

FinTech and digital currencies

The European perspective and
the regulatory status in Italy

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19 June 2018



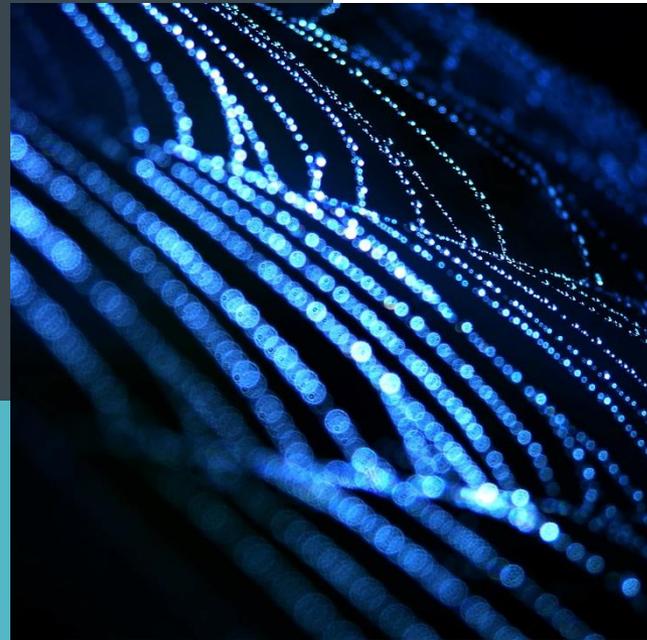
Welcome & introduction

Romeo Battigaglia



Summary of the EU Commission FinTech Action Plan

Angus McLean



EU FinTech
Action Plan



- Published on 08 March 2018 by the Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA) (*after being leaked in draft in February 2018*)
- Aims to facilitate and encourage financial innovation within the EU Single Market, whilst enhancing consumer protections
- Does not envisage broad legislative or regulatory action / reform at EU level
- Sets out the following targeted initiatives:
 - Enabling innovative business models to scale-up across the EU through clear and consistent licensing requirements
 - Supporting the uptake of technological innovation in the financial sector
 - Enhancing security and resilience in the financial sector



- **Crowdfunding:** Commission to present proposal for comprehensive European passporting regime for European crowdfunding service providers
- **Licensing:** ESAs invited to map current authorising licensing approaches to FinTech and consider issuing guidelines on approach/procedures
- **Crypto-assets:** Commission, ESAs, European Central Bank and FSB to monitor development of crypto-assets / ICOs and assess need for regulatory action
- **Innovation facilitators:** ESAs invited to map innovation facilitators and identify best practices, as basis for initiatives by Competent Authorities

- **Obstacles to innovation:** Commission to set up expert group to assess by Q2 2019 whether there are unjustified regulatory obstacles to financial innovation
- **Outsourcing to the cloud:** Commission is exploring ways to remove obstacles to adoption of cloud services, including measures to clarify rules to facilitate its greater use
- **Blockchain:** public consultation on further digitisation of regulated information to take place in Q2 2018, alongside continued evaluation of blockchain use
- **EU FinTech Lab:** European and national authorities invited to engage with technology solution providers in a neutral, non-commercial space

- **Cyber threats:** Commission to organise public-private workshop in Q2 2018 on cyber threats
- **Supervisory landscape:** ESAs invited to map existing supervisory practices, issue guidance and advise Commission on potential legislative improvements
- **Cost/benefits of cyber resilience:** ESAs invited to evaluate costs/benefits of developing coherent cyber resilience testing framework

European and UK perspective on regulatory initiatives

(eg regulatory sandboxes, innovation hubs
and FinTech bridges)

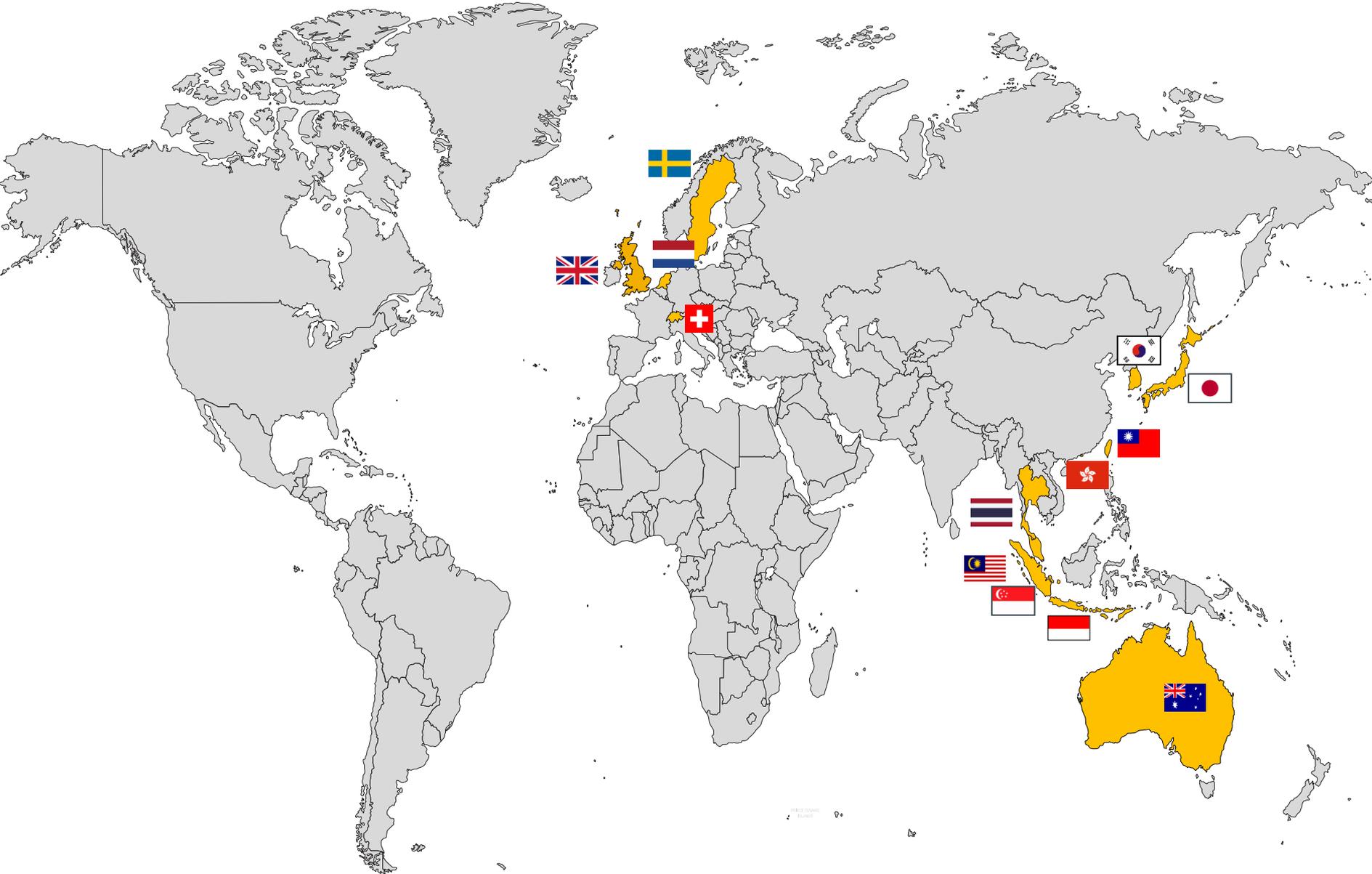
Angus McLean



Regulatory Sandboxes



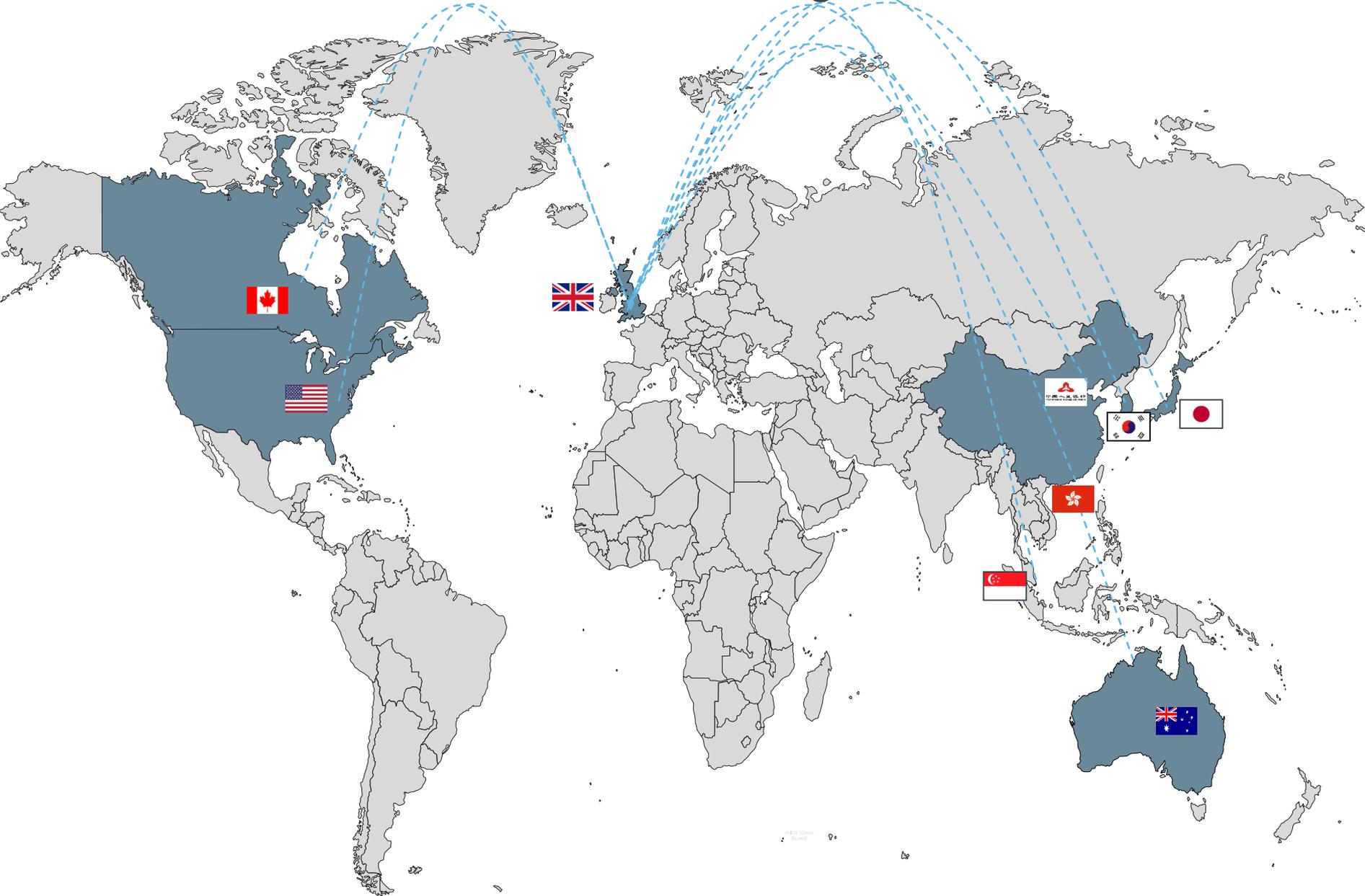
Global Regulatory Sandboxes



FinTech Bridges



UK FinTech Bridges



UK FinTech Bridges

Country	Counterpart	Date	Scope
UK (FCA)	Australia (ASIC)	22 March 2018	Sharing of information; facilitating entry of Fintech start-ups from one country into others' regulatory sandbox; support for authorisation; exploring 'quicker processing in terms of licensing' businesses already authorised in the other country; secondment of ASIC officer in the FCA; providing point of contacts in each respective regulator.
	Singapore (MAS)	11 May 2016	Mutual referrals of businesses seeking authorisation in each country, guidance for businesses to understand regulatory framework and assist with seeking authorisation. Share information to promote innovation in financial services.
	Hong Kong (SFC, Monetary Authority, Insurance Authority)	December 2016 – September 2017	
	Canada (Ontario Securities Commission)	22 February 2017	
	Japan (FSA of Japan)	09 March 2017	
	USA (CFTC)	19 February 2018	
	Korea (Korea FSC)	22 July 2016	
	China (People's Bank of China)	11 November 2016	

Global FinTech Bridges



- Global Attitudes**
- Enhanced – global advocate
 - Advanced
 - Developing
- Bridge Types**
- UK Fintech Bridges
 - Australia Fintech Bridges
 - UAE Fintech Bridges
 - Singapore Fintech Bridges
 - Other Fintech Bridges

Global FinTech Bridges

Country	Counterpart(s)	Scope
Australia	Canada (OSC), Hong Kong (SFC), Indonesia (OJK), Kenya (CMA), Japan (JFSA), Malaysia (SC), Singapore (MAS), Switzerland (FINMA), the UAE (ADGM) and UK (FCA)	Sharing of information in respective markets related to regulatory issues and market trends and, in some cases, an ability to refer business seeking authorisation in another market. The ASIC's relationship with the FCA includes support for authorisation.
Hong Kong	Australia (ASIC) and UK (FCA), in addition to China (Office of Financial Development Service (Shenzhen)), Malaysia (SC), Poland (PSFA), Singapore (MAS), Switzerland (FINMA) and UAE (DFSA)	Sharing of information in respective markets related to regulatory issues and market trends. Agreement with the FCA includes referrals.
Japan	Australia (ASIC), Singapore (MAS), Switzerland (FINMA), UAE (ADGM) and UK (FCA)	Sharing of information and in some cases referral systems, outlining how the referred companies can initiate discussions with regulatory bodies and receive advice on authorisation.
Korea	UK (FCA) and Singapore (MAS)	Sharing information on recent regulatory trends on FinTech and pursuing joint projects – they do not offer specific benefits.
Malaysia	Australia (ASIC), Hong Kong (SFC), Singapore (MAS) and UAE (DFSA)	Sharing of information on emerging FinTech trends and regulatory developments, referral of FinTech companies seeking to operate in the other jurisdiction and join innovation projects.
Singapore	Australia (ASIC), Brunei (AMBD) Denmark (DSFA), France (AMF and ACPR), Hong Kong (HKMA), India (Department of Economic Affairs), Japan (JFSA), Korea (KFSC), Latin America (ASBA), Lithuania (Bank of Lithuania), Malaysia (SC), Poland (PFSA), Switzerland (FINMA), Thailand (BOT), UAE (ADGM), UK (FCA) and Vietnam (State Bank of Vietnam).	Various. Ranging from sharing of information on market trends and regulatory regimes to create a framework to assist authorisation applications in the other country (e.g. Korea, Switzerland and the UK) referrals from one regulator to the other (e.g. Denmark, Japan) to exploring joint innovation projects (Latin America, India, ADGM).
Switzerland	Australia (ASIC), Japan (JFSA), Hong Kong (SFC) and Singapore (MAS)	Promoting and enabling innovation in respective countries, including supporting regulatory compliance in each jurisdiction through sharing information on regulatory issues.
UAE (ADGM / DFSA)	Australia (ASIC), Hong Kong (SFC), Japan (JFSA), Kenya (CMA), Lebanon (DFSA), Malaysia (SC) and Singapore (MAS).	Transparency and efficiency, collaboration between regulators to share information on regulatory trends and market developments.

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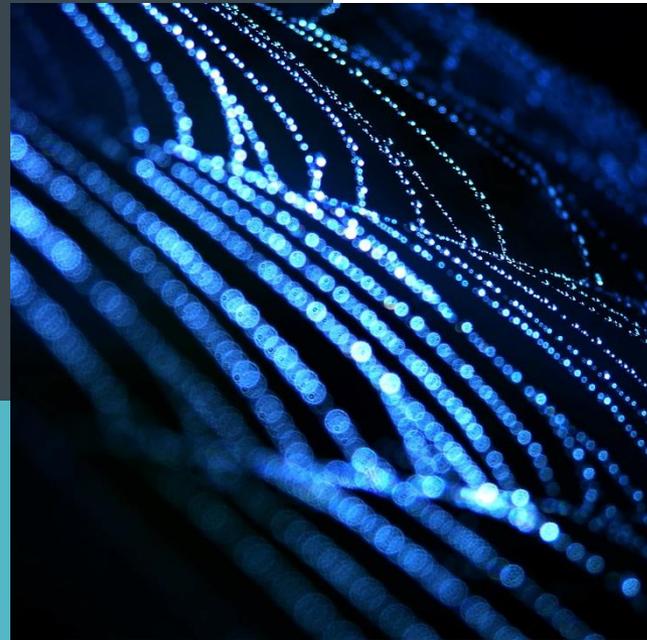
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European and UK perspective on Cryptocurrencies

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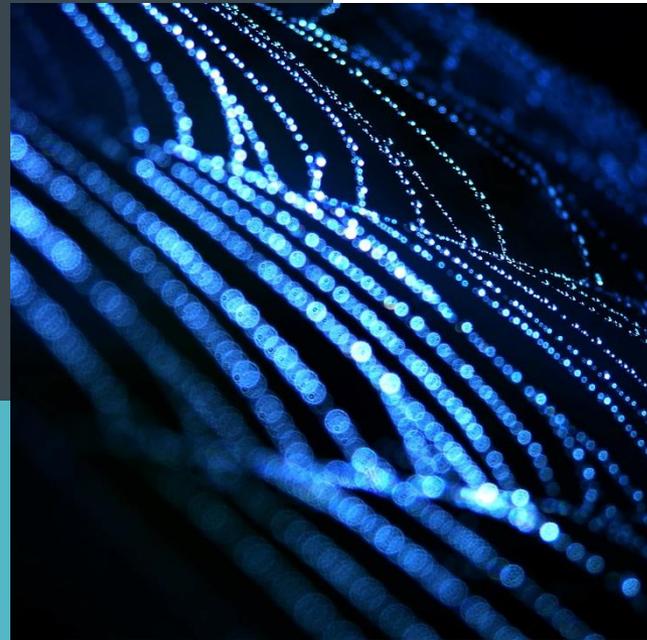
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The Italian landscape: Crowdfunding, Cryptocurrencies and P2P Lending

Romeo Battigaglia



- FinTech in the spotlight in Italy in 2017.
- CONSOB conducted a thorough survey concluding that digitalization of banking and financial services is becoming a crucial part of the transformation of the economy as a consequence of digitalization of social relationships.
- The Bank of Italy also conducted its own survey on a sample of 93 intermediaries aiming to understand the role of FinTech projects in their business model – these projects cover different sub sectors and most of them concern remote transactions, i.e.: client identification and execution of contracts; payment services; p-2-p/social lending; supporting technologies (including big data, AI, cloud computing); and automatic services (mainly robo-advice).
- The Italian market is considered attractive for FinTech.

- In Italy, no specific provisions prohibit or restrict the types of FinTech business that a company is entitled to carry out.
- Still, the different types of activities which FinTech might involve will trigger different types of registrations, more or less invasive (from registration as a «financial intermediary» to carry on a proper lending business, to the registration as a «payment institution», to a mere «mediation»).
- Might be time for a RegTech covering all FinTech areas, followed by further regulatory actions – the lack of an all-embracing FinTech regulation being perceived as a block to its development.
- With specific reference to virtual currencies, the Bank of Italy has been warning Italian banks (and other supervised entities) about operating and offering related trading tools.
- For now, worth noting that Italy has been the first EU Country to introduce a definition of «cryptocurrency» and «cryptocurrency providers», although only for AML purposes.
- Re crowdfunding, after having launched the first specific regulation in the EU back in 2013, early on January this year CONSOB further relaxed relevant rules to meet market demand.

The assessment as to whether a FinTech activity falls within the scope of a regulated activity has two major implications



The exercise of a regulated activity is safeguarded by several sanctions:

- Criminal: violation of a regulated activity is a criminal offence;
- Civil: any agreement entered into while violating a regulated activity is void and without effects;
- Administrative: several sanctions.



Every regulated activity is governed by several rules providing for:

- Business conduct;
- Retail protection;
- Corporate Governance;
- Supervisory reporting;
- Etc.

- As mentioned, regardless of the technological means actually used, if the activity carried out by a company falls into the definition of a regulated activity, the company must comply with the relevant licensing and ongoing requirements.
- More in details, Peer-to-Peer lending would normally fall within the scope of the payment services regulation, thus requiring the Bank of Italy's authorization.

BUT

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- Peer-to-Peer operators which have limited their business to the following activities:
 - matching borrowers with lenders via the platform;
 - providing support for the credit assessment of loan applications;
 - preparing standard loan and security documents between investors and borrowers;
 - providing loan servicing;
 - undertaking KYC, AML and sanctions checks on customers.
- Provided that the provision of the “regulated leg” of the business – *i.e.* originating loans, arranging funding by lenders, providing payment services, enforcing loan contracts, credit broking, holding client money - is done via third parties licensed intermediaries.
- Have not been required by the Bank of Italy to obtain a specific licence.

- The European Securities and Markets Authority (ESMA), the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA) ('the ESAs') warned consumers on the high risks of buying and/or holding Cryptocurrencies.
 - Extreme volatility and bubble risk;
 - Absence of protection being unregulated under EU law;
 - Lack of exit options;
 - Lack of price transparency;
 - Operational disruptions;
 - Misleading information;
 - Unsuitability of VCs for most purposes, including investment or retirement planning.
- CONSOB is now taking the view that VCs should be treated as any other financial investment. With Resolution n. 20207 of 6 December 2017, CONSOB qualified investing in VCs as a financial investment, considering that: (i) it involves an investment; (ii) it has an expected financial return; (iii) the financial risk is strictly connected to the capital invested.
- It would follow that the offer of VCs is captured by MiFID II (Directive 2014/65/EU) and by the Prospectus Directive (Directive 2003/71/EC).
- On the other hand, the Italian tax authority has qualified VCs as a currency for tax purposes, even if they are not recognized as such by CONSOB (neither by the Bank of Italy).

Italian Legislator anticipated the 5th AML Directive



Legislative Decree No. 90 of 25 May 2017 implementing the Directive (EU) 849/2015 (the “4th Anti-money Laundering Directive”) has already introduced the definition of “cryptocurrency” and of “cryptocurrency providers” as well as a register of cryptocurrency providers



The Department of the Treasury launched a public consultation on the public register of the virtual currency providers also in order to monitor their operations in Italy (the Final Report has not been published yet).

- “Virtual Currency” means a digital representation of value that is neither issued by a central bank or a public authority, nor necessarily attached to a fiat currency, but is accepted by natural or legal persons as a means of payment and can be transferred, stored or traded electronically.
- “Virtual Currency Service Provider” means a person or an entity engaged primarily and professionally in trade, storage and exchange services between virtual currencies and fiat currencies.
- “Special section of the Register” a section of the Register provided for under article 17-bis, paragraph 8-bis. Letter c) of the Legislative Decree 141/2010, where a Virtual Currency Service Provider is required to be registered with in order to carry out trade, storage and exchange services between virtual currencies and fiat currencies.

- Italy was one of the first EU authorities to regulate equity crowdfunding with CONSOB Regulation No. 18592/2013 on the collection of risk capital via on-line portals, as subsequently amended («Equity Crowdfunding Regulation»).
- Equity crowdfunding Regulation has developed a functioning scheme aimed at:
 - Defining the role of every player involved in such a financing scheme: (i) Bidder, (ii) Portal and (iii) Manager;
 - Defining the companies that can be financed through crowdfunding: (i) small and medium-sized enterprises; (ii) innovative start-up companies, including start-ups with a social vocation; (iii) innovative small and medium enterprises; (iv) undertakings for collective investment schemes; (v) companies which invest mainly in small and medium-sized companies;
 - Determining the authorisation and the conditions governing the taking-up of the business (Manager can be an entity either regulated or unregulated);
 - Ensuring consumers protection by means of
 - Conduct of business for unregulated entities; and
 - MiFID II conduct of business for regulated entities.

- Will it be central banks to issue digital currencies in the future (“Central Bank Digital Currencies” or “CBDC”)?
- Will the next evolution of MiFID and Prospectus Directive capture digital currency like any other «financial instrument» or «currency»?
- If so, would that be the «killer» of digital currency or would it boost it by legitimating it as an eligible investment for other regulated products (e.g. UCITS funds, including ETFs, and AIFs?)
- Will FinTech companies replace banks in relation to payment services or will banks ultimately build their own FinTech operations occupying that space?

I DON'T KNOW!

BUT MY COLLEAGUE ARIEL MIGHT HAVE SOME OF THE ANSWERS ...

OR MAYBE ANOTHER QUESTION:

IS THE TECHNOLOGY EMBEDDED IN THE «BLOCKCHAIN» A BETTER ANSWER TO REGULATORY CONCERNS AND INVESTORS' PROTECTION THAN THE VARIOUS LAYERS OF EXISTING REGULATION?

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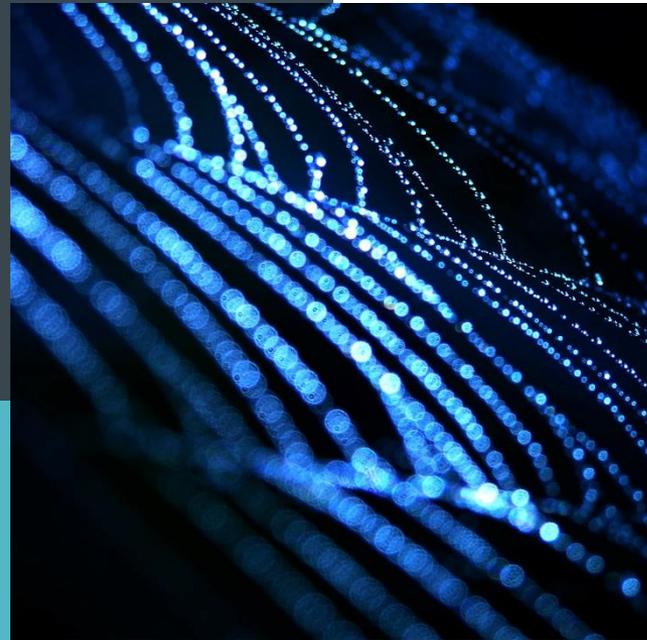
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The brave new world of blockchain

Ariel Nachman



- Blockchain is a secure, transparent, data transmission and storage technology operating without a central control body.
- Blockchain is described as a large digital ledger (distributed between its users) recording all transactions between parties using the same network.
- We see the rise of Blockchain technology on the backbone of human distrust and institutional fragility.
- The success of Blockchain as a legitimate business tool in our business life lies on how it resolves and addresses 3 key areas: (i) identity; (ii) transaction; and (iii) recourse.

- Blockchain has a **passive role**, storing information and tracking it over time; and an **active role**, to complete a transaction (financial or otherwise).
- Blockchain is also transparent, with free or authorised access (according to defined access rights that can be changed according to whether the blockchain is public, semi-private (consortium or hybrid or private).
- This transparency, combined with easy access (needing only an Internet connection) offers a complete overview of the transactions conducted in a blockchain and the data or information that are recorded in it.
- Although the technology is in its infancy, we are told that blockchain is very hard to hack and that one cannot hack one single chain, but needs to hack all previous chains that are heavily encrypted.
- Will Blockchain become the quintessential tool for human exchange of value for years to come and will it to a great extent replace institutions as a tool for certainly in transactional life, on a decentralized peer to peer basis?

- Global and attestable identity management on individuals from any source.
- User controlled portable identity.
- Selective disclosure of transactional relevant human attributes (ID, age etc.).
- A black box of your identity owned by you.
- The identification requirement would not be satisfied in the case of those participating in public blockchains because of their use of pseudonyms or user names.
- Using trusted third parties or "Know Your Customer" type processes should permit the identification of blockchain participants, especially for the most important contracts and those with consumers.

- Asset tracking and transactional history stored in blocks of data that are cryptographically lined together and secured, such as custodianship, ownership and location of digital currencies (bitcoin), title of ownership (IP), certificates, contracts, real objects, personal identifiable information, stocks, bonds, loyalty points, music, art, a vote, carbon credits etc.
- Immutable and unforgeable records.
- Constantly updated.
- Shared reality from different databases without trusting each other.
- Growth of value as the asset progresses over the blockchain.
- Money remittance with no time or cost.
- Securitization of any asset through tokenization (representation of the rights to an asset in the digital form of tokens, to be added in the blockchain).
- Once acknowledged as means of communication, it can be used for voting in corporations.

- A new generation of escrow.
- Smart contracts - Ethereum (created by a 19 year old Canadian named Vitalik Buterin) created a smart contract that self executes, handles enforcement, management, performance and payment and has its own bank account.
- Eg. Making a blockcain registered and protected art piece into a revenue generating business unit.
- Although a smart contract cannot currently be legally defined as a contract, being rather considered as just a method of performing a contractual obligation, it may well in time be possible for parties to enter into real contracts via a blockchain.
- Ethereum runs new projects from creating new replacements for the stock market to a new model of democracy where politicians are accountable to citizens.

What lies ahead...

- Blockchain lowers uncertainty and claims to be the internet of value.
- Blockchain will attempt to replace institutions, making the case that they take a fee, capture our data and control our privacy, act slowly, can be hacked and can exclude part of the population that does not have access to them.
- Blockchain will not only target traditional institutions such as financial and political institutions, but also sharing economy icons, such as Uber and AirBNB.
- Institutions will fight back by investing and controlling the narrative blockchain takes.
- Blockchain will continue to capture a following on the basis of trust by collaboration and cryptography.
- This will not just be an economic evolution, but mainly a technology to create a record of human exchange.

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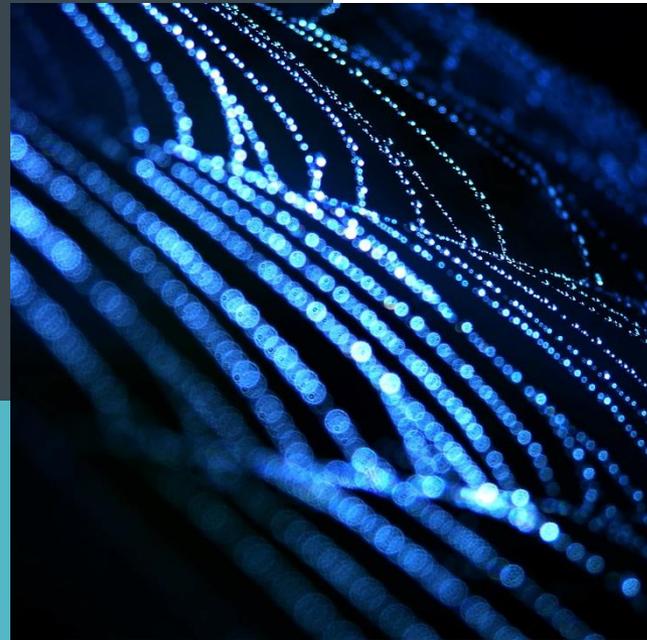
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The disintermediation
of the economy: blockchain
technology and beyond

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Q&As





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