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NOTE

From:	Presidency
To:	Delegations
Subject:	State of play on the use of regulatory sandboxes in the EU Member States.

BACKGROUND

On 16.11.2020 the Council approved Conclusions on Regulatory sandboxes and experimentation clauses. In paragraph 14, the Council

CALLS on the Commission to organise, in cooperation with Member States, an exchange of information and good practices regarding regulatory sandboxes between Member States and itself in order to:

- a) establish **an overview of the state of play** regarding the use of regulatory sandboxes in the EU;*
- b) identify **experiences** regarding the legal basis, implementation and evaluation of **regulatory sandboxes**;*
- c) analyse how learning from regulatory sandboxes at national level can contribute to evidence-based policy making at EU-level.*

The Slovenian Presidency would like to facilitate the exchange of experiences regarding the legal basis, the implementation and the evaluation of regulatory sandboxes.

At the Working Party meeting on Better Regulation of 28 April 2021, the Commission presented its first findings on experimentation clauses in the EU legislation¹. A number of Member States referred to the exchange of best practices between the Member States and the Commission, compiled during the Maltese Presidency in 2017² regarding possible ways to collect practices from Member States (hereinafter referred to as the exchange of best practice document). To avoid duplicating the work done under the Maltese Presidency, the Slovenian Presidency has used this exchange of best practice document as a starting point to identify the experiences of regulatory sandboxes in the Member States. However, it should be noted that WK 6477/2017 contains information on the practical implementation of the Innovation Principle and the future proofing of legislation thus identifying a large number of instruments and tools. Amongst them, we only identified a limited number of Member States who reported practices with experimentation.

Since the practices compiled in the Maltese document date back to 2017 it can be expected that in the meantime other Member States have also established or are establishing regulatory sandboxes. Therefore, the Presidency has taken into account additional documents to gather more information on the state of play of regulatory sandboxes in the European Union:

¹ 28.4.2021 WK 5521/2021 INIT

² WK 6477/2017 INI

- a) The role of sandboxes in promoting flexibility and innovation in the digital age³,
- b) ESAs Joint Committee report FinTech: Regulatory sandboxes and innovation hubs, January 2019⁴,
- c) UNSGSA FinTech Working Group and CCAF 2019, Early Lessons on Regulatory Innovations to Enable Inclusive FinTech⁵,
- d) Regulatory Sandboxes and Innovation Hubs for Fintech⁶,
- e) Regulatory sandboxes and financial inclusion⁷.

From these documents the Presidency identified other countries using regulatory sandboxes, mostly in the financial sector. All this information shows that the use of regulatory sandboxes is evolving, therefore it is appropriate to collect experiences from all the Members States. In this regard, the Slovenian Presidency prepared a questionnaire, annexed to this document.

The questionnaire is online and divided into two parts:

- **Part one** collects information on regulatory sandboxes and their possible accompanying experimentation clauses.
- **Part two** collects information on other forms of experimentation provisions and tests that exist in the Member States.

³ Attrey, A., M. Leshner and C. Lomax (2020), "The role of sandboxes in promoting flexibility and innovation in the digital age", Going Digital Toolkit Policy Note, No. 2.

⁴ [BoS Report on Sandboxes and innovation hubs.docx \(europa.eu\)](#)

⁵ UNSGSA FinTech Working Group and CCAF, Early Lessons on Regulatory Innovations to Enable Inclusive FinTech: Innovation Offices, Regulatory Sandboxes, and RegTech. Office of the UNSGSA and CCAF: New York, NY and Cambridge, UK, 2019 (hereinafter 'UNSGSA FinTech Working Group and CCAF 2019, Early lessons').

⁶ Parenti, R., *Regulatory Sandboxes and Innovation Hubs for FinTech*, Study for the committee on Economic and Monetary Affairs, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020.

⁷ Jenik, Ivo, and Kate Lauer. 2017. "Regulatory Sandboxes and Financial Inclusion." Working Paper. Washington, D.C.: CGAP.

The Slovenian Presidency invites the national delegates of this Working Party to help with the collection of data from relevant institutions at national level. The deadline for submission is 31 August 2021 with the intention to share the first findings at the Working Party meeting in September 2021. The exchange of views during this meeting will form the basis for organising a workshop within the Conference "Government Beyond Recovery", to be held on 18 and 19 October 2021, where all relevant experiences in the EU and the OECD members will be further discussed.

QUESTIONNAIRE

Better Regulation plays a crucial role in supporting efforts to simplify and make EU laws better adapted for tomorrow's needs. It is one of the key drivers of growth and competitiveness. Better Regulation is a shared objective and responsibility of EU co-legislators, Member States and stakeholders.

New challenges (digital technologies, decarbonisation, ageing...), overall uncertainty and increasing complexity call for **resilient and innovation-friendly legislation**. It is more important than ever to join forces, foster innovation, reduce barriers for innovative businesses without compromising on important European values.

There is a need to explore how regulation can be more future-proof and enabling innovation, including possibilities for experimentation. One of the approaches in this regard are **regulatory sandboxes**, which are sometimes based on **experimentation clauses**. Regulatory sandboxes and, to a certain extent, experimentation clauses are a relatively new phenomena in the EU and beyond. However, there are also other forms of experimentation.

The Council of the European Union in its Conclusions⁸ called on the Commission to organise, in cooperation with the Member States, **an exchange of information and good practices regarding regulatory sandboxes** between the Member States and the Commission in order to analyse how learning from regulatory sandboxes at the national level can contribute to evidence-based policy making at EU-level.

The Slovenian Presidency would like to collect concrete experiences of regulatory sandboxes in the EU Member States, their legal basis, implementation, and evaluation.

⁸ ST13026/20 - Conclusions on Regulatory sandboxes and experimentation clauses as tools for an innovation-friendly, future-proof, and resilient regulatory framework that masters disruptive challenges in the in the digital age.

The questionnaire is divided into two parts:

- **Part one** collects information on **regulatory sandboxes** and their possible accompanying **experimentation clauses**. Here, please focus only on real cases of regulatory sandboxes (not strategic documents that encourage the implementation of regulatory sandboxes...). For more clarity we already included the relevant **definitions** alongside the questions.
- **Part two** collects information on **other forms** of experimentation provisions and tests that the Member States have.

The questionnaire is open until 31 August 2021.

Contact Details

Member State:

Institution (Ministry, Agency...):

Contact Name:

Job Title:

Email Address:

Telephone Number:

Part 1 – Regulatory sandboxes and possible accompanying experimentation clauses expressly foreseen in your country

1. Does/did your institution have any examples of regulatory sandboxes? Please include all the examples that fulfil the Council’s definition: *The Council perceives **regulatory sandboxes** as **concrete frameworks** which, by providing a structured context for experimentation, enable where appropriate in a real-world environment the **testing** of innovative technologies, products, services or approaches – at the moment especially in the context of digitalisation – for a **limited time** and in a limited part of a **sector or area** under **regulatory supervision** ensuring that appropriate safeguards are in place.*

- Yes.
 - a) In which **sector** are/were the regulatory sandboxes? (e.g. Finance, Health, Energy, Transportation, Environment, Social...).
 - b) What was the **purpose behind the establishment** of a regulatory sandbox? Please describe.
 - c) In which **year** is/was the regulatory sandbox established and how long is/was its **duration**?
 - d) If existent, please indicate the **legislation and an experimentation clause**/article(s) which is/was the basis for setting up the regulatory sandbox, whereas according to the Council **experimentation clauses** are “*legal provisions which enable the authorities tasked with implementing and enforcing the legislation to exercise on a case-by-case basis a degree of flexibility in relation to testing innovative technologies, products, services, or approaches*”.

- No, we do not have but we are establishing/setting up.
 - a) In which **sector** are you establishing the regulatory sandbox? (e.g. Finance, Health, Energy, Transportation, Environment, Social...)
 - b) What is the **purpose of establishing** a regulatory sandbox? Please describe.
 - c) If existent, please indicate the **legislation and an experimentation clause/article(s)** which is the basis for setting up the regulatory sandbox:
- No, we do not have.

I. Implementation:

2. **Who can/could apply** for testing in the regulatory sandbox? (e.g. business entities, start-ups, SMEs, authorised/non-authorised firms, new entrants...)
3. Is/was there an **eligibility criterion** for the participants?
 - Yes. Please describe.
 - No.
4. How long is/was the **application period** for the participants of the regulatory sandbox open?
 - a) **opened all year**
 - b) **a specific period.** Please explain.
5. How does the **approval** for the participant(s) look like? (are they issued with a decision, contract...)

II. Evaluation and lessons learnt:

6. How many **participants have applied for testing** in your regulatory sandbox until now?
7. Please share some of your **experiences** of having a regulatory sandbox. Please explain
 - a) **positive experiences** (what worked well)
 - b) **negative experiences** (what did not work out)
 - c) **room for improvement**
8. How has the experience of using a regulatory sandbox **impacted the law-making process**?
 - a) There has been **a change** in the regulation. (Please explain.).
 - b) There has been **no change** in the law.
 - c) It is **too early to tell**.
9. What would be the most important **advice** that you would give to countries planning or considering establishing regulatory sandboxes?

Part 2 – Other forms of experimentation provisions and tests

10. Do you have other forms of experimentation similar to regulatory sandboxes but **do not** meet the following definition: *The Council perceives regulatory sandboxes as concrete frameworks which, by providing a structured context for experimentation, enable where appropriate in a real-world environment the testing of innovative technologies, products, services or approaches – at the moment especially in the context of digitalisation – for a limited time and in a limited part of a sector or area under regulatory supervision ensuring that appropriate safeguards are in place*

- Yes.
 - a) Please indicate the **sector** (e.g. Finance, Health, Energy, Transportation, Environment, Social...).
 - b) If existent, please indicate the **legislation** and article(s) below:
 - c) Please provide below any **additional observations** (e.g. evaluations, lessons learned...), as needed.
 - No.
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