

LAW FOR THE DIGITAL TRANSFORMATION OF THE FINANCIAL SYSTEM

On 14 November, the Law for the digital transformation of the financial system (the “Law”) was published in the Official State Bulletin (“BOE”).

The Law allows companies to create sandboxes, or controlled testing environments, to enable financial market operators to implement technology-based financial innovation projects, with the involvement of the relevant supervisory authorities. Thus, Spain joins a small group of countries that are launching a pioneering initiative of this kind, which is designed to encourage the implementation of innovative technological solutions in the area of financial services.

1. Objectives of the Law

The Law has two main objectives:

- (i) the facilitation of technology-based financial innovation, in a controlled and secure environment, through the creation of the sandbox; and
- (ii) the improvement of the authorities’ understanding of technology-based financial innovation that will put them in a better position to understand the implications of the digital transformation.

2. Creation of the sandbox

The Law establishes, as a central part of the regulations, the creation of sandboxes with the aim of allowing promoters of technology-based and financially innovative projects to have a controlled space for testing.

Since access to the sandbox does not entail authorisation to carry out the corresponding activity, project promoters will not be subject to the legislation applicable to the provision of the financial services involved for the duration of the trials (they will, however, be subject to the Law’s own provisions and its implementing regulations). This will make it possible to test the feasibility of innovative projects in the financial sector without the need for prior authorisation.

3. System of access to the sandbox

Any interested party may be a promoter (irrespective of whether or not they are already subject to supervision), launching projects that involve “technology-based innovation applicable to the financial system”, which includes not only the development of software but also processes (or methodologies), products or business models that, through the use of technology, may have an impact on financial markets.

All those projects that provide technology-based innovation applicable to the financial system and that are at a sufficiently advanced stage to be able to offer a minimum functionality that allows for the verification of their utility and future viability will have access to the sandbox.

It will also be necessary to demonstrate that the project adds value to existing uses in the sector in at least one of the following areas:

- (i) the facilitation of regulatory compliance through the improvement or homogenisation of processes or instruments;
- (ii) the reduction of costs, improvement of the quality or conditions of access and availability of financial services or the increased protection of the final customer;
- (iii) the improvement of the efficiency of institutions or markets; and/or
- (iv) the contribution to the improvement of financial regulation or supervision.

To access this trial environment, the promoter must submit an application using the standard template published by the General Secretariat of the Treasury and International Finance (*Secretaría General del Tesoro y Financiación Internacional*) (“SGTFI”)¹, together with a report supporting the project. Applications may be submitted in any of the official languages of Spain and in English.

Upon receipt of the application, the SGTFI will send it to the relevant authority (or to all relevant authorities), which will issue a detailed report within one month (this may be extended by another month if the number of applications or the complexity of the procedures so requires), which may be favourable or unfavourable. A list of projects declared favourable will then be published on the SGTFI’s website.

¹ The first additional provision of the Law provides that the SGTFI must approve the standard application form within one month of the entry into force of the standard.

4. Protocol and explanatory document

For projects that receive a favourable preliminary assessment, a test protocol must be established between the promoter and the responsible supervisory authority or authorities within three months of the publication of the assessment (the “**Protocol**”). The purpose of the protocol is to set out the rules and conditions governing the project.

Before the start of the trials, the promoter must provide users who have agreed to participate in the project with an explanatory document, written in simple, understandable and accessible language, stating, among other things, the nature of the trial, the risks and liabilities which may arise from their participation and the withdrawal period, and must obtain their consent in writing, preferably in electronic form. The participant must accept the confidentiality of the trial being carried out and respect the industrial and intellectual property rights or business secrets of the promoter that may be affected.

5. Guarantee and liability scheme

The Law establishes a guarantee scheme to cover liability for loss and damage that the promoter may incur in the exercise of the trials in the sandbox, such as insurance, bank guarantees or deposits.

The Law also establishes a system of strict liability on the part of the promoter for loss and damage suffered by the project participants arising from (i) a breach of the protocol by the promoter, (ii) a risk not communicated to the participant, (iii) technical or human error during the trials or (iv) fault or negligence on the part of the promoter.

6. Exit scheme and access to a fast-track authorisation procedure

During the period of the trials, the promoters may suspend or terminate the pilot project or one of its trials with just cause. The authority responsible for monitoring may also suspend the trials if the promoter fails to comply.

One of the most interesting aspects of the sandbox system is that, once the trials have been completed, the promoter is allowed access to a fast-track authorisation procedure in certain circumstances. Given the ordinary length of these procedures, this is a welcome development.

7. Communication channel with the authorities

Another of the most interesting new features of the Law is the establishment of a direct communication channel with the supervisory authorities, through which it will be possible to submit electronic queries to the supervisory authorities regarding regulatory aspects related to fintech projects.

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The authorities must respond to the queries within a maximum period of two months of their submission and their responses will be binding where specific legislation so provides.

Please refer to the infographic [here](#).

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The information contained in this Legal Briefing is of a general nature and does not constitute legal advice. This document was drafted on 16 November 2020 and Pérez-Llorca does not undertake to update or revise its contents.

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