portfolio that can be marketed under their own brand. Such an arrangement offers clear advantages for both parties while maintaining operational boundaries that protect their respective expertise and business models.⁴⁷

III. Manufacturer's Perspective

These partnerships also allow manufacturers to create a scalable business model, paving the way for collaborations with additional resellers in the future. This approach fosters growth and diversifies revenue streams while enhancing market presence indirectly.

However, these arrangements are not without drawbacks for the manufacturer. One significant disadvantage is the lack of direct brand recognition. The success and reputation of the products typically enhance the reseller's brand rather than that of the manufacturer. As a result, the manufacturer forfeits opportunities to establish consumer loyalty and strengthen its brand identity in the market.

Additionally, the manufacturer is often disconnected from direct customer feedback. Since the reseller handles all interactions with the end customers, including inquiries and support, the manufacturer loses access to valuable insights that could be used to refine and improve its offerings. This detachment from the consumer experience can be a hindrance to product innovation and market responsiveness.

Another critical issue is the pricing structure. To make the partnership attractive, the manufacturer sells its products and services to the reseller at a discounted wholesale rate. While this ensures a steady flow of bulk sales, it also means sacrificing potential profit margins that could be achieved through direct-to-consumer sales. This trade-off,

⁴⁷Forbes, 'Why a White-Label Solution Is Easier Than Building Your Own' (<https://www.forbes.com/sites/theyec/2014/06/03/why-a-white-label-solution-is-easier-than-building-your-own/>).

while beneficial in terms of volume, requires careful consideration of long-term profitability and sustainability.⁴⁸

Overall, White Label Agreements offer compelling advantages for both parties, but they also necessitate clear strategies and considerations to address the associated challenges. By balancing these dynamics effectively, manufacturers and resellers can create mutually beneficial partnerships that drive growth and innovation.

IV. Distinction between Outsourcing and White Label Solution

The legal differences between white label agreements and outsourcing agreements mainly lie in the scope of services, branding rights, responsibilities, and the way each agreement is structured in terms of relationships between the parties involved. Here's a detailed comparison:

I. Nature of Relationship

In a white label agreement, the manufacturer or service provider offers a product or service that is rebranded and sold by another company, often referred to as the reseller. The reseller sells the product or service under its own brand, while the underlying product/service remains the same.

The agreement typically focuses on intellectual property rights (branding and trademarks), product quality, and confidentiality. The reseller assumes the marketing and sales responsibility but the provider ensures the quality and compliance of the product.

On the other hand, in an outsourcing agreement, a company (the client) delegates certain tasks, functions, or processes (such as customer service, IT services, manufacturing, etc.) to an external service provider.

Outsourcing agreements primarily deal with performance metrics, service level agreements (SLAs), confidentiality, data protection, and intellectual property concerning

⁴⁸ Investopedia, 'White Label Product' (<https://www.investopedia.com/terms/w/white-label-product.asp#:~:text=White%20label%20products%20are%20sold,marketer%20instead%20of%20its%20own>).

the work being outsourced. The service provider handles operational functions but typically doesn't take on any branding or customer-facing responsibilities.⁴⁹

II. Branding and Marketing

The reseller gets to market and sell the product or service as its own, meaning the customer never sees the original service provider's brand. This is a key feature of white labeling.

The agreement addresses rights and limitations on the use of intellectual property (trademarks, patents, etc.). It ensures that the manufacturer retains ownership of the original product while the reseller can freely market it under their own name.

The external provider typically does not gain any rights to the client's branding. The outsourced provider focuses on fulfilling the agreed-upon functions and services as per the contract, but it does not rebrand or market the client's services as their own.

In outsourcing, while intellectual property rights (in relation to services or products) are often discussed, there is usually no transfer or license of branding rights.

III. Scope of Services

White label agreements are more focused on the provision of pre-designed products or services which are then rebranded and sold by the reseller. The service provider is responsible for ensuring the functionality and quality of the product or service, but not for how it is marketed or used.

These agreements may contain clauses related to warranty, product specifications, and customer support, but they generally do not cover the operational processes or business functions beyond the provision of the product.⁵⁰

Outsourcing typically involves the transfer of specific operational functions or services to an external provider (such as payroll management, software development, or customer support). The outsourcing company may not be responsible for product design or

⁴⁹ Marzi/Testor in Knauder/Marzi/Temmel (Hrsg), Handbuch Wirtschaftsverträge (1. Lfg 2011) IT-Servicevertrag (Managed Services/Outsourcing/Outtasking)

⁵⁰ Baker Tilly, 'Navigating BaaS: Insights and Compliance' <<https://www.bakertilly.com/insights/navigating-baas-insights-and-compliance>> accessed 28 December 2024.

marketing, but it is responsible for the execution and delivery of the functions it has been contracted to provide.

Outsourcing agreements will often include terms on performance standards, deadlines, penalties for non-performance, and service-level expectations.

IV. Control and Responsibility

The reseller controls the customer-facing aspects of the business, such as sales, marketing, and customer relations. The manufacturer's responsibility typically stops at providing the product or service in a condition suitable for resale.

The agreement would need to define warranties, liabilities for defects, and the level of support the manufacturer needs to provide for customer service and technical issues.

The service provider is responsible for delivering the contracted services according to the agreement's terms, and it generally operates under the direction of the client (the company outsourcing). The client retains ultimate control over its operations but relies on the outsourcing partner for specific processes.

Outsourcing contracts often cover more detailed operational controls, including monitoring and reporting requirements, penalties for missed performance metrics, and dispute resolution procedures.

V. Regulatory Compliance

Regulatory compliance generally pertains to the product/service quality, intellectual property, and advertising practices. The manufacturer must ensure that the product complies with legal standards, but it is not involved in the reseller's marketing or consumer-facing operations.

White label agreements may have clauses that require the manufacturer to meet certain industry standards or regulations regarding product safety, data protection, or other relevant laws.⁵¹

In outsourcing, especially in regulated industries such as finance, healthcare, or telecom, compliance with local laws and industry standards is critical. The outsourcing provider is expected to meet the client's regulatory requirements as part of the service delivery.

⁵¹ White Label Wonder, 'What is the Difference Between White Label and Outsourcing?' (<https://whitelabelwonder.com/what-is-the-difference-between-white-label-and-outsourcing/>).

Outsourcing agreements often specify compliance with laws such as data protection (GDPR in the EU), anti-money laundering (AML) regulations, or other sector-specific regulations. Both parties may be bound by joint responsibility for regulatory compliance.

VI. Summary of Key Legal Differences

White label agreements are about the reseller using the provider's product under their own brand. They deal with product or service provision, while outsourcing agreements are broader, focusing on managing operations and services and are focusing on managing operations and services. Additionally, Outsourcing agreements focus on delegating business functions but do not involve rebranding.

In white labeling, the reseller controls the branding and customer-facing activities, while in outsourcing, the client retains control of business functions, with the provider performing agreed-upon services. White label agreements emphasize branding, intellectual property, and warranties; outsourcing agreements emphasize service levels, performance, compliance, and operational responsibilities.

In conclusion, while both agreements involve external relationships and services, the key difference lies in the scope, branding, and responsibility for the product or service being delivered.

VII. Considerations for Drafting a White Label Agreement

Besides of all benefits for each party, it is a necessity to have the duties and tasks sorted. For that, a special contract has to be set up, the so called white label agreement. This agreement is made between the manufacturer and the reseller and governs a few more terms than an outsourcing agreement.:

In the context of a standard manufacturing and reselling arrangement, there are several key aspects that require consideration. Primarily, it is essential to ascertain if the provider is permitted to speak with buyers of its goods, a practice that is frequently restricted. Moreover, the contract may encompass exclusivity provisions, such as whether the

manufacturer is prohibited from reselling products within a specific geographic region or for a designated period, either to other resellers or under their own brand name. The agreement may also address whether the manufacturer is permitted to make changes or modifications to the products.

Another critical consideration is the performance expectations for both parties, outlining what progress is required during agreed timeline. Furthermore, the billing method must be defined, covering items like marketing materials, freight, transport costs, taxes, and duties, and stipulating which party is responsible for each. Intellectual property rights should also be clarified, especially regarding whether the manufacturer stays the owner of the good and who holds the rights to any related intellectual property.

The contract should ensure that the products comply with valid quality standards and specify which party is responsible for product liability. Finally, the contract should define the amount of products and services the manufacturer will supply to the reseller for resale.

When drafting a contract you need to regulate all the relationship with your counterpart, prevent and minimize all possible legal risks and liabilities and ensure all the terms of the contract comply with applicable legislative provisions.⁵²

The reality shows that the concept of the White Label Agreement opens up new possibilities for both major and start-up companies. The most important thing is to evaluate the potential of the above-mentioned model within the scope of the particular business in order to use it in the most efficient way to implement new technologies, develop new areas and find new customers. However, you should be aware of all the risks, perspectives, advantages and disadvantages in connection with it⁵³

⁵² Rocket Lawyer, 'How Do White Label Agreements Solidify Business Relationships?' (Rocket Lawyer) <<https://www.rocketlawyer.com/gb/en/business/business-insights/legal-guide/how-do-white-label-agreements-solidify-business-relationships>> accessed 29 December 2024.

⁵³ AGP Law, 'What Is a White Label Agreement?' (AGP Law) <<https://www.agplaw.com/what-is-a-white-label-agreement/>> accessed 29 December 2024.

VIII.Relevance

The most prevalent use case for White Label Agreements (WLAs) today can be found in the software industry, and for good reason. Developing software is an inherently complex task that requires specialized expertise, tools, and resources. Many individuals and businesses lack the technical education or capabilities necessary to create software that meets their specific needs, especially when the requirements are highly complex or specialized. Fortunately, this is where White Label solutions shine. Often, businesses find that others have already addressed similar challenges or, even better, specialize in creating software solutions for external clients.

In fact, a significant proportion of software services are now provided by third parties through White Label models. It would not be an exaggeration to state that offering software as a service has become one of the most critical business areas in our digital era. However, it is essential to differentiate between various applications of White Label solutions, as their adaptability has allowed them to thrive across multiple industries⁵⁴

White Label services have proven to be incredibly versatile, supporting industries as diverse as entertainment and e-commerce. In the music industry, White Label solutions have enabled streaming platforms to emerge without needing to build their own complex back-end systems. Similarly, in the internet industry, companies have benefited from White Label software to create functional and user-friendly websites, e-commerce platforms, and digital tools. Over time, as the internet industry evolved, so too did the demands placed on these solutions. With the arising chances of the internet, software products have needed to adapt to new technical and consumer-driven requirements. This shift has opened up fresh opportunities for White Label providers to innovate and expand into new areas.

One of the most significant developments in recent years has been the expansion of White Label solutions into financial services. FinTech companies have increasingly adopted White Label software to provide banking platforms, payment systems, and investment tools without the need to develop them in-house. This shift reflects both the

⁵⁴ White Label Wonder, 'White Label' (White Label Wonder) <<https://whitelabelwonder.com/white-label/>> accessed 29 December 2024.

growing complexity of financial software and the demand for rapid scalability within the industry. White Label solutions allow FinTech startups to enter the market more quickly, leveraging pre-existing platforms while tailoring them to their specific branding and functional needs

As the digital economy continues to evolve, White Label solutions remain a cornerstone of innovation, offering businesses in various sectors the ability to adapt, grow, and reach their full potential.⁵⁵

I. Relevance in the Banking Sector

The banking sector presents a compelling case for the application of White Label Agreements (WLAs) due to several unique challenges and opportunities. One of the primary reasons lies in the complex and rigorous regulatory framework that governs the provision of financial services as discussed in the first part of this thesis. Obtaining the necessary licenses to operate as a financial service provider requires navigating an intricate approval process managed by central banks and other regulatory bodies. For newly established companies, particularly startups, this process can be prohibitively time-consuming and resource-intensive.

In addition to these regulatory hurdles, the banking industry has undergone a profound transformation over the past two decades, driven by digitalization. Twenty years ago, the idea of conducting financial transactions on a personal computer was met with skepticism and concerns over security. Fast forward to today, and the landscape has shifted dramatically. Digital banking has become the norm, and traditional methods, such as submitting transactions on paper, are now seen as inefficient and outdated—often carrying additional fees. This evolution underscores the growing importance of digital solutions within the banking sector and the increasing demand for seamless, technology-driven financial services.⁵⁶

⁵⁵ [?]White Label Wonder, 'White Label Banking: The Fintech Solution Reshaping Financial Services' (White Label Wonder) <<https://whitelabelwonder.com/white-label-banking-the-fintech-solution-reshaping-financial-services/>> accessed 29 December 2024.

⁵⁶ [?]White Label Wonder, 'How White Label Banking as a Service (BaaS) is Democratizing Financial Services' (White Label Wonder) <<https://whitelabelwonder.com/how-white-label-banking-as-a-service-baas-is-democratizing-financial-services/>> accessed 29 December 2024.

Amidst this digital revolution, a new generation of companies has emerged, offering innovative technologies and solutions tailored to the needs of modern banking customers. These startups often specialize in cutting-edge fields such as mobile banking, artificial intelligence, blockchain, and payment processing. However, their ability to bring these innovations to market is frequently hindered by the challenges associated with securing the necessary licenses to provide financial services. Without these licenses, they are unable to operate independently as full-fledged financial institutions.

This is where White Label Agreements play a transformative role. Existing banks, which already possess the requisite licenses, can partner with startups by outsourcing specific services or leveraging their technology under a WLA. Under this model, the startup provides the technological infrastructure or innovative solutions, while the licensed bank executes the compliance-heavy processes required to deliver these services. For example, a startup might develop an intuitive mobile banking platform or a sophisticated AI-driven risk assessment tool, which the bank then adopts and markets under its own brand.

This collaboration not only bridges the gap between regulation and innovation but also creates a symbiotic relationship. The bank benefits from enhanced digital capabilities without having to develop them in-house, while the startup gains access to the market and revenue opportunities without directly shouldering the burden of compliance. Moreover, Article 28 of the EBA guidelines on outsourcing emphasizes the importance of maintaining regulatory compliance even when tasks are outsourced, ensuring that the partnership adheres to high standards.

In summary, the banking sector's combination of strict licensing requirements, rapid digitalization, and the influx of innovative players has made it an ideal environment for White Label solutions. By facilitating collaboration between established institutions and agile startups, White Label Agreements provide a pathway for overcoming regulatory obstacles and driving technological progress in the financial industry.⁵⁷

⁵⁷ Judt/Klausegger, Was ist eigentlich ... Banking-as-a-Service?, ÖBA 2024, 347

II. White Label Banking

White-label banking is called a business model in which a banking institution provides its infrastructure, services, and regulatory framework to third parties, such as FinTechs, startups, or non-financial companies, allowing them to offer banking products under their own brand. The term "white label" implies that the bank remains in the background, while the customer-facing branding and experience are handled by the third party: in other words: the user experience is granted by the FinTech while the original banking core lies within the licensed credit institution. This makes it very relevant for these younger companies: they usually attract more tech-friendly personnel and better engineers because they can really start there on a blank space and can enjoy the liberty in a start up without corporate hierarchy. So, the tech part and the experience, that is related to the third party remains at the third party. Usually, the parties can decide how close they want to stick together, so there are many ways of integration.⁵⁸

Overall, there are three options of bank–FinTech integration: the complete integration, the model in which the bank is renting its license to the FinTech and the third option is when the FinTech is operating under its own license as a bank/payment institution/electronic money institution and the bank is acting as an outsourcing service provider. If we are talking about White Label Banking, the latter two models are meant.

Sometimes, there is a slight misunderstanding with another concept which is in a way similar but has different specifics. The concept also „encompasses a significant area of banking activities and related regulations, commonly known to as Open Banking. This approach is centered on granting FinTech companies easy access to bank accounts, particularly in Europe, under Directive (EU) 2015/2366 of the European Parliament and the Council of 2015, on payment services in the internal market (PSD2)⁵⁹. Third-Party Access solutions were developed in response to market demands. Prior to PSD2 and the establishment of standardized Third-Party Provider (TPP) frameworks, access to bank account data was often achieved through a method called "screen scraping," where TPPs

⁵⁸ White Label Wonder, 'A Revolution in Banking: The Rise of White Label Solutions' (White Label Wonder) <<https://whitelabelwonder.com/a-revolution-in-banking-the-rise-of-white-label-solutions/>> accessed 29 December 2024.

⁵⁹ Grabowski, Michał (2021) : Legal aspects of "White-label" banking in the European, Polish and German law, Journal of Risk and Financial Management, ISSN 1911-8074, MDPI, Basel, Vol. 14, Iss. 6

used the client's confidential credentials without the bank's permission, as opposed to a "direct feed" approach, which involved formal agreements with the bank ⁶⁰

I. Complete Integration

The first option involves completely integrating the FinTech into the bank, typically through methods such as acquiring the FinTech's business via merger, contribution in kind, or purchase of part of its operations. In this setup, the FinTech's services are absorbed and offered as the bank's own, with the bank taking full responsibility for service delivery. The services are marketed under the bank's branding, allowing the institution to operate with minimal changes to its existing business model. This approach does not rely on external third-party resources to deliver FinTech services and, as such, is not categorized as a variation of the White-label banking model.⁶¹

II. License Renting

The second approach involves the bank "lending" its license to the FinTech. Using this concept, the FinTech is an outsourcing service provider for the respective bank. This arrangement is governed by several agreements: an outsourcing agreement between the bank and the FinTech, an intermediary agreement between the bank and the FinTech, and a banking service agreement between the bank and the client. The banking service agreement with the client is facilitated through the FinTech in its role as an intermediary. Several businesses already operate using the Banking-as-a-Service model. A notable example is Solarisbank AG, often described as a technology company holding a German banking license. Solarisbank provides BaaS products in the German market, including the payment solution Samsung Pay. This service is promoted as a "comprehensive mobile payment solution" featuring an integrated installment option and an innovative Know Your

⁶⁰ Grabowski, Michał (2021) : Legal aspects of "White-label" banking in the European, Polish and German law, Journal of Risk and Financial Management, ISSN 1911-8074, MDPI, Basel, Vol. 14, Iss. 6, pp. 2

⁶¹ Reuters, 'UniCredit buys digital bank and cloud IT platform in Aion-Vodeno deal' (Reuters, 24 Juli 2024) [https://www.reuters.com/markets/deals/unicredit-buys-digital-bank-cloud-it-platform-aion-vodeno-deal-2024-07-24/#:~:text=UniCredit%20buys%20digital%20bank%20and%20cloud%20IT%20platform%20in%20Aion%2DVodeno%20deal,-By%20Reuters&text=MILAN%2C%20July%2024%20\(Reuters\),of%20cloud%2Dbased%20banking%20services](https://www.reuters.com/markets/deals/unicredit-buys-digital-bank-cloud-it-platform-aion-vodeno-deal-2024-07-24/#:~:text=UniCredit%20buys%20digital%20bank%20and%20cloud%20IT%20platform%20in%20Aion%2DVodeno%20deal,-By%20Reuters&text=MILAN%2C%20July%2024%20(Reuters),of%20cloud%2Dbased%20banking%20services).

Customer (KYC) process.⁶² Additionally, Solarisbank collaborates with SMAVA to offer consumer loans in Germany through the Kredit2Day platform. SMAVA is responsible for outsourcing tasks such as implementing, managing, and overseeing the entire credit process, with specific focus on data processing, servicing, the provision of loan application documents, the query of data stored with credit agencies, preliminary loan decisions, the conclusion of the loan agreement on behalf of the service bank, the dunning process, and the safekeeping of the contractual documents, a credit check at SCHUFA Holding AG, time and content of the text reminders of defaulting borrowers.⁶³

III. Bank Acting as an Outsourcing Services Provider

The last model is based on the idea, that the bank is acting like an outsourcing provider for the FinTech. In this concept, the bank doesn't make any use of its banking license in order to provide these services. Quite the opposite : This model necessitates that the FinTech has its own appropriate license, which could „include authorization as a payment institution or electronic money institution, depending on the services it offers“⁶⁴. The FinTech acts as the direct counterparty to the client in providing these licensed services, taking full liability for its operations and assuming responsibility for all business obligations toward the client. Additionally, the FinTech is required to fulfill all necessary anti-money laundering (AML) duties, particularly identifying the client and the beneficial owner.

A good example of this model's execution is the activity of Railsbank, a global banking and compliance platform founded in Great Britain. Railsbank enables businesses to scale rapidly by reducing the time and complexity associated with opening bank accounts, simplifying technical integrations with banks, and enhancing banking functionality through its core services. While Railsbank holds a UK banking license for card issuance, its primary role is as a provider of technical outsourcing services. Its FinTech partners

⁶² Solaris, 'Splitpay' <https://www.solarisgroup.com/de/services/splitpay/>, accessed on 29 December 2024

⁶³ Smava, 'Kredit2Day' <https://www.smava.de/kredit/kredit2day/> accessed on 29 December 2024.

⁶⁴ Grabowski, Michał (2021) : Legal aspects of "White-label" banking in the European, Polish and German law, Journal of Risk and Financial Management, ISSN 1911-8074, MDPI, Basel, Vol. 14, Iss. 6

operate under their own banking, Electronic Money Institution (EMI), or Payment Institution (PI) licenses and market their services under their own brands.⁶⁵

Neo-banks and embedded finance providers are increasingly using white-labelled banking solutions to bring their services to market quickly and efficiently. Neo-banks, such as those supported by *Andaria Financial Services*, are using these technologies to focus on customer acquisition rather than developing their own technical infrastructures. By providing APIs for virtual cards, currency exchange and digital wallets, they can deliver their products faster. They enable non-financial companies to integrate financial services such as bulk payment processing and multi-currency accounts directly into their offerings. This gives companies the opportunity to get an additional revenue and upgrade their services to their customers.⁶⁶

As mentioned, White Label Solutions offer an attractive opportunity for start-ups in particular, both to test the product and to generate revenue. This becomes particularly clear when you look at the European FinTech market: Startups in financial services often use white-label banking and payment solutions to offer branded financial products without investing heavily in infrastructure: almost every well-known FinTech has had dealings with WLP during its existence. The company Revolut, which operates as a bank, deserves special mention here.⁶⁷ Although Revolut largely operates its own business, it also works with WLS. Somewhat less well-known, but often mentioned in the same breath as Revolut, is Wirex: they often use White Label Partner for their multi-currency payment cards and e-wallets business.⁶⁸

IV. Legal Grounds for a Europe Wide White Labeling

The freedom to provide services and the freedom of establishment are the two principles which enable the legal and economic thrive of the EU. These principles ensure that businesses can operate and move freely across the EU. Their legal foundation is

⁶⁵ Fintech Global, 'Railsbank Jumps into BNPL Market with White Label Solution Launch' (Fintech Global, 13 Januar 2022) <https://fintech.global/2022/01/13/railsbank-jumps-into-bnpl-market-with-white-label-solution-launch/>. accessed on 29 December 2024

⁶⁶ TheBanks.eu, 'Andaria Financial Services' (TheBanks.eu, 2024) https://thebanks.eu/emis/andaria-financial-services-355240#white_label_solutions accessed on 29 December 2024.

⁶⁷ Revolut, 'Discover Our Company' <https://www.revolut.com/de-DE/discover-our-company/> accessed 29 December 2024.

⁶⁸ Wirex, 'White Label of Wirex Hybrid Crypto, Fiat and DeFi Services' (Wirexapp, 2024) <https://wirexapp.com/blog/post/white-label-of-wirex-hybrid-crypto-fiat-and-defi-services-0446>.

established in Articles 26 (internal market), 49 to 55 (establishment), and 56 to 62 (services) of the Treaty on the Functioning of the European Union (TFEU).

However, specific regulations apply to financial services. Directive 2013/36/EU of the European Parliament and Council (CRD4), adopted on June 26, 2013, governs access to credit institution activities and their prudential supervision. This directive introduces the concept of "passporting" services within the EU.

Under the principle of single authorization, the respective authorities of the institution's statutory Member State are solely in charge for granting authorization valid across the EU. Once authorized, a financial institution can offer its services or carry out its authorized activities throughout the Single Market, either by establishing a branch or through cross-border service provision.⁶⁹

V. Key Features of White-Label Banking:

I. Banking Infrastructure

When it comes to the whole set up of this collaboration, it is important to note, that the bank supplies core banking functionalities such as account management, payment processing, and regulatory compliance while the third party (e.g., a FinTech) customizes the customer interface and markets the services under its brand, often with a focus on user experience.⁷⁰

II. Compliance and Licensing

The bank retains responsibility for meeting regulatory requirements. This comes for a prize: whenever the White Label Partner fails to comply with the regulations, also the FinTech or their customers are affected. In this case, it is even more important to check, whether the partner is reliable in these matters. But also the other way around is possible:

⁶⁹ BaFin, 'Passporting' (Bundesanstalt für Finanzdienstleistungsaufsicht) https://www.bafin.de/DE/Aufsicht/BankenFinanzdienstleister/Passporting/passporting_node.html accessed 29 December 2024.

⁷⁰ Judt/Klausegger, Was ist eigentlich ... Banking-as-a-Service?, ÖBA 2024, 347

if the partner dismiss a potential customer which would have been onboarded from the FinTech because their opinion, the customer is compliant.⁷¹

III. Examples of White-label Banking Products

A very common product are indeed credit cards or any physical product for banks. FinTech companies offering branded debit/credit cards and digital bank accounts powered by a licensed bank, for example Visa for Finanzguru.⁷²

But also non-physical banking products like lending or payment processing are frequently used: in the case of lending, the third party provides the loan while it is relying on the partner banking infrastructure. A famous example for this is SMAVA. For the processing of payments, branded payment solutions such as mobile wallets or point-of-sale systems are in use.⁷³ A major advantage of the increasing digitalization in the banking sector is that many young providers have focused on great user-friendliness and have developed good software for this. As a result, not every 'older' provider takes care of an app, but uses the software of the younger provider for a fee and a different platform design.

Of course, this process also goes in the other direction, or part of the deal may be that the bank can use the start-up's platform, while the start-up can outsource the banking transactions to the bank in return. The advantages of this are obvious. On the one hand, start-ups can enter the market much faster and earn their first money without having to delve into the license process first. This is indeed very extensive and requires many years and money of preparation, so it is much easier to outsource this part of the business, which requires a license, and instead ensure that the user-friendliness and technical processing work very well. This allows the start-up to generate revenue and gain valuable experience on how to make their platform even better, while the bank's customers can access a modern platform without having to switch providers.

⁷¹ Baker Tilly, 'Navigating BaaS: Insights and Compliance' <<https://www.bakertilly.com/insights/navigating-baas-insights-and-compliance>> accessed 28 December 2024.

⁷² Cardscout, 'Finanzguru startet mit einer Debit-Visa-Card' <<https://www.cardscout.de/kreditkarten-news/finanzguru-startet-mit-einer-debit-visa-card>> accessed 28 December 2024.

⁷³ smava, 'Partnerprogramm' <<https://www.smava.de/partnerprogramm/>> accessed 28 December 2024.

As mentioned above, start-ups can concentrate fully on the product and its marketing and do not have the additional burden of complying with regulatory requirements, which they may not be able to cope with for staffing reasons, and can therefore rely on the staff and legal infrastructure of the banking partner. Unfortunately, this has the disadvantage that the two partners have to trust each other and are to some extent dependent on each other. It is therefore highly advisable for start-ups to protect themselves contractually in the event that the banking partner is held liable for regulatory problems, particularly in view of the fact that reputational damage can be very damaging to the start-up. In addition, the banking service should not be prone to errors, as these errors would also become a burden for the start-up's customers. On the other hand, if the partnership works well, it also allows for better scalability: because the bank has usually been in the market for some time, it has already had the opportunity to take its business and thus its infrastructure to new markets outside Europe.⁷⁴

The following company deserves special mention: *Solarisbank*. Its product is Banking-as-a-Service and offers white label solutions for payments, loans and compliance activities. This makes it the white label partner for many German FinTechs such as *Bitpanda* and one of the best-known WL banks. At Solarisbank, you can see very clearly that the trust and compliance of the bank is also largely dependent on the respective partners: the German financial authority BaFin regularly highlights shortcomings in the fight against money laundering. One of the reasons for this is that the new -digital- ways of opening a securities account unfortunately also allow people to open an account who are up to no good and are generally categorized as a higher money laundering risk. Unfortunately, this is particularly common in connection with crypto-assets. Solarisbank therefore finds itself in a dilemma: on the one hand, it does not want to lose its White Label partner, but on the other hand it also has to carry out a full KYC process in order to fulfill its obligations under its CRR license. Younger companies in particular do not necessarily have business customers or customers with a higher investment sum that can be fully checked with regard to their source of funds and integrity. This is one of the reasons why Solarisbank is so often in the crossfire of criticism.

⁷⁴ *Judt/Klausegger, Was ist eigentlich ... Banking-as-a-Service?, ÖBA 2024, 347*

This model is a cornerstone of the Banking-as-a-Service (BaaS) ecosystem, helping bridge traditional banking and modern financial innovations.⁷⁵

⁷⁵ IT Finanzmagazin, 'Die BaFin verliert mit Solaris in Sachen Geldwäsche Geduld – Zwangsgeld droht' <<https://www.it-finanzmagazin.de/die-bafin-verliert-mit-solaris-in-sachen-geldwaesche-geduld-zwangsgeld-droht-212875/>> accessed 28 December 2024.

IV. Going West: US Expansions from EU based start ups

European fintech and tech companies have achieved considerable success in expanding their operations into the U.S. market. This has been achieved by utilizing strategic partnerships and tailoring their offerings to align with local demands. A notable example of this is the Swedish fintech giant, *Klarna*, which extended its payment solutions for online shopping to the U.S. The company focused on partnerships with American retailers and implemented a substantial marketing campaign to drive adoption.⁷⁶ A similar approach was adopted by *Spotify*, a Swedish company that has become a global leader in music streaming by prioritising partnerships and adapting its product to the American audience⁷⁷. *Revolut*, a digital banking pioneer from the UK, entered the U.S. market in 2020. It targeted underbanked and tech-savvy consumers with financial products designed to meet their specific needs, carving out a strong presence.⁷⁸

Additionally, *TransferWise*, now known as *Wise*, introduced its cost-efficient money transfer services to the U.S., catering primarily to expatriates and international businesses seeking competitive exchange rates. These companies exemplify the efficacy of strategic localization and partnerships in penetrating the competitive U.S. market.⁷⁹

I. Key Considerations for Expansion

European startups aspiring to expand into the U.S. encounter a variety of substantial challenges, with the selection of an optimal location being a primary concern. Two prominent hubs that have gained significant popularity are New York and San Francisco, each offering distinct advantages. New York exerts a particular appeal for companies in the finance and media sectors due to its proximity to key customers and the presence of

⁷⁶ Akila Quinio, 'US Expansion Helps Klarna to Report Third-Quarter Profit' (Financial Times, [25.11.2024]) <https://www.ft.com/content/4ab50934-fc1f-4b3a-98d9-9d031902757d> accessed 29 December 2024.

⁷⁷ Accelingo, 'Spotify Global Strategy' <<https://www.accelingo.com/spotify-global-strategy/#>> accessed 28 December 2024.

⁷⁸ Revolut, 'About' <<https://www.revolut.com/en-US/about/>> accessed 28 December 2024.

⁷⁹ Payments Dive, 'Wise Gears Up for US Expansion' <<https://www.paymentsdive.com/news/wise-gears-up-for-us-expansion/610747/>> accessed 28 December 2024.

industry-specific networks. Conversely, tech startups frequently gravitate towards San Francisco, a city that boasts a global reputation as a technology hub.

In addition to geographical considerations, nascent enterprises must navigate a labyrinth of regulatory and legal complexities. A common initial step is the establishment of a U.S.-based entity, frequently adopting a Delaware C-Corp structure. Subsequent challenges include navigating U.S. employment laws, intricate tax regulations, and the procurement of visas for foreign employees.

Cultural adaptation is another crucial factor, given that U.S. customers often have different preferences, meaning European companies must tailor their offerings accordingly to succeed. Hiring a local team for sales, business development, and regulatory compliance is also key to ensuring smooth operations in the U.S. market.⁸⁰

II. Challenges for EU based Start Ups

European startups face several challenges when expanding into the U.S. market. These challenges stem from differences in market dynamics, regulations, culture, and operational needs. Below are some of the key obstacles: The expansion of nascent enterprises into the U.S. market is characterized by a unique set of challenges, largely attributable to regulatory, geographical, and workforce considerations.⁸¹ The complexity of compliance requirements, stemming from the variegated nature of U.S. regulations across states and sectors, poses a significant obstacle for emerging entities. A case in point are fintech startups, which are obligated to adhere to a dual set of financial regulations – both at the federal and state levels. This obligation encompasses anti-money laundering laws and consumer protection standards, among others. In addition, employment legislation differs significantly from European standards, encompassing at-will employment, worker classification, and specific benefits obligations. The sheer size and scope of the United States further complicates market entry, making it difficult for startups to establish a nationwide presence. Consequently, many startups initially focus their efforts on specific regions, such as the East Coast or West Coast, to effectively

⁸⁰ Evan Kimbrell, 'How European Startups Can Successfully Move to the U.S.' (Forbes, 15 April 2021) <https://www.forbes.com/councils/theyec/2021/04/15/how-european-startups-can-successfully-move-to-the-us/> accessed 29 December 2024.

⁸¹ 'Sifted, 'Expand into the US: Startup? Read This First' <<https://sifted.eu/articles/expand-into-the-us-startup-read-this-first>> accessed 28 December 2024.'

manage this challenge. Furthermore, the competition for skilled workers in tech hubs like Silicon Valley or Austin is both costly and challenging. Consequently, it is imperative for startups to offer highly competitive compensation packages and benefits to attract and retain talent, especially in comparison to well-established companies in these areas.⁸²

I. Brand Recognition

For many companies expanding from Europe to America, it comes as a surprise that their brand is not as well received on the other side of the Atlantic as it is in their home market.⁸³ Therefore, care should also be taken to build credibility and trust with US customers, which requires at least as much effort as building a brand in Europe.⁸⁴

There are various ways to meet the challenges of US expansion. It is always a good idea to enter into a partnership with local companies or even go into incubators or accelerators in order to build up a stable network and overcome regulations and cultural differences. It helps to have thought carefully in advance about exactly what the target market looks like in order to discover niches and get a foot on the deck at the first attempt. In addition, the WL Solutions discussed here can be of great help. US investors can be of great help, especially for start-ups, as they also have a great interest in the success of the company and are therefore happy to help. Since a lot of risk capital is based in the US anyway, financial, strategic or official support can be expected there. A thorough market analysis is essential, especially in America: as customer preferences and purchasing behavior can differ greatly from those in Europe, it is advisable to clarify this in advance before becoming entangled in long contracts or a high level of product development. It is also important to familiarize yourself with existing competitors, not only to understand their strategies and products, but also to draw conclusions about their customer base. As a result, marketing strategies can be better adapted to the USA in order to achieve a better Product-Market-Fit. This allows the brand to better adapt to the US culture and use local marketing channels such as social media accordingly. It is also worth having a profound local network to be able to turn to if necessary. This can consist of lawyers, tax advisors or other consultants who are already based in the US business

⁸² Y Combinator, 'Y Combinator' <<https://www.ycombinator.com>> accessed 28 December 2024.

⁸³ Judt/Klausegger, Was ist eigentlich ... Brand Experience ?, ÖBA 2020, 342

⁸⁴ N26, 'N26 US Operations' <<https://n26.com/en-us/n26-us-operations>> accessed 28 December 2024.

sector, for example. Consider joining local accelerator programs to build connections and gain market insights.

A good analysis should not only be carried out in business terms: There are a number of pitfalls in the legal and tax areas. It should be noted in advance that US laws can differ significantly from state to state, which is why the choice of business location is an important one. Many companies therefore favor a Delaware company because the legal obligations there are the least onerous. This also applies to regulatory issues and compliance, among other things. When making this choice, it should also be borne in mind that - as in Europe - the choice of company form gives rise to both tax and operational rights and obligations. The legal provisions relating to 'intellectual property' are also different, which is why it is particularly important for start-ups, whose major corporate value is often innovation.⁸⁵

By conducting thorough research and seeking expert guidance, businesses can effectively navigate the complexities of expanding to the U.S., positioning themselves for success in a competitive and diverse market.

II. Support through Outsourcing and White Labeling

It is evident that a number of European startups are actively utilising white-label solutions to streamline their operations and expand their offerings across markets. The following are some notable examples and industries where these solutions are applied:

Online retailers employ white-label payment gateways or financial tools to enhance customer experience. Providers such as Stripe offer startups the capability to seamlessly integrate payment processing, virtual cards, and invoicing tools directly into their platforms, eliminating the need for in-house development.⁸⁶

Startups in the gig economy leverage white-label solutions to provide digital wallets and payment cards to their workers, helping to streamline earnings disbursement and increase platform loyalty. White-label solutions provide a cost-effective and time-efficient

⁸⁵ 'Sifted, 'Expand into the US: Startup? Read This First' <<https://sifted.eu/articles/expand-into-the-us-startup-read-this-first>> accessed 28 December 2024.'

⁸⁶ Stripe, 'Stripe' <<https://stripe.com/de>> accessed 28 December 2024.

way for European startups to innovate and scale, making them especially appealing in competitive and highly regulated industries.⁸⁷As mentioned, the technical and operational infrastructure plays a major role: if the White Label partner abroad has a fully developed product or service, the expanding company can brand it as its own. This means that the start-up no longer has to worry about developing the platform or new technologies from scratch and therefore has more time to think about a suitable marketing strategy.⁸⁸

Startups can fully focus on building their brand presence in the new market. The white label solution allows them to market services under their own name while relying on the expertise and infrastructure of the provider.

The fact that the White Label partner already has this infrastructure and is familiar with the local laws means that this is often used as a selling point. This significantly reduces the complexity of an expansion, as local experts can deal with such problems much more efficiently and are more familiar with the extent and regulatory requirements. White label providers often have existing licenses and regulatory knowledge in various regions. For startups entering highly regulated industries (like fintech or healthcare), this provides a shortcut to compliance. Thanks to the existing structure and product, the start-up no longer has to worry about the development of these and therefore saves on development costs, but can make better use of these resources in marketing, personnel or customer service in the new country if these are not also borne by the WL partner, which would make particular sense for customer service because many white label solutions come with built-in localization features, including language support, region-specific functionality, and compatibility with local payment systems. This helps startups offer tailored experiences to their new customers.⁸⁹ It is evident that a number of European startups are actively utilizing white-label solutions to streamline their operations and expand their offerings across markets. The following are some notable examples and industries where these solutions are employed:

Online retailers employ white-label payment gateways or financial tools to enhance customer experience. Providers such as Stripe offer startups the capability to seamlessly

⁸⁷ VoPay, 'Gig Economy' <<https://vopay.com/industry/gig-economy/>> accessed 28 December 2024.

⁸⁸ Evan Kimbrell, 'Why a White Label Solution Is Easier Than Building Your Own' (Forbes, 3 June 2014) <https://www.forbes.com/sites/theyec/2014/06/03/why-a-white-label-solution-is-easier-than-building-your-own/> accessed 29 December 2024.

⁸⁹ sevDesk, 'White Label' <<https://sevdesk.at/lexikon/white-label/>> accessed 28 December 2024.

integrate payment processing, virtual cards, and invoicing tools directly into their platforms, eliminating the need for in-house development.⁹⁰

Startups in the gig economy leverage white-label solutions to provide digital wallets and payment cards to their workers, helping to streamline earnings disbursement and increase platform loyalty. White-label solutions provide a cost-effective and time-efficient way for European startups to innovate and scale, making them especially appealing in competitive and highly regulated industries.⁹¹

White label solutions have become a critical tool for businesses across various industries looking to expand into new markets. FinTechs, such as digital banks like N26 and payment platforms, frequently partner with white label providers to launch financial services in new countries. These partnerships enable them to leverage pre-approved regulatory frameworks and technologies, simplifying the expansion process.⁹² Similarly, in e-commerce, startups can utilize white label logistics, payment, and website solutions to establish a presence in new markets without the need for extensive local operations.⁹³ The telecommunications industry also benefits from white label services, as companies entering new regions often rely on these solutions to offer SIM cards or data packages with localized pricing, ensuring a seamless market entry.⁹⁴

⁹⁰ Stripe, 'Stripe' <<https://stripe.com/de>> accessed 28 December 2024.

⁹¹ VoPay, 'Gig Economy' <<https://vopay.com/industry/gig-economy/>> accessed 28 December 2024.

⁹² White Label Wonder, 'How White Label Banking-as-a-Service (BaaS) Is Democratizing Financial Services' <<https://whitelabelwonder.com/how-white-label-banking-as-a-service-baas-is-democratizing-financial-services/>> accessed 28 December 2024

⁹³ White Label Wonder, 'Scaling Your E-Commerce Store with White Label Fulfillment Services' <<https://whitelabelwonder.com/scaling-your-e-commerce-store-with-white-label-fulfillment-services/>> accessed 28 December 2024.

⁹⁴ NewSIM, 'NewSIM' <<https://newsim.de>> accessed 28 December 2024.

Conclusion

There are several regulations which companies have to be compliant with, depending on which area the business is conducted. For the most of the companies, mainly data protection and labor laws are restricting the outsourcing efforts of the companies and due to that, everyone is affected to the same extent, as laws apply to everyone who wants to do business in a certain area.

Legislation in the EU is primarily aimed at protecting consumers and therefore any company wishing to do business with customers must be compliant with certain laws. What affects companies differently, however, is the means by which they achieve compliance. The cost of lawyers and consultants is more likely to fall on the financial shoulders of younger companies than older ones. In addition, start-ups are more often represented in fields where regulation is lagging behind or has not yet been established for years and with constant case law. This legal uncertainty can mean that business models are nipped in the bud or have to be changed so much that they no longer have much to do with the core idea.

As a result, growing companies are naturally hit harder than those that have already been on the market for 30 years and will certainly have to invest a little more budget in training existing employees as a result of the new regulation, but can otherwise continue their business.

With regard to outsourcing and its regulation, it can be argued that, with a few exceptions, this is limited to data protection regulations and labour law challenges. However, as these have to be complied with anyway and synergy effects can be utilized in the legal team, I don't think that start-ups have a greater burden compared to existing companies.

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Abstract

In vielen Bereichen der Wirtschaft wird die eigene Arbeit durch die Arbeit anderer ergänzt. Vor allem im Technologiesektor spielt das Outsourcing eine entscheidende Rolle und ist entlang der Wertschöpfungskette unverzichtbar. Aufgrund der Bedeutung dieser Rolle ist es wichtig, einen angemessenen rechtlichen Rahmen für ihre Nutzung zu haben. In diesem Beitrag wird zunächst allgemein erläutert, wie solche Vereinbarungen aufgesetzt werden können und worauf dabei besonders zu achten ist. Da Fehler in diesem Bereich für jüngere Unternehmen sehr kostspielig sein können, konzentrieren sich die folgenden Abschnitte stark auf neu gegründete Unternehmen. Da einige Sektoren staatlich reguliert sind, ist es nicht verwunderlich, dass Unternehmen, die in diesen Sektoren tätig sind, in Bezug auf das Outsourcing Vorschriften unterliegen. In dieser Arbeit werden wir einen kurzen Blick auf den Pharmasektor und den Finanzsektor werfen. In diesem Zusammenhang werden wir die regulatorischen Herausforderungen und Besonderheiten erörtern und erörtern, wie sie sich auf die Geschäftstätigkeit von Start-ups auswirken, z. B. die EBA-Leitlinien zum Outsourcing und Datenschutzbestimmungen. Abschließend werden in dieser Arbeit mögliche Verbesserungen des derzeitigen regulatorischen Rahmens in der EU analysiert und bewertet, wie Start-ups in der EU einen soliden Outsourcing-Rahmen sicherstellen können.

Diese Sektoren, einschließlich des Bankensektors, sind in der Regel stark reguliert. Daher ist es im Allgemeinen sehr schwierig, als neuer Marktteilnehmer in den Bankenmarkt einzutreten, der vielleicht noch keine Lizenz hat, aber eine regulierte Bankdienstleistung anbieten möchte. In diesem Fall kann eine so genannte White-Label-Lösung dieses Problem lösen: Durch die Auslagerung der lizenzierten Dienstleistung an eine bereits regulierte Bank kann das Start-up seinen Kunden diese Dienstleistung anbieten, während es sich auf den Aufbau eines soliden Unternehmens konzentriert, das eines Tages in der Lage sein könnte, den lizenzierten Teil seines Geschäfts selbst anzubieten. Im letzten Teil der Arbeit werden wir uns einen anderen Teil der Welt, die Vereinigten Staaten von Amerika, genauer ansehen: Da der US-Markt so groß ist, wollen viele in der EU ansässige Start-ups ihr Geschäft dorthin ausweiten. In diesem Fall wird erörtert, ob White-Label-Lösungen ein möglicher Weg sein könnten, um die Expansion europäischer Start-ups nach Westen erfolgreicher zu gestalten.

In many areas of the economy, in-house labour is supplemented by the work of others. In the technology sector in particular, outsourcing plays a crucial role and is indispensable along the value chain. Due to the importance of this role, it is important to have an appropriate legal framework for its utilization. This paper begins with a general explanation of how such agreements can be drawn up and what particular attention should be paid to. As mistakes in this area can be very costly for younger companies, the following sections focus heavily on newly established companies. As some sectors are regulated by the government, it is not surprising that companies operating in these sectors are subject to regulations regarding outsourcing. In this paper, we will take a brief look at the pharmaceutical sector and the financial sector. In this context, we will discuss the regulatory challenges and specificities and how they affect the business activities of start-ups, e.g. the EBA guidelines on outsourcing and data protection regulations. Finally, this paper analyses possible improvements to the current regulatory framework in the EU and assesses how start-ups in the EU can ensure a sound outsourcing framework.

These sectors, including the banking sector, tend to be highly regulated. Therefore, it is generally very difficult to enter the banking market as a new entrant that may not yet have a licence but wants to offer a regulated banking service. In this case, a so-called white label solution can solve this problem: By outsourcing the licensed service to an already regulated bank, the start-up can offer this service to its customers while focusing on building a solid business that might one day be able to offer the licensed part of its business itself. In the last part of the paper, we will take a closer look at another part of the world, the United States of America: Since the US market is so large, many EU-based start-ups want to expand their business there. In this case, we will discuss whether white label solutions could be a possible way to make the expansion of European start-ups to the West more successful.