

A NEW STRATEGIC APPROACH TOWARDS FINANCIAL REGULATION: A COMPARATIVE OVERVIEW OF THE ENGLISH AND ITALIAN LEGAL SYSTEM BETWEEN REGULATORY NEEDS AND TECHNOLOGY INNOVATIONS / Marco Boldini

Marco Boldini
San Raffaele University
Via di Val Cannuta 247
20138 Rome, Italy.
London Institute of Banking and
Finance
36 Monument Street;
EC3R 8LJ London, United Kingdom.
Bayes Business School (London)
106 Bunhill Row,
EC1Y 8TZ London, United Kingdom
mboldini@orrick.com
ORCID: 0000-0003-1179-7177

Abstract: *This paper analyses the dynamics and evolutionary strategies that are occurring in regulated markets in light of the impacts of new technological innovations in the financial sector and how different jurisdictions are seeking the right balance between fostering innovation and competition and ensuring customers protection. The main focus of the paper is to present regulatory sandboxes as one of the novel ways of regulating financial services, especially fintech. The article is characterized by a comparative approach based on my professional experience as a lawyer in UK and Italy, as well as my experience as an academic in the financial markets sector.*

Key words: *Financial regulation; FinTech; RegTech; Regulatory sandbox; Public Law; Comparative Law; UK; Italy; EU*

Suggested citation:

Boldini, M. (2022). A New Strategic Approach Towards Financial Regulation: A Comparative Overview of the English and Italian Legal System between Regulatory Needs and Technology Innovations. *Bratislava Law Review*, 6(2), 9-20. <https://doi.org/10.46282/blr.2022.6.2.276>

Submitted: 12 February 2022

Accepted: 13 July 2022

Published: 30 December 2022

1. INTRODUCTION

Since finance is a legal construct, there is always the need to regulate it. Otherwise, as the financial crisis showed, if private entities are left free to regulate themselves, no proper guarantees for investors would be provided.

Finance requires regulation, as any transaction carried out on financial markets needs to be ruled by respective agreements and thus law to ensure their effectiveness and enforceability.

Traditionally, the law-making approach to financial markets has debated around two main concepts: deregulation on one side and strict regulation on the other. The debate is the result of the intricacies naturally embedded in the financial world and the constant evolution of the products developed by the industry.

As the industry itself is very sensitive to innovation and development, it stands as the main promoter of economic transformations which generally have deep impacts on

theoretical concepts of laws (Amirante, 2008),¹ and for this reason, a careful adjustment of the legal system itself is required, especially taking for granted that, as Sabino Cassese (2009) recalled, juridical normativism and juspositivism should be considered inadequate to deal with the new millennium challenges because of the rapidity of economic and technological evolution, with its immediate impact on fundamental social structures.

In this regard, it is worth noticing that the transformation in the financial market sector is part of a wider global transformation of the law making process which is shifting – as affirmed by Carlo Amirante (2008)² – from a “pyramidal” vision into a “net” (Ost and Van de Kerchove, 2010)³ or “horizontal” vision which involves different players of the social and economic texture due to the fact that – as also suggested by Paolo Grossi (2020)⁴ – the complexity of modern society is hardly contained in codes composed by rigid norms. In front of those transformations, therefore, a “pyramidal” approach risks to be anachronistic, or at least not sufficient to grasp the dynamism of societies, as well as the pluralism of sources, actors, and relationships involved. Again, in the words of the author, the characteristics of the “net” approach are “the realization of a juridical unity while respecting its internal diversities; an intensely dialectical relationship between juridical unity and individual diversities; the valorisation of jurists in the production of law (since law is a matter for jurists and not for politicians) and, above all, of juridical science for its capacity to design principles that harmoniously unite and tend to be boundless” (Grossi, 2020), so that the regulatory activity should be inventive “in the etymological sense of find, discover by looking”.

The debate on which regulatory approach is the most feasible went on for a long time. In the last years, after a hyper regulation due to the aim of mitigation risks for investors, some tentative to softer the regulatory approach have been introduced, as the involvement of market players through public consultations and the adoption of second and third level measures upon coordination with trade associations. The reason of such softer approach is that the law on financial markets shall take into consideration, together with the mitigating risks and protecting investors, the promotion of competitiveness and economic growth.

After decades in which hyper-regulation seemed to be, at least in Europe and North America, the most common approach to regulate finance – mainly due to the tentative to mitigate the risks arising from financial crisis and scandals (Mehrling, 2013)

¹ As masterfully highlighted by Amirante in one of his masterpieces *Dalla forma Stato alla forma mercato*, the legal aspect has become a fundamental moment of the economic process, arguing that economic issues are never merely technical, and to reduce them to mere technique is to devalue the role of parliamentary institutions.

² In his work, Amirante excellently analyses the effects of globalization on the institutions and the legal system of the State, by highlighting the new dimension of the state-market, that is, of the market form where the state and its original characters are put in a functional position and ultimately subordinated to the rules and the needs of the market itself.

³ The two authors argue that from the pyramidal (regulatory) conception we are moving to a “deregulatory” conception, in the sense that regulation occurs through horizontal, “network” relationships.

⁴ In one of his latest works, the author highlights how the post-modern society is abandoning the legal culture of the Age of Enlightenment, characterized by a rigid and hierarchical legal absolutism, in which the sovereign power proposed itself as the sole holder of the law, while society assumed a non-role of merely passive platform, while adopting more typical features of the Medieval legal dynamism, based on the juridical analysis of the historical development of society and its customs. In that sense, analyzing the principle of legality, the author writes: “The principle of legality was, in fact, supported by a single purpose: the creation by the State of a legislative right, expression of its will, neither read nor invented elsewhere. With a further and essential firm point: beyond this there was only the vast territory of juridic irrelevance, a complex socio-economic reality transformable into unifying law through an act of the will of the State [...] The principle of legality perfectly realized the most rigid juridical monism and perfectly realized the only possible itinerary to arrive at the creation of law”.

– in the last years, especially with the aim of encouraging the adoption of new technologies in finance, innovative regulatory approaches become more popular, as pivotal regimes and regulatory sandboxes. In that sense as a matter of fact the UK, as I can testify from my own experience as a scholar and practitioner, has generally positioned itself as the main promoter of innovative and flexible institutes, also helped by the legal context of Common law, which historically rejected the myth of the rigidity of law, rather favouring a more flexible juridical system which ended up to be a perfect incubator of innovative solutions, very adaptable to the continue challenges posed by development of the economic texture.

The need for a more flexible regime is now more evident in the FinTech market (Alpa, 2019),⁵ where there is a clear awareness that strict rules would be inefficient because they would discourage the adoption of new technologies and would slow the development of the sector (Carruthers, 2020). The main aim of RegTech is, indeed, to balance the fostering of digital innovation together with the protection of clients and the markets.

Regulatory sandboxes are also an example of new, lighter approaches to regulate FinTech, allowing firms to enter a regulated environment but benefitting from some exemptions to the ordinary rules.

The present work is divided into three parts. The first part offers an overview on the importance of the legal and juridical context with respect to the nature of the financial phenomenon and the markets in which it takes place, as well as the prevailing approaches in the interpretation of the phenomenon. The second part, instead, provides a focus on the solutions and regulatory interventions adopted in different jurisdictions for the regulation of the FinTech phenomenon, through the involvement at different levels of production and implementation of legislation by the many players involved in the sector, in order to adapt the regulatory system to the needs and opportunities offered by modern finance. Ultimately, in the third part, the tool of the regulatory sandbox is analysed, as well as its benefits for businesses and for the regulatory activity of the sector authorities, and the various models adopted and being adopted in the main jurisdictions.

2. FINANCIAL MARKETS AS A “LEGAL CONSTRUCTION”

As Katharina Pistor (2013) well explains, financial markets are a legal construction: each transaction on financial markets relies on contracts, from the sale and purchase of securities on stock exchanges to the subscription of derivate products to the granting of a financing. This means that all financial transactions need to be implemented according to the legal terms and conditions provided for in relevant agreements, which therefore need to be compliant with the applicable legal environment to ensure their proper enforcement. Indeed, law is decisive not only to set the terms of the agreements and to provide a perimeter in which parties may negotiate but also – especially – to ensure remedies in case of infringement, providing proper guarantees.

To ensure such intrinsically necessary support to financial markets, several approaches by legislators have been adopted, varying from different jurisdictions and ages. These approaches range from “doing nothing”, which may be permissive or highly restrictive, depending on the context, to cautious permissiveness on a case-by-case basis

⁵ As Guido Alpa masterfully pointed out, *“the science-driven technique has introduced a new revolution, precisely a digital revolution, and law has had to chase scientific discoveries and technical applications to economic relations in order to make the most appropriate choices that could not be entrusted to technicians and scientists”*.

with reference to different sectors or players, to structured experimentalism such as regulatory sandboxes or piloting, and to the development of specific new regulatory frameworks, as happens mainly, in the European Union.

Because financial markets are legal constructs, a complete deregulation, which is sometimes desired due to the inadequacy of traditional legal instruments, may not be deemed to be an option at all (Krönke, 2021).⁶ The absence of rules cannot exist, and thus deregulation may rather mean the absence of specific rules and the consequent application of the common civil rules or may lead to an implicit delegation of the law-making process to subjects different from legislators and regulators (Pistor, 2013), as trade associations of financial intermediaries. In that sense several initiatives, both in the UK as well as in several European countries, are taking place on the assumption that, for the moment, the best strategy to balance regulatory needs and technology innovations lays on a close and osmotic dialogue between legislators, regulators, and the different players and participants involved in the financial markets.

In certain sectors is nowadays widely common the adoption of a very sophisticated regulation and other approaches have been drastically overcome (i. e., the securities exchanges on regulated markets follow similar rules in different countries worldwide), while in others, such as those concerning the application of new technologies in finance (i. e., the so-called “FinTech”), the alternating of different approaches is still evident. Indeed, only in the last years in the European Union the adoption of common rules on main examples of Fintech (as the exchanges of crypto-assets or the crowdfunding)⁷ has become popular, also to overcome the different approaches adopted in Member States which included specific regulations and testing initiatives, with the overall aim to, even with caution, support the development of technologies in finance and the consequent financial and economic growth.

3. FROM THE REGULATION OF FINANCIAL MARKETS TO “REGTECH”

In the past few years, following some financial scandals which highlighted the inadequacy of the existing rules, the approach appearing to be predominant was the hyper-regulation of financial markets (Mehrling, 2013).

For example, in the aftermath of the 2008 global financial crisis, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010⁸ enhanced the regulatory authority to oversee the US regulated markets, while in Europe, the review of the MiFID framework entered in the scope of the programme of the European Commission to provide investors with more guarantees protecting them from new risks. Together with MiFID II also other measures have been adopted in the European Union (i. e., the directive on the alternative investment funds,⁹ the new prospectus regulation,¹⁰ the benchmarks

⁶ The author leans towards the possibility of regulating techno-finance by resorting to the instruments provided by current public law, especially administrative law. In this perspective, new regulatory tools, such as the sandbox, would be compatible with existing law.

⁷ The European Commission proposed a Digital Finance Package composed of four highly relevant proposals for regulations. The first two are dedicated to crypto assets, the MiCA (Markets in Crypto-Assets regulation) and the Pilot (pilot regime for market infrastructures based on DLT). The third, the DORA Regulation, is dedicated to security in the financial sector, while the proposal on Artificial Intelligence was presented on 21 April 2021. In the crowdfunding sector the Regulation on European Crowdfunding Service Providers for Business entered into force in November 2021.

⁸ The Dodd-Frank Act.

⁹ The AIFMD, i. e. the Directive on Alternative Investment Fund Managers (2011).

¹⁰ Regulation on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (2017).

regulation, the EMIR)¹¹ both to review and amend existing rules and to regulate sectors – as those of alternative funds, benchmarks and derivatives – not already ruled. The overall result was a highly regulated market.

However, within the perimeter outlined by the rules set by the public (legislators and regulators), private market players conduct their business: financial markets indeed are essential hybrid: *not state or market, private or public, but always and necessarily both* (Mehrling, 2013).

This is one of the reasons why, traditionally, also the private sector has been involved in the law-making process about financial markets. Within the hyperregulation following the financial crisis, several ways to match private and public needs have been enforced, trying to engage market players in the law-making process: the participation of such actors into the setting-up and refinement of the regulatory perimeter into which they make business, allows to overcome the traditional dualism between public and private.

A traditional way to involve financial entities into such policy-making process is the promotion, mainly through sectorial and ad hoc trade associations, of the so-called best practices or guidelines, often validated by national competent authorities. Such rules, being at their best simply “soft law”, are not binding but a “comply or explain” principle may be relevant for those entities, which decide to disregard such guidelines.

An example of such practices is the “Corporate Governance Code” which has been issued by Borsa Italiana, the Italian Stock Exchange. The adoption of and compliance with the Corporate Governance Code is voluntary for Italian listed companies, but issuers who adopt it shall state in their Corporate Governance Reports which specific recommendations, laid down in principles and criteria, they have departed from and, for each one, explain how the company has not complied and relative reasons.

Other similar initiatives in Italy have been launched by Assogestioni, the trade association of Italian asset management companies, which in recent years adopted guidelines on the main aspects of financial regulation, such as the management of conflicts of interests – both from a governance and contractual perspective – the best execution of the clients` orders. In the provision of portfolio management, and inducements according to the AIFMD and MIFID II. Such guidelines have a very practical attitude to guide companies in the processes to adopt internally and have been validated by Consob,¹² the Italian Securities and Exchange Commission, supervisory authority of the Italian financial market, with the result that companies in compliance with them would be deemed to be compliant with the overall applicable legal framework.

Another example of initiatives sponsored by private entities and accepted as best practices in the markets, on a global basis, has been launched by the International Swaps and Derivatives Association (“ISDA”), a private organization that brought together the major issuers and brokers of derivative instruments. The association played a critical role in the rise of these markets, creating standard contracts, adapted in different jurisdictions around the world. Furthermore, ISDA not only promotes the adoption of best practices but also lobbies legislatures to adapt their legal frameworks (in particular bankruptcy laws) to their agreements and forces, to this extent, the same law-making process.

¹¹ Regulation on OTC derivatives, central counterparties and trade repositories (2012).

¹² Among other activities, CONSOB is responsible for: a) verifying the transparency and correctness of the conduct of operators in order to safeguard the confidence and competitiveness of the financial system, the protection of investors, and compliance with financial regulations; b) supervising in order to prevent and, where necessary, sanction any improper conduct; it exercises the powers granted by law so that investors are provided with the information necessary to make informed investment choices; c) working to guarantee maximum efficiency in trading, ensuring the quality of prices as well as the efficiency and certainty of the methods of execution of contracts concluded on regulated markets.

The lobbying activity carried out by market associations is a common practice in the financial markets and in some cases it is formalised within specific processes to involve them, through public consultations, in the dialogue with National Competent Authorities who are required to adopt the so-called “second level” measures, i. e. the regulatory acts which implement primary laws through regulations and recommendations, both at the European level (e. g. by EFAMA, the asset management companies trade association) and at the national level.

The discussion on which of the mentioned approaches to regulate finance – from the deregulation to the hyperregulation and the “soft law” – is the most efficient has again been debated due to the need to regulate a new trend: the application of technology in finance.

FinTech (“financial technology”) is a term used to describe the application of new technologies – such as blockchain, smart contracts and the distributed ledger technology (DLT) – to finance that seeks to improve and automate the delivery and use of financial services. FinTech is used to help companies and consumers better manage their financial operations and processes by using software and algorithms that are used on digital devices.

Notably, the use of technologies in finance leads to a dual result: on one hand, it allows the provision of the traditional services and products through new digital channels (i. e. the access to banking services through apps and website, the trading online) in a process known as “digital transformation”, while on the other hand it allows the creation of new services and products, from those more similar to existing ones, (i. e. crowdfunding) to those more innovative, such as crypto-assets and relevant services.

Technology is therefore transforming financial markets around the world, generating new opportunities on one side and new risks (i. e., technology risk, cyber security, operational resilience) on the other. Regulators must develop new approaches to regulate FinTech (“RegTech”) that balance the benefits of innovation and consequent financial growth with the need for financial stability and consumer protection.

To regulate FinTech, legislators around the world are testing very diverse approaches, which vary from a total un-regulation, with no changes in the existing regulatory framework to include such new activities, to FinTech specific regulations.

In particular, where legislators decide to provide for specific rules on FinTech, different methods may be adopted. As mentioned above, the application of technology in finance may lead both to the provision of traditional services through innovative means and to the development of new services and products. Those different trends require for different rules, *rectius* for different regulatory approaches. In fact, while in the first hypothesis a mere review of existing rules may be sufficient, in the second one, new specific rules may become necessary. Furthermore, it is not always simple to distinguish exactly between a new service at all and a new way to provide traditional services, and thus a mixed approach is often adopted.

For example, in the European Union, within the “Digital Financial Package” the European Commission declares to be intended to adopt several measures, both to review and amend the financial and banking regulation (e. g. the MIFID rules to include in the list of financial instruments those crypto-assets having similar features, as some security-tokens) (ii) adopt new rules, such as the proposal for a regulation on the market in crypto-assets (MICA), an innovative set of rules applying to certain categories of crypto-assets, their issuers and services provider, in part similar to the MIFID rules and in part to those of the Prospectus Regulation.

Furthermore, some measures have already been adopted at the European Union level, such as the Regulation on European crowdfunding service providers for business,

a very first example of how new phenomenon, such as the rising of capital through web portals, leads to the need of a new set of rules, specifically designed based on the features on the new service, even if in accordance with general principle and traditional guarantees for investors provided by the law.

4. A NEW APPROACH TO REGULATE FINTECH: THE REGULATORY SANDBOXES

Recently, a new approach to soften regulation on financial markets has been adopted around the world (Attrey et al., 2020; Corapi, 2019; Eberle, 2020; *FinTech: Regulatory Sandboxes and Innovation Hub (JC 2018 74)*, 2018; Krönke, 2021; Parenti, 2020; Quan, 2021; Zetzsche et al., 2017): the introduction of “regulatory sandboxes”, i. e., specific regulatory frameworks under which firms are allowed to provide regulated services benefitting from temporary exemptions from the most stringent rules that would be applicable under the ordinary regime or, to use the words of Ringe and Ruof (2020), “a safe playground in which to experiment, collect experiences and play without having to face the strict rules of the ‘real world’”. As a result of the hyper-regulation of financial markets, in fact, most of the services concerning financial transactions are subject to strict rules, and firms to perform them need to be licensed by national competent authorities and subject to their surveillance. On the contrary, access to a regulatory sandbox would allow firms, under certain conditions, to provide regulated activities benefitting from a less restrictive regime.

FinTech regulatory sandboxes have recently been, introduced in several countries worldwide (Goo and Heo, 2020). In Europe the first country to implement them was the United Kingdom where, since it was launched, it has undergone numerous evolutions updating to different versions (Quan, 2021), the regulatory sandbox has operated on a cohort basis, allowing firms to apply during a specific window in the year until August 2021, when the regulatory sandbox became always open, allowing companies to submit applications throughout the entire year (Kalifa, 2021).

In the wake of the excellent results observed in the UK, the European Parliament, in a resolution of May 17, 2017, called for the introduction of the testing regime, recommending that competent authorities “allow and encourage controlled experimentation with new technologies for new and existing market participants” further specifying that “such a controlled environment for testing could take the form and space of regulatory testing (“sandbox”) for Fintech services with potential societal benefits, which brings together a wide range of market participants and has already been successfully introduced in several Member States”.¹³

Even if a common regulatory framework for the sandbox in Europe is still far from being realized, nevertheless the European Commission has also acknowledged equal dignity to the initiatives undertaken in some Member States, almost underlining their legal foundations by stating that “the competent national authorities are obliged to apply the relevant European Union rules on financial services, which nevertheless provide for a margin of discretion as regards the application of the principles of proportionality and flexibility enshrined therein. This can be particularly useful in the context of technological innovation (Commission et al., 2018). In Italy, in 2021, first windows to apply to the new FinTech regulatory sandbox have been opened too, and the next months will allow to understand if and to which extent the Italian market will effectively benefit from it.

¹³ Resolution 2016/2243(INI) on Financial Technology: The Influence of Technology on the Future of the financial Sector (2017).

The conditions for admission to a regulatory sandbox are different in each jurisdiction, but common elements exist (*International Guide to Regulatory Fintech Sandboxes*, 2021). Namely, to be part of the sandbox, firms generally need to prove that their business in the financial, banking, and insurance sectors has economic soundness and innovative features in respect to the existing market. Further specific requirements, such as the AuM under a certain threshold, target clients, and internal organizational structure, may apply too.

The main benefit of regulatory sandboxes is the fact that they permit firms to experiment innovative services and products in the market, with real clients. A pivotal period under the sandbox gives firms the opportunity to better understand the need of consumers preparing their business to enter it on an ordinary basis. Furthermore, while taking advantages of less strict rules, firms would always be under the continuous surveillance of competent authorities, thus avoiding the risk of non-compliance or incurring sanctions for the activities performed.

At the same time, also legislators and regulators may test the regulatory framework and dialogue with market players adopting a collaborative approach. In that view, sanctioning powers, which were previously seen as an "essential" element of the juridical experience in order to drive players' activity and to deter them from harmful behaviour towards investors and ultimately towards the stability and confidence in financial markets, have now been replaced by a friendly and reciprocal dialogue and assistance, aimed at analysing, defining and taking concrete initiatives on the fostering both competition and customers' guarantees in the financial markets. The dialogue helps to better understand the digital transformation taking place within the financial markets, from the regulator's/legislator's perspective, and to favour from a less stringent regime in order to test and launch activities, which would otherwise have been hampered by law, from the players' perspective.

Finally, regulatory sandboxes allow harmonization, even if with some exemptions from ordinary rules, and therefore provide for lower legal and compliance costs for firms. Indeed, sandboxes do not lead to a total reduction of such costs because to be allowed to a sandbox, companies shall prove the occurrence of certain requirements and thus several activities are required for the submission of the application.

Furthermore, in certain regimes, firms entering the sandboxes are allowed to require the competent authorities to be subject to specific rules benefiting from individual exemptions granted on a case-by-case basis. This, even if it is a concrete benefit for companies, leads to a non-overall harmonization, to certain risks for a fair competition between companies and – last but not least – to less guarantees for the protection of clients.

5. CONCLUSION

The need to regulate financial markets is strictly related to the nature of finance, which is a sort of legal construction requiring rules for the settlement and enforcement, through agreements, of each transaction.

This, together with the aim to provide guarantees for investors to protect them from the risks that emerged during the recent financial scandals, has led to a hyper-regulation of the market. If the provision of strict rules is certainly positive for the mitigation of risks and protection of clients, this could also hinder the development of new businesses and slow the overall economic growth.

The need for a balance between those different trends is traditionally a subject of debate about which is the most efficient approach to regulate finance. Furthermore,

the emerging application of technology in finance ("FinTech") has made this topic even more relevant because, despite the need to mitigate new significant risks arising from the use of digital instruments, at the same time there is the awareness that too many burdens for companies would discourage the development of this proficient market.

Thus, after decades of hyper-regulation, in the very last years, a new softer approach emerged including the involvement of private entities in the law-making process and the introduction of experimentations, such as the regulatory sandboxes.

FinTech regulatory sandboxes seem to be a very interesting approach allowing firms, especially start-ups and independent companies not belonging to a big banking group and thus not always able to bear high compliance costs, to develop their business benefiting from some exemptions from ordinary rules. At the same time, the ongoing surveillance by national competent authorities would guarantee proper protection of market stability and investors. Regulatory sandboxes could be very useful for entering the market by new entrepreneurs, as the UK experiences have already shown and, let us hope, that also the Italian new regime¹⁴ will demonstrate.

That said, the experience, in particular that of the United Kingdom, well represented in the Kalifa Review, and Italy, still in the start-up phase, also returns to the interpreters some limits of the regulatory sandboxes. If some of these are inherent in the typical characteristics of the sandboxes, namely partial (and not total) harmonization, reduction (and not elimination) of compliance costs and related risks, others depend instead on the way in which they have been, or have not been, regulated in the various jurisdictions. Consider, for example, the lack of a harmonized regime at European level and therefore the impossibility to operate cross-border, a real paradox in the financial sector. And it is undoubtedly on these last aspects that it will be worthwhile to focus the attention of interpreters and operators, in order to identify solutions to improve a system certainly valid for the FinTech sector and all those markets characterized by a high degree of innovation, and which could represent a useful instrument for the regulatory framework to keep up with disruptive changes brought by new digital technologies.

BIBLIOGRAPHY:

- Alpa, P. G. (2019). Fintech: un laboratorio per i giuristi. *Catalogo Dei Prodotti Della Ricerca*, 35(2), 377–385.
- Amirante, C. (2008). *Dalla forma stato alla forma mercato*. Giappichelli.
- Attrey, A., Leshner, M. and Lomax, C. (2020). The role of sandboxes in promoting flexibility and innovation in the digital age. OECD Going Digital Toolkit Notes, No. 2. OECD. Available at: <https://www.oecd-ilibrary.org/docserver/cdf5ed45-en.pdf?expires=1667465857&id=id&accname=guest&checksum=770DCDDA69951BC8B30239FA02D231DA> (accessed on 15.11.2022).
- Carruthers, B. G. (2020). Law, governance, and finance: introduction to the Theory and Society special issue. *Theory and Society*, 49(2), 151–164. DOI: <https://doi.org/10.1007/s11186-020-09390-5>
- Cassese, S. (2009). *Il diritto globale. Giustizia e democrazia oltre lo Stato*. Einaudi.
- Commission, European Parliament, Council, ECB, and European Economic and Social

¹⁴ Ministerial Decree no. 100 on Regulations implementing article 36, paragraphs 2-bis et seq. of Decree-Law (so called "Growth Decree"), converted, with amendments, by Law on the regulation of the Committee and the testing of FinTech (2021).

- Committee and the Committee of the Regions. (2018). FinTech Action plan: For a more competitive and innovative European financial sector COM (2018) 109 (p. 18). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0109> (accessed on 15.11.2022).
- Corapi, Elisabetta. (2019). Regulatory Sandbox nel Fintech? In: Corapi, E. and Raffaele, L. (eds.), *I diversi settori del Fintech. Problemi e prospettive* (pp. 13–29). Wolters Kluwer.
- Eberle, N. (2020). Die „Regulatory Sandbox“ (K)ein Modell für Deutschland? Legal Revolutionary, 175–179. Available at: https://lrz.legal/images//pdf/Die_Regulatory_Sandbox.pdf (accessed on 15.11.2022).
- FinTech: Regulatory sandboxes and innovation hub (JC 2018 74). (2018). Available at: https://www.esma.europa.eu/sites/default/files/library/jc_2018_74_joint_report_on_regulatory_sandboxes_and_innovation_hubs.pdf (accessed on 15.11.2022).
- Goo, J. J. and Heo, J.-Y. (2020). The Impact of the Regulatory Sandbox on the Fintech Industry, with a Discussion on the Relation between Regulatory Sandboxes and Open Innovation. *Journal of Open Innovation: Technology, Market, and Complexity*, 6(2), 43–61. DOI: <https://doi.org/10.3390/joitmc6020043>
- Grossi, P. (2020). *Oltre la legalità*. Editori Laterza.
- International Guide to Regulatory Fintech Sandboxes (p. 37). (2021). Baker McKenzie. Available at: https://www.bakermckenzie.com/en/media/files/insight/publications/2021/03/baker-mckenzie-a-guide-to-regulatory-fintech-sandboxes-internationally_230321.pdf (accessed on 15.11.2022).
- Kalifa, R. (2021). Kalifa Review of UK Fintech. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/978396/KalifaReviewofUKFintech01.pdf (accessed on 15.11.2022).
- Krönke, C. (2021). Sandkastenspiele – »Regulatory Sandboxes« aus der Perspektive des Allgemeinen Verwaltungsrechts. *JuristenZeitung*, 76(9), 434–443. DOI: <https://doi.org/10.1628/jz-2021-0135>
- Mehrling, P. (2013). Essential hybridity: A money view of FX. *Journal of Comparative Economics*, 41(2), 355–363. DOI: <https://doi.org/10.1016/j.jce.2013.03.007>
- Ost, F. and Van de Kerchove, M. (2010). *De la pyramide au réseau ?* Presses de l'Université Saint-Louis. DOI: <https://doi.org/10.4000/books.pusl.25350>
- Parenti, R. (2020). Regulatory Sandboxes and Innovation Hubs for FinTech. Impact on innovation, financial stability and supervisory convergence (PE 652.752). DOI: <https://doi.org/10.2861/14538>
- Pistor, K. (2013). A Legal Theory of Finance. *SSRN Electronic Journal*, 41(2), 13–348. DOI: <https://doi.org/10.2139/ssrn.2262936>
- Quan, D. (2021). A Few Thoughts on Regulatory Sandboxes. *Stanford Center on Philanthropy and Civil Society*. Available at: <https://pacscenter.stanford.edu/a-few-thoughts-on-regulatory-sandboxes/> (accessed on 15.11.2022).
- Ringe, W.-G. and Ruof, C. (2020). Regulating Fintech in the EU: the Case for a Guided Sandbox. *European Journal of Risk Regulation*, 11(3), 604–629. DOI: <https://doi.org/10.1017/err.2020.8>
- Zetzsche, D. A., Buckley, R. P., Barberis, J. N., and Arner, D. W. (2017). Regulating a Revolution: From Regulatory Sandboxes to Smart Regulation. *Fordham Journal of Corporate & Financial Law*, 23(1), 31–103.
- Regulation 2020/1503 on European Crowdfunding Service Providers for Business (2021).

Regulation 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (2017).

Regulation 648/2012 on OTC derivatives, central counterparties and trade repositories (2012).

Directive 2011/61/EU on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (2011).

Resolution 2016/2243(INI) on Financial Technology: The Influence of Technology on the Future of the financial Sector (2017).

Italy, Ministerial Decree no. 100 on Regulations implementing article 36, paragraphs 2-bis et seq. of Decree-Law (so called "Growth Decree"), converted, with amendments, by Law on the regulation of the Committee and the testing of FinTech (2021).

USA, Dodd-Frank Wall Street Reform and Consumer Protection Act (2010).

