

The new Italian FinTech initiatives

In line with the actions taken in several EU Member States, Italy has also recently enacted specific measures for the development of FinTech initiatives by introducing a dedicated sandbox.

The initiative for the establishment of the sandbox follows the publication in January 2019 of the ESAs Report on FinTech: Regulatory sandboxes and innovation hubs setting out a comparative analysis of existing innovation facilitators and best practices for the design and operation thereof. In light of the indications provided in this Report, a regulatory sandbox consists of a test area for innovative FinTech initiatives where the possibility of a cooperative dialogue with the regulators and flexibility in the application of the existing legislation is ensured.

With respect to Italy, pursuant to Law Decree No. 34 of 30 April 2019 (as converted into law by Law No. 58 of 28 June 2019) concerning urgent measures for economic growth (the “**Growth Decree**”), in order to foster innovation in the financial, banking and insurance industry, the Italian Ministry of Economy and Finance is to adopt one or more decrees (the “**MEF Regulations**”) setting out the main requirements to launch an initiative aimed at testing FinTech activities (the “**Sandbox**”).

Italy thus becomes the sixth EU Member State to establish a Sandbox for FinTech initiatives. The main characteristics of the Sandbox would be the following:

- a maximum 18 month duration;
- lower capital requirements;
- simplified obligations proportionate to the activities to be carried out;
- shorter timing for authorization procedures;
- boundaries of the activities that may be performed.

The MEF Regulations are to be adopted within 180 days from the entry into force of the converting law (i.e. 30 June 2019) and should include, among other things, the general requirements for taking advantage of the Sandbox, the capital requirements, the obligations to be fulfilled which should be simplified and proportionate to the activity to be carried out, the operating boundaries, the disclosure requirements, the timing for the authorisation, the professional requirements of the key officers, the corporate governance and risk management structure, the eligible corporate structure, and the financial guarantees (if any).

The MEF Regulations will also regulate the steps to be taken following the end of the Sandbox ‘testing’ period. In this regard, pursuant to the Growth Decree, at the end of the Sandbox ‘testing’ period the national regulators may authorise, on a temporary basis, the participants in the Sandbox



to operate in the market according to a ‘FinTech-oriented interpretation’ of the industry-specific legislation currently in force.

This provision is closely linked to the requirement for the national regulators (the Bank of Italy, CONSOB and IVASS) to publish on a yearly basis a report on FinTech including the outcome and highlights of the Sandbox activities. National regulators are also required to indicate any legislative and regulatory amendment necessary to foster the development of the industry. The above seems to represent a clear intention of the legislator to start reviewing the current legal framework so as to adjust it to the new technological development of the industry.

The Growth Decree provides for the establishment of a FinTech Committee in charge, among other things, of facilitating contacts between the industry, institutions and authorities, drafting regulatory proposals and taking actions aimed at the development of FinTech in the Italian territory, also liaising with foreign entities.

In this regard, the ESAs Report shows that sandbox participants often need to liaise with authorities other than those from the financial sector (e.g. data protection authorities or antitrust authorities), given the variety of subject matters impacted by FinTech activities. The ESAs Report, therefore, suggested that such authorities should also participate in the Sandboxes. For this purpose, the Italian FinTech Committee to be set up by the MEF Regulations will include not only the Ministries of Economy and Finance, Economic Development and European Affairs and the national regulators (i.e. the Bank of Italy,

CONSOB and IVASS), but also the AGCM (i.e. the Italian Antitrust Authority), data protection authorities, the AGID (i.e. the Agency of Digital Italy) and the Tax Agency.

The absence of regulatory sandboxes, of course, may not have been the primary reason that the Italian FinTech market has been developing more slowly compared to other markets. However, the establishment of the Sandbox and the flexibility that the Growth Decree granted to national regulators in relation to the development of FinTech activities seems to be a good start for fostering technological innovation in the Italian financial market. Time will tell how the change to the new Government will impact developments in this area.



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