

EXPERIMENTAL LEGAL REGIMES (REGULATORY SANDBOXES): RUSSIAN AND FOREIGN PRACTICES

REGÍMENES LEGALES EXPERIMENTALES (SANDBOXES REGULATORIOS): PRÁCTICAS RUSAS Y EXTRANJERAS

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ABSTRACT

This article provides a comparative analysis of regulatory sandbox implementation in the Russian Federation and foreign countries. Based on the information provided by financial regulators of Bulgaria, Hungary, Georgia, Lithuania, Kyrgyzstan, and Estonia, as well as on Russian and foreign legislation concerning regulatory sandboxes, the comparative legal study has explored the terminology, legal regulation, and potential application of experimental regimes. This research has analyzed the criteria for proposals related to special legal regimes, as well as authorities that regulate the participants of experimental legal regimes and evaluate the results. Testing stages have been specified and a general model of regulatory sandbox development has been provided. The study gives examples of legal experiment practices in the Russian Federation and foreign countries.

Keywords: legal experiment practices; sandbox implementation; financial regulators; legal regimes; legal regulation.

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RESUMEN

Este artículo proporciona un análisis comparativo de la implementación del sandbox regulatorio en la Federación Rusa y países extranjeros. Con base en la información proporcionada por los reguladores financieros de Bulgaria, Hungría, Georgia, Lituania, Kirguistán y Estonia, así como en la legislación rusa y extranjera relativa a los sandboxes regulatorios, el estudio legal comparativo ha explorado la terminología, la regulación legal y la aplicación potencial de regímenes experimentales. Esta investigación ha analizado los criterios de las propuestas relacionadas con los regímenes jurídicos especiales, así como las autoridades que regulan a los participantes de los regímenes jurídicos experimentales y evalúan los resultados. Se han especificado etapas de prueba y se ha proporcionado un modelo general de desarrollo de sandbox regulatorio. El estudio da ejemplos de prácticas de experimentos legales en la Federación Rusa y países extranjeros.

Palabras clave: prácticas de experimentos legales; implementación de sandbox; reguladores financieros; regímenes legales; regulacion legal.

INTRODUCTION

In 2020, Federal Law No. 258-FZ of July 31, 2020, “On experimental legal regimes in the field of digital innovations in the Russian Federation” was adopted, taking effect January 1, 2021. This law aims to create regulatory sandboxes in the Russian Federation - special, legally provisioned, limited in time and scope national or international experimental legal regimes for testing digital innovations by granting their participants exemptions from current legal regulation, supervised by a legally authorized regulator. Russia is not the only state that integrates legal experiments into its system; meanwhile, modern complex academic studies focus primarily on the most advanced regulatory sandboxes in the nations that were the first to introduce this institution in 2016 (Alaassar & Mention, 2021). Thus, it seems reasonable to examine Russian and foreign practices, making a comparative legal study of experimental legal regimes in the Russian Federation and similar regimes in other countries.

MATERIALS AND METHODS

The author has submitted requests to the National Banks of Bulgaria, Hungary, Georgia, Lithuania, Kyrgyzstan, and Estonia, asking to provide information on the legal regulation of regulatory sandboxes and implementation practices. Their responses became the basis for an analysis of foreign legal acts regulating the sandboxes, as well as offered insights into their functioning in said counties. Besides, Russian legislation regulating experimental legal regimes has been examined and interpreted. The main research method was the comparative-legal method that helped define common aspects and differences in regulation and implementation of said institutes in the Russian Federation and foreign countries. Other methods include formal logic, systemic and structural analysis.

RESULTS AND DISCUSSION

In global practice, the most commonly applied **term** that defines special, legally provisioned, limited in time and scope regimes for testing digital innovations is the “regulatory sandbox” (Makarov & Davydova, 2021). However, among the countries analyzed in this research, this term has been officially used only in Lithuanian legal acts.

In the Russian Federation, the legal definition is the “experimental legal regime”; this is a more abstract category, typical for the official and formal style of the legal language. Federal Law No. 258-FZ of July 31, 2020, defines the experimental legal regime as the application of special regulation on the development, approbation, and implementation of digital innovations to the participants of the experimental legal regime during a certain period. A similar notion, “*the special regulatory regime*” is used in Kyrgyzstan and is understood as the set of rules allowing the participants that implement/test innovative technologies/services on the banking and payment service markets to test them in a controlled environment, limited in time, by territory, by the number of users and operations, or otherwise. The Hungarian definition also follows the official and formal style – “*Financial Innovation Testing Environment*” (FITE).

Georgia has adopted the notion of “regulatory laboratories” that includes special legal regimes related to the fintech industry. Besides, despite the current lack of a legislative base for regulatory sandbox functioning, the Bulgarian Ministry of Finance uses the “RegTech sandbox” term for its upcoming projects. Estonia has not established any sandboxes and does not plan to introduce any in the future.

Thus, the regulatory sandbox is a common notion that encompasses Lithuanian legal regimes of the same name, Russian experimental legal regimes, Kyrgyz special regulatory regimes, Hungarian FITE, and Georgian regulatory laboratories.

The main **legal regulation source** for regulatory sandboxes in the Russian Federation is *Federal Law No. 258-FZ of July 31, 2020 (ed. July 2, 2021), “On experimental legal regimes in the field of digital innovations in the Russian Federation”* (Federal Law of July 31, 2020 No. 258-FZ), as well as 24 regulatory bylaws. A similar model (i.e., an organic law and a specifying bylaw) is used in Kyrgyzstan: Law No. 206 of the Kyrgyz Republic of December 16, 2016 (ed. June 24, 2021), «On the National Bank of the Kyrgyz Republic, Banks and Banking Activity» (Law on National bank of the Kyrgyz Republic) and *Resolution No. 2020-P-12/45-3-(NPA) of the Board of the National Bank of the Kyrgyz Republic of August 12, 2020, “On Approving the provision on the special regulatory regime”* (Regulation «On Special Regulatory Mode»). The major difference is that no standalone legislation on regulatory regimes was adopted in Kyrgyzstan; instead, this institution is stipulated by a special chapter of the law on the regulator, i.e., the National Bank (Chapter 11-1).

National Banks regulate the activities of sandboxes in Lithuania (*Resolution of the Board of the Bank of Lithuania of 19 September 2018 № 03-166 «On the Approval of the Regulatory Sandbox Framework of the Bank of Lithuania»*) (Resolution on the Approval of the Regulatory Sandbox Framework of the Bank of Lithuania), Georgia (*Decree of the Governor of the National Bank of Georgia of 25 May 2020 №110/04 “On Approval of the Regulation on Establishing Regulatory Laboratory Framework by the National Bank of Georgia and its Use”*) (<https://nbg.gov.ge>), and Hungary (*MNB Decree 47/2018 (XII.17.) on diverging rules of compliance with obligations under certain MNB Decrees*) (MNB Decree 47/2018).

The Russian legislation provides detailed regulation of experimental legal regimes’ **scope of application**. Such regimes can be established only for the field of digital innovations, understood by the law as new or significantly improved products (goods, works, services, protected intellectual property) or processes, new sales methods, organizational business practices, workplace management, or external affairs practices that have been introduced, applied, or created within the scope provisioned by Part 2, Article 1 of Federal Law No. 258-FZ of July 31, 2020 (ed. July 2, 2021), “On experimental legal regimes in the field of digital innovations in the Russian Federation” (including but not limited to the financial market).

In Hungary, there is no clear list of areas for which sandboxes can be created; however, the law emphasizes there are no restrictions or limitations on establishing a sandbox regime. Thus, any regulatory body of authority can create such a regime in conformity with the law. Meanwhile, the only functioning sandbox in the country is the sandbox established by the National Bank of Hungary, available for certified financial institutions (i.e., it can be categorized as related to fintech).

Georgian law also does not impose specific limits on the regulatory sandbox scope but the experimental regulation applies to financial technologies only, so the prerequisite for a claimant is their jurisdiction to the National Bank of Georgia.

In Kyrgyzstan, it is possible to create special regulatory regimes for innovative services/technologies related to banking and payment services.

Since 2018, it has become possible in Lithuania to create regulatory sandboxes for financial innovations within the jurisdiction of the National Bank. Besides, amendments to Lithuanian Energy Law in 2020 legalized regulatory sandboxes in the power industry (International Energy Agency, Lithuania 021 Energy Policy Review). In the same year, three Lithuanian state companies united into the Mobility Innovations Center and launched a transport regulatory sandbox (Lithuanian transport giants launched “sandbox” platform). In 2021, the Agency for Science, Innovation, and Technology (MITA) and the Ministry of Economy and Innovation financially supported the incentive to create a GovTech sandbox for making public services more technologically sophisticated (Lithuania funds ‘GovTech sandbox’ for public sector bodies). Thus, although there is no single regulation of sandboxes in Lithuania, they are initiated and implemented in various areas of activity.

Bulgaria and Estonia have no regulatory sandboxes but the Bulgarian Ministry of Finance plans to establish RegTech sandboxes alongside innovation hubs. The Estonian Financial Supervisory Authority (Finantsinspeksioon) points out that sandboxes are understood as a “safe” environment, where early-stage ventures can conduct live tests for their planned solutions before wider market uptake, while the regulator applies a more relaxed approach to supervising the solution by waiving certain regulatory or licensing requirements, cannot be established in EU countries, as they are unable to deviate from EU legal requirements. However, Estonia has introduced the Innovation Hub, which provides companies with a single point for questions about financial innovation, with a primary focus on understanding the innovative components of solutions and on answering questions and setting the financial supervision position on the use of solutions given their individual nature. The hub aims to make it easier for innovative companies and solutions to enter the market, allowing, above all, businesses in the early phase of their activities to communicate directly with Finantsinspeksioon and provide support as far as it is legally mandated to in qualifying the service, explaining the legal framework, and if needed guiding the business toward the process of applying for an authorization (<https://www.fi.ee/en/finantsinspeksioon/innovation-hub>).

Let us consider the **criteria** that must be met by a legal experiment initiative in the analyzed countries.

In Russia, an experimental legal regime can be established only if all of the following conditions are met: 1) general regulation concerning digital innovations provisioned by Part 2, Article 1, of Federal Law No. 258-FZ of July 31, 2020, imposes requirements, restrictions, or limitations that prevent or constrain implementation of digital innovations; 2) there is a technological ability to apply digital innovations or their application requires technical, technological, organizational, or other preparations;

3) an experimental legal regime should achieve one or several legally provisioned objectives; 4) an initiative proposal provides a reasonable assessment of risks to health, life or property of individuals. property of legal entities, national defense and (or) security, other values protected by federal law, as well as assessment of measures to minimize such risks.

In Georgia, innovation incentives must also follow certain criteria: 1) increase the availability, efficiency, security or/and quality of financial services or/and products; 2) improve the risk management efficiency of entities under the supervision of the National Bank; 3) give consumers significant additional benefits; 4) serve to increase financial involvement.

In Kyrgyzstan, such conditions are: 1) operations, services, or related technologies are fundamentally new; 2) operations and services have not been previously used by subjects or were limited; 3) operations and services are not regulated by legal acts of the Kyrgyz Republic (there are no direct restrictions or regulatory standards); 4) from the consumer standpoint, operations and services are improved compared to similar products.

In Hungary, the regulator may approve an exemption from general regulation in case: 1) participation in FITE would not endanger the completion of tasks as determined in Article 4 of the MNB Act, nor the basic objectives as determined in Acts defined by Article 39 of the MNB Act, and if it would not breach the provisions of laws or EU legal acts; 2) the financial entity wishes to provide an innovative solution which matches the objective of FITE; 3) the financial entity undertakes a commitment towards the MNB; 4) the financial entity shall undertake responsibility for compliance with regard to the implementation of the innovative solution also for the activity of a company in a contractual relationship with it; 5) upon submitting the request, the innovative solution is of a readiness level appropriate for practical application and substantial assessment by the MNB; 6) the financial entity supports compliance with documents according to the information published by the MNB on its website.

Depending on the allowed scope of application for regulatory sandboxes, they can be regulated by different **bodies of authority**. Russian legislation provides a complex and diverse system of legal experiment regulation that includes *the regulating body* (the profile ministry, depending on the digital innovation field), *the authorized body* (the Ministry of Economic Development), *the business community organization* (as of now - the autonomous non-profit organization «Digital Economy»), and *the coordinating authority* that has not been specified yet. That does not apply to fintech, as *the Bank of Russia* has the exclusive right to manage experimental legal regimes for digital innovations related to the financial market. This means the Bank of Russia specifies the regulating and authorized bodies, as well as the business community organization.

A similar model is applied in Lithuania: the National Bank controls the regulatory sandboxes it has launched, while sandboxes related to other activities are supervised by profile agencies, eg., the Ministry of Transport and Communications, the Ministry of Energy, etc.

Unlike Russia and Lithuania, regulatory sandboxes in Georgia, Hungary, and Kyrgyzstan can be introduced for fintech exclusively and are regulated by national banks.

The Russian model of regulatory sandbox functioning can be divided into the following **stages**: 1) proposal submission; 2) reviewing the proposal ; 3) establishment; 4) conduction; 5) monitoring of the results and performance evaluation.

The following stages can be approximately distinguished in the Lithuanian model: 1) submission; 2) review and approval of application to enter the regulatory sandbox; 3) participation; 4) evaluation; 5) exit.

In Kyrgyzstan: 1) submitting an application; 2) reviewing an application; 3) establishing a special regulatory regime; 4) participation; 5) summarizing the testing results, with optional stages of suspending and canceling the test.

In Hungary, it is possible to define the following stages: 1) submission of an application; 2) preliminary consultation; 3) regulatory sandbox licensing process; 4) testing; 5) end of the test (including evaluation).

The Georgian model of regulatory laboratory management provisions: 1) idea testing; 2) concept testing; 3) test for product application in a real environment. The National Bank defines terms and time limits for each stage, given the specifics of particular financial services and products.

Given the **implementation practices** of regulatory sandboxes, it should be noted that as of November 1, 2021, 40 initiative proposals to establish an experimental legal regime have been submitted in the Russian Federation since the moment the law took effect (January 1, 2021) - 3 of them did not provide any description of digital innovations or reasons for their implementation (Registry of Experimental Legal Regimes for Digital Innovation). After a primary revision of initiatives by the Ministry of Economic Development, 12 projects were rejected, while 28 projects were approved and submitted for consideration to the regulating body and the business community organization. As of now, only one initiative has been approved by all three bodies of authority: a vehicle with a test driver on the passenger seat; a driverless vehicle (including a test driver), remotely routed and navigated by an operator (this initiative has been put forward by Yandex). However, there has been no final approval of this project and no legal regime has been established to test this initiative.

In 2020 in Georgia, a total of forty-two projects from twenty-six organizations were submitted for consideration; the projects were aimed to start online identification to implement the remote services. The high interest of organizations in remote services and, consequently, the special abundance of applications was partly due to the global pandemic. However, due to technological developments and customer requirements, there has also been a fairly high interest in the development of online services in the financial market.

Out of the online identification projects submitted to the Regulatory Laboratory by 2020, fifteen projects from thirteen organizations were approved to move to the final “Test for product application in a real environment” stage. At the end of the year, fourteen projects were still under discussion. As of November 1, 2021, 6 projects are being tested in a real environment (Test in real environment) and testing of 10 other projects has been completed (Completed projects).

As for special regulatory regimes of Kyrgyzstan, three initiatives are being tested, with no completed projects at the moment (Register of special regulatory regimes).

Hungarian statistical and analytical evidence on regulatory sandboxes is not available to the public.

Lithuania, as one of the first countries to adopt the regulation of sandboxes, has implemented

three projects. In 2021 Workpower UAB completed a year of testing of its “Ooniq” peer-to-peer insurance platform, which has created new possibilities in the market for financial services (Peer-to-peer insurance platform – the first innovation tested in the Bank of Lithuania’s regulatory sandbox). Besides, the Bank of Lithuania developed and is currently testing a blockchain-based service - LBChain (<https://www.lb.lt/en/lbchain>). The LBChain platform service has been co-designed with six fintech companies and implemented in tandem with Deloitte, IBM, and Tieto as technology suppliers. Participating fintechs have reduced their time to market, mitigated regulatory and technology risks as well as saved costs required to develop, deploy and test their innovative blockchain-based use cases. Lithuania is a participant of the Global Financial Innovation Network (GFIN), so a Polish company was permitted to test their innovation in a Lithuanian sandbox, i.e., ATOME: Matter. The objective of the test is to develop a sustainability reporting template that allows monitoring how financial market participants manage sustainability-related risks and to perform climate change-related data analysis, such as the assessment of financial assets and portfolio sustainability risks and the carbon footprint in the projects financed by financial market participants and the identification of sectors that make a significant impact on climate change (GFIN initiative: Bank of Lithuania’s regulatory sandbox will be used for testing sustainability report prototypes; Rahman, 2018; Shakirova et al., 2021).

CONCLUSION

The compared nations have different terminology for regulatory sandboxes. Only Lithuania uses this notion directly. The Russian Federation, Hungary, and Kyrgyzstan adopted a special term typical for legal style: experimental legal regimes, financial innovation testing environment, and special regulatory regimes, respectively. Georgia introduced the notion of regulatory laboratories and Bulgaria applied the Regtech sandbox term. Meanwhile, we can conclude that the regulatory sandbox is a general theoretical notion that encompasses all the legal regimes available in the countries mentioned above.

Russia and Kyrgyzstan have similar models for regulating the sandboxes: an organic law specified by bylaws. The difference is that in Russia, experimental legal regimes are regulated by a special federal law, while in Kyrgyzstan, this institution is regulated only in one chapter of the law on the National Bank. Besides, Russia has adopted 24 bylaws to ensure detailed regulation of sandboxes. In Hungary, Georgia, and Lithuania, this institution is regulated by their National Banks, as provisioned by respective legal acts. Meanwhile, Lithuanian sandboxes can function in areas other than fintech, so they are regulated by the legal acts of the profile authorities.

The Russian legislation offers a broad scope of application for experimental legal regimes while limiting their fields of activity. On the contrary, European countries like Hungary or Lithuania do not provide a limited list of activities for regulatory sandboxes; the establishment of special regimes is not limited or restricted, so any regulatory body of authority can create such a regime. For instance, Lithuania is implementing sandboxes related to fintech, transport, and public services. On the contrary, only fintech sandboxes are allowed to be created in Georgia and Kyrgyzstan. Bulgaria and Estonia have no regulatory sandboxes or any laws on their establishment. In the future, the Bulgarian Ministry of Finances is planning to create RegTech sandboxes alongside innovation hubs, while the Estonian Financial Supervisory Authority states that regulatory sandboxes cannot be created in EU member states, otherwise they will deviate from the EU legislation. However, this circumstance did not prevent other European countries from imposing special legal regimes, as demonstrated by Hungary and Lithuania: in these countries, the regulatory sandbox participants are given exemptions

from the national legislation yet they still comply with the EU law. Meanwhile, the innovation hub was established in Estonia for advisory purposes rather than for testing innovations.

We may distinguish the following criteria for regulatory sandboxes that are common for all the analyzed countries: 1) novelty; 2) presence of current legal regulation that prevents innovation from being implemented; 3) benefit for future users or consumers; 4) safety.

As for sandbox regulators, their structure is based on the sandbox scope of application. For instance, Russia makes it legally possible to implement experimental regimes in various fields of activity, so they are managed by the regulating body (a profile ministry, depending on the digital innovation), the Ministry of Economic Development, the business community organization (as of now – the autonomous NPO «Digital Economy») and an unspecified coordinating agency. Fintech innovations, however, are regulated exclusively by the Bank of Russia that species the authorized and regulating bodies, as well as the business community organization. Sandboxes in Lithuania can also be created for various industries, so the regulatory model is similar: sandboxes launched by the National Bank are managed by it, while sandboxes for other fields of activity are managed by profile authorities. In Georgia, Hungary, and Kyrgyzstan, regulatory sandboxes can be implemented for fintech only, so they are regulated by the national banks.

The procedure for regulatory sandbox establishment and conduction is similar among the analyzed countries, so its structure can be presented the following way: 1) submitting an application; 2) reviewing the application; 3) testing in a regulatory sandbox; 4) monitoring and efficiency evaluation; 5) completion.

Having analyzed the implementation practices, we can make several conclusions. Firstly, detailed legal regulation of sandboxes does not guarantee the active development of this institution; the regulation of these activities by a single bylaw does not constrain the establishment of special legal regimes and efficient testing of digital innovation. Secondly, fintech remains the main scope of application for regulatory sandboxes but this model becomes more widespread and can be applied for testing innovations related to other fields of the economy or state development.

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