

Italy - Financial Services Regulatory Newsletter

Summer 2021 edition

In brief

An updated summary of the most recent regulatory developments for Italy.

In depth

FinTech: adoption of the regulation implementing the Italian regulatory sandbox (*Decreto del Ministero dell'Economia e delle Finanze n. 100 del 30 aprile 2021*)

On 2 July 2021, the Decree of the Ministry of Economy and Finance No. 100 of 30 April 2021 (the "**MEF Implementing Decree**") was published on the Official Journal of the Republic of Italy (*Gazzetta Ufficiale*). The MEF Implementing Decree provides the technicalities for the implementation of Article 36, paragraphs from 2-*bis* to 2-*octies* of the Legislative Decree No. 34 of 30 April 2019, as amended by Law No. 58 of 28 June 2019 (the "Growth Decree") in relation to the introduction of a **FinTech regulatory sandbox** in the Italian financial system. The MEF Implementing Decree (i) regulates the tasks attributed to the newly-established FinTech Committee, its functioning and composition, and (ii) provides a comprehensive framework for the FinTech experimentation, including setting out the requirements for the participation to the Sandbox, the operational perimeter during the participation and the regime for the termination of such an experimentation.

The FinTech Committee

The FinTech Committee is composed of the Minister of Economy and Finance, the political authority in charge of the EU affairs, the Governor of the Bank of Italy (the Italian supervisory authority competent for the banking and payments industries), the President of the Consob (the Italian supervisory authority competent for the investment and markets industries), the President of the IVASS (the Italian supervisory authority competent for the insurance industry), the President of the Italian Antitrust Authority (*Autorità garante della concorrenza e del mercato*), the President of the Italian Privacy Authority (*Autorità Garante per la protezione dei dati personali*), the Director of the Agency for the Digitalization (*Agenzia per l'Italia digitale*), and the President of the Italian Tax Authority (*Agenzia delle entrate*). Officers from other public administrations and FinTech experts, operators or associations may be invited to participate to meetings of the FinTech Committee, without voting rights.

The FinTech Committee is in charge of:

- conducting the FinTech experimentations;
- monitoring the evolution of the FinTech industry, at national and international level, in order to elaborate a policy for the development of the Italian FinTech sector;
- supporting and facilitating the interactions of private FinTech operators with public authorities and administrations, also by (i) conducting studies and researches, and (ii) organizing meetings with Italian and foreign FinTech operators and supervisory authorities;
- identifying and addressing the risk factors underlying the FinTech industry;

In this issue

FinTech: adoption of the regulation implementing the Italian regulatory sandbox

Corporate governance: updates to the Bank of Italy's Circular No. 285

Supervisory requirements: Bank of Italy's provisions on the fitness and propriety assessment of corporate representatives and individuals in charge of the main corporate functions



- coordinating the collaboration and information exchange activities with foreign authorities.

The FinTech experimentation - Requirements

The participation to the FinTech experimentation is reserved to undertakings performing one of the following technologically innovative activities in the banking, investment or insurance sector:

1. activities that require an authorization or the enrolment in a register held by the Bank of Italy, the Consob or the IVASS (e.g., banking, payment, investment, asset management and insurance activities and services);
2. activities that benefit from an exclusion from the authorization or enrolment requirements described in item 1. above, including those that (i) are not performed towards the public, or (ii) are performed towards a restricted audience;
3. activities which entail regulatory implications performed in favour of Italian and EU regulated entities (e.g., banks, investment firms, asset management companies, insurance undertakings) operating into Italy;
4. activities performed by an Italian or EU regulated entity (e.g., banks, investment firms, asset management companies, insurance undertakings) operating into Italy.

FinTech operators whose activities do not fall under the above categories can informally contact the Italian supervisory authorities (i.e., the Bank of Italy, the Consob and/or the IVASS), in order to assess whether such activities have characteristics or entail risks similar to those which are associated with the performance of regulated activities. If the assessment is positive, the FinTech Committee may admit the FinTech operator to the FinTech experimentation.

The activities admitted to the FinTech experimentation must possess all the following features:

1. must be highly innovative;
2. require a derogation from the ordinary supervisory guidelines and/or regulatory provisions adopted by the Italian supervisory authorities;
3. produce added value, in terms of:
 - a. consumers welfare (e.g., lower prices, better quality of the services, enhancement of the competition, easier access to the services, more protection for customers);
 - b. enhancement of the efficiency of the banking, investment or insurance sector;
 - c. reduction of the costs or increase of the efficacy of the implementation of the banking, financial or insurance regulations;
 - d. improvement of the risk management systems, procedures or internal processes of regulated entities;
4. must be already enough developed for the experimentation;
5. must be economically and financially sustainable, or have adequate financial coverage.

The corporate representatives of FinTech operators that are not regulated entities must satisfy specific integrity requirements (pursuant to Decree of the Ministry of Economy and Finance No. 169 of 23 November 2020 (the "MEF Decree on Personal Requirements").

The FinTech experimentation - Participation

Any FinTech operator intending to participate to the FinTech experimentation must file an application with the Italian supervisory authority that is competent for the relevant regulated industry. The application contains, *inter alia*, a detailed description of the project (including its innovative elements, its added value and the length, purpose and target of the participation to the experimentation), a feasibility study (that takes into account the necessary financial coverage of the



project) and a list of the ordinary supervisory guidelines and/or regulatory provisions that would be derogated during the experimentation and the rationale behind the derogation.

If the application is accepted, the FinTech operator is authorized to operate on the market, within a tailored perimeter that is tailored by the competent Italian supervisory authority on a case-by-case basis: in fact, the applications may also be partially approved, entailing that the FinTech operator may receive an authorization for only part of the envisaged regulated service, or that only a partial derogation from the ordinary supervisory regime is eventually granted.

Participants to the FinTech experimentation are enrolled on a register held by the FinTech Committee, and remain subject to the supervision of the competent Italian supervisory authority.

The experimentation may last for a maximum of 18 months, that can be extended upon request. At the end of the FinTech experimentation, the participants must submit an operational and economic report on the participation to the experimentation to the competent Italian supervisory authority, and they may apply for the relevant authorization for performing their activities on the market.

FinTech operators are allowed to interact with the Italian supervisory authorities using the English language, although (i) the application for participating to the FinTech experimentation, and (ii) all the information and advertising material and any documentation, including pre-contractual and contractual documents, provided to clients must be in Italian.

The MEF Implementing Decree will enter into force as of 17 July 2021.

Corporate governance: updates to the Bank of Italy's Circular No. 285 (Circolare n. 285 del 17 dicembre 2013 «Disposizioni di Vigilanza per le banche» - 35° aggiornamento – Governo societario: recepimento dell'articolo 88, paragrafo 1, capoversi 4 e 5, della direttiva (UE) 2013/36 (CRD), come modificata dalla direttiva (UE) 2019/878, in materia di prestiti agli esponenti e alle loro parti correlate)

On 30 June 2021, the Bank of Italy issued the 35th update to Circular No. 285 of 17 December 2013 on "*Supervisory provisions for banks*" (the "**Circular No. 285**"). In particular, this latest update entirely replaces Part First, Title IV, Chapter 1, of Circular No. 285, introducing substantial amendments to the corporate governance requirements applicable to Italian banks and parent companies of Italian banking groups, as well as, limited to the provisions referenced, to Italian investment companies (*società di intermediazione mobiliare*), parent companies of groups of Italian investment companies and asset managers pursuant to the references to the Circular No. 285 contained in the Bank of Italy's Regulation of 5 December 2019 implementing Articles 4-*undecies* and 6, paragraph 1, letters b) and c-*bis*), of Legislative Decree No. 58 of 24 February 1998 (the Italian Consolidated Law on Finance). As a result of this latest update to the Circular No. 285, the Italian regulations on corporate governance requirements is aligned with the provisions of Directive (EU) 2019/878 of 20 May 2019 (the "**CRD V**").

These amendments include, *inter alia*:

- a new threshold for the application of the definition of "*banks of minor dimension or operational complexity*", which has been increased from EUR 3.5 billion to EUR 5 billion of assets, calculated as an average with reference to the 4 precedent fiscal years (banks with assets between EUR 5 billion and EUR 30 billion are caught under the scope of application of the definition of "*intermediate banks*");
- a minimum gender quota equal to the 33% of the members of the administrative and control bodies of banks;
- the duty for the corporate bodies with strategic supervision functions of banks to adopt professional conduct rules applicable to the personnel of banks, also by adopting an ethical code or similar tools;
- the duty for banks of major dimension or operational complexity (i.e., (i) significant banks subject to the direct supervision of the European Central Bank, (ii) listed banks, and (iii) those which resulted as banks of major dimension or operational complexity adoption on the basis of an evaluation procedure) to adopt a policy on the communication between the directors and the shareholders of banks (including institutional investors and asset managers);
- the assignment of additional non-delegable duties to the corporate bodies with strategic supervision functions of banks, such as the approval, review and update of the recovery plan;



- the duty for the corporate bodies with strategic supervision functions of banks to take into account, amongst other things, (i) the adoption of business models, applications, processes or products connected with the offer of high technological financial services (Fintech) and (ii) the sustainable finance targets, in particular the environmental, social and governance (ESG) factors, for the purpose of determining the corporate strategies of banks;
- the obligation to keep data on loans to members of the management body¹ of the bank and their related parties², in order to make them available to the Bank of Italy upon request, pursuant to Article 88, paragraph 1, subparagraph 4 and 5, of Directive (EU) 2013/36 ("CRD IV"), as amended by CRD V. Banking groups assess whether to apply such an obligation also to loans granted by (i) a bank to the members of the management body (and their related parties) of other banks within the group or of the parent company, and (ii) other companies within the group (e.g., financial companies) to the members of the management body (and their related parties) of the banks within the group or of the parent company.

Gender quotas focus

On the first complete renewal of the corporate bodies after 1 January 2022, and in any case no later than 30 June 2024, the minimum gender quota of the members of the administrative and control bodies of banks must be implemented.

On the first complete renewal of the corporate bodies, banks of minor dimension or operational complexity apply a minimum gender quota equal to the 20% of the members of the administrative and control bodies, while for subsequent renewals (and in any case, no later than 30 June 2027) they apply the ordinary 33% quota.

Implementation timeline

- (i) **30 June 2021**: adoption of the 35th update to Circular No. 285;
- (ii) **30 July 2021** (i.e., the fifteenth day as of their publication on the Official Journal of the Republic of Italy (*Gazzetta Ufficiale*)): entry into force of the 35th update to Circular No. 285;
- (iii) **by 30 January 2022** (i.e., by 6 months as of the entry into force of the 35th update to Circular No. 285): banks must comply with the amendments;
- (iv) **no later than the shareholders' meeting approving the financial statements for fiscal year 2021**: adoption of any required change to the By-Law of banks;
- (v) **by one month as of the shareholders' meeting resolution (see point (iv) above)**: adoption of the relevant implementing acts.

Supervisory requirements: Bank of Italy's provisions on the fitness and propriety assessment of corporate representatives and individuals in charge of the main corporate functions (*Disposizioni di vigilanza in materia di procedura di valutazione dell'idoneità degli esponenti di banche, intermediari finanziari, istituti di moneta elettronica, istituti di pagamento e sistemi di garanzia dei depositanti*)

On 5 May 2021, the Bank of Italy issued the Supervisory provisions on the fitness and propriety assessment of corporate representatives and individuals in charge of the main corporate functions of banks, financial intermediaries, electronic

¹ As indicated by the Bank of Italy, the term "*members of the management body*" means the individuals in charge of the administration, management and control functions.

² Pursuant to Article 88, paragraph 1, subparagraph 5, of the CRD IV, the term "*related party*" means:

- a) a spouse, registered partner in accordance with national law, child or parent of a member of the management body;
- b) a commercial entity, in which a member of the management body or his or her close family member as referred to in point (a) has a qualifying holding of 10 % or more of capital or of voting rights in that entity, or in which those persons can exercise significant influence, or in which those persons hold senior management positions or are members of the management body.



money institutions, payment institutions and deposit guarantee schemes (the "**Bank of Italy's Provisions**"). The Bank of Italy's Provisions implement the MEF Decree on Personal Requirements, which introduced stricter reputation, professional and independency requirements, characterized by objectivity, and the new category of suitability criteria for corporate representatives and individuals in charge of the main corporate functions, which are subject to discretionary assessment, including decency, expertise, availability of time and limitation of other charges. The Bank of Italy's Provisions provide for procedural matters of the fitness and propriety assessment of candidates in case of:

- (i) appointment of corporate representatives by the shareholders' meeting;
- (ii) appointment of corporate representatives not by the shareholders' meeting and appointment of individuals in charge of the main corporate functions;
- (iii) appointment of the deputy members of the control body;
- (iv) assumption of additional non-executive tasks by corporate representatives;
- (v) occurred events and renewals; and
- (vi) suspensions from the office.

The Bank of Italy's Provisions entered into force on 1 July 2021. They are applicable to:

- (i) appointments made as of 1 July 2021;
- (ii) appointments made between the entry into force of the MEF Decree on Personal Requirements (i.e., 30 December 2020) and 1 July 2021, in relation to the events considered in items (iii), (iv), (v) and (vi) above, if they occur after 1 July 2021.

As the Bank of Italy's Provisions entered into force, several regulatory provisions were repealed, namely:

- (i) Title II, Chapter 2, of the Bank of Italy's Circular No. 229 of 21 April 1999 on "*Supervisory instructions for banks*";
- (ii) the Bank of Italy's order of 1 December 2015 on "*Requirements of corporate representatives of banks and parent companies of banking group. Assessment procedures*";
- (iii) Title II, Chapter 2, of the Circular No. 288, with the exception of Attachments A, C and D and of the indication reported in Title II, Chapter 2, Section I, paragraph 4, regarding the administrative procedure for the declaration of relinquishment for breach of the ban of cross participation in competitor financial intermediaries or financial groups (so-called interlocking);
- (iv) Chapter III, Section IV, with the exception of the references to the interlocking ban, and Chapter III, Section V, limited to the administrative procedures relating to the relinquishment in case of lack of suitability and to the suspension of corporate representatives, of the Supervisory provisions for payment institutions and electronic money institutions.



Contact Us

Eugenio Muschio

Counsel

Eugenio.muschio@bakermckenzie.com

© 2021 Baker & McKenzie. **Ownership:** This site (Site) is a proprietary resource owned exclusively by Baker McKenzie (meaning Baker & McKenzie International and its member firms, including Baker & McKenzie LLP). Use of this site does not of itself create a contractual relationship, nor an attorney/client relationship, between Baker McKenzie and any person. **Non-reliance and exclusion:** All information on this Site is of general comment and for informational purposes only and may not reflect the most current legal and regulatory developments. All summaries of the laws, regulation and practice are subject to change. The information on this Site is not offered as legal or any other advice on any particular matter, whether it be legal, procedural or otherwise. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Legal advice should always be sought before taking any action or refraining from taking any action based on any information provided in this Site. Baker McKenzie, the editors and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this Site. **Attorney Advertising:** This Site may qualify as "Attorney Advertising" requiring notice in some jurisdictions. To the extent that this Site may qualify as Attorney Advertising, PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME. All rights reserved. The content of the this Site is protected under international copyright conventions. Reproduction of the content of this Site without express written authorization is strictly prohibited.

