

# Procedural Framework for Innovation Facilitator Cross-Border Testing

EUROPEAN FORUM FOR INNOVATION FACILITATORS (EFIF)

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## I. EXECUTIVE SUMMARY

In recent years national competent authorities (NCAs) in the EU have adopted various initiatives to facilitate financial innovation and promote greater engagement between NCAs and firms on innovation-related issues, enhancing firms' understanding of regulatory and supervisory expectations and increasing the knowledge of NCAs about innovations and the opportunities and risks they present.

These initiatives include the establishment of 'innovation facilitators', which typically take the form of 'innovation hubs' and 'regulatory sandboxes'.

The innovation facilitators in the EU currently operate on a national level. This has been identified as an issue by the majority of NCAs, the European Commission, the European Supervisory Authorities and firms as it may create limitations and challenges for firms to scale up financial innovations across the EU. As a first step to address this issue the EFIF was established in 2019 to promote greater coordination and cooperation between innovation facilitators cross-border.

In addition, in accordance with the EU Digital Finance Strategy and the mandate of the EFIF, this document establishes a common procedural framework on which firms and NCAs may rely to share testing-related information in a structured manner across borders. This is to facilitate the scaling up of innovative products and solutions across the Single Market, to simplify communication between NCAs cross-border and to increase accessibility of information and transparency regarding regulatory sandbox testing cross-border.

The procedural framework for cross-border testing developed by the EFIF takes into account the different scopes and characteristics of regulatory sandboxes across the EU and lays down the rules of procedure for bilateral and multilateral cooperation between NCAs across borders.

The framework allows all types of firms to indicate interest in invoking it should the firm have applied for at least one regulatory sandbox in the EU. It is non-binding for NCAs, but provides guidance to all NCAs in the European Economic Area (EEA).

Whilst the procedural framework does not introduce additional eligibility criteria for access to regulatory sandboxes in the EU, which continue to be under full control of the respective NCAs, it defines three specific cases in which this framework facilitates:

- the involvement of two or more regulatory sandboxes from at least two different EU Member States plus an indefinite number of observing NCAs (case 1 - 'Multi sandbox testing');
- the involvement of one regulatory sandbox plus an indefinite number of observing NCAs (case 2 - 'Observing sandbox testing');
- the involvement of one regulatory sandbox whose test results are made available to NCAs located in another or other EU Member States (case 3 - 'Sharing of test findings').

In order to give interested firms a comprehensive overview of the possibilities for the involvement of more than one NCA from at least two different Member States in sandbox tests, the procedural framework highlights the importance of publishing all related information at a single destination. Therefore it describes how the EU Digital Finance Platform, which will be established by the EC, in close cooperation with the ESAs, may be used for this purpose. In particular, the document sets out the idea to publish a so called 'standardized common form' on the EU Digital Finance Platform, which should be the only way for firms to indicate their interest in the involvement of multiple NCAs cross-border in its testing activities. In this respect the procedural framework highlights that the standardized common form does not replace the process for applying to national regulatory sandboxes, but is meant to facilitate visibility about testing in (a) national sandbox(es) cross-border.

With regards to observing NCAs (cases 1 and 2) or such NCAs which receive test findings (case 3 or a combination of case 3 with cases 1 and 2), the framework includes guidance on how additional NCAs, i.e. NCAs which have not been indicated by the firm in the standardised common form, can indicate their interest in a particular testing case towards the respective firm.

Finally, the framework includes rules of procedure for the transmission of high-level testing results and lessons learned to EFIF in order to support dialogue and assist NCAs in reaching common views on the treatment of innovative technologies.

As the area of regulatory sandbox testing evolves rapidly and the procedural framework for cross-border testing is a newly introduced initiative in the EU, the framework acknowledges that the rules of procedure set out in the document may need to be revised in due course.

## II. INTRODUCTION

### 1. Background

In recent years, national competent authorities (NCAs) in the EU<sup>1</sup> have adopted various initiatives to facilitate financial innovation and promote greater engagement between NCAs and firms on innovation-related issues, enhancing firms' understanding of regulatory and supervisory expectations and increasing the knowledge of NCAs about innovations and the opportunities and risks they present.

In their 2019 joint ESA report<sup>2</sup>, the ESAs identified two core types of innovation facilitator: regulatory sandboxes and innovation hubs. Innovation facilitators operate at national level pursuant to domestic arrangements.

All NCAs now have in place at least one form of innovation facilitator and participate in the European Forum for Innovation Facilitators (EFIF)<sup>3</sup>.

The role of the EFIF is to support the scaling up of financial innovation across the Single Market. It provides a platform for NCAs to share experiences from engagement with firms through innovation facilitators, to share technological expertise, and to reach common views on the regulatory and supervisory treatment of innovative products, services and business models, overall boosting bilateral and multilateral coordination.<sup>4</sup>

In accordance with the objectives of the EFIF, the EU Digital Finance Strategy, which was published on 24 September 2020, confers on the EFIF the mandate of developing by mid-2021 a procedural framework for cross-border testing [...].<sup>5</sup>

This framework does not in anyway impact the regime applicable to firms as regards cross-border services, according to the EU financial services legislation.

### 2. Context for the establishment of a cross-border testing framework

The innovation facilitators in the EU currently operate on a national level. The absence of supporting mechanisms to facilitate closer engagement by NCAs in individual tests may create challenges for firms

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<sup>1</sup> National Competent Authorities (NCAs), which are members of one of the three European Supervisory Authorities (ESAs).

<sup>2</sup> January 2019 Joint ESA report on regulatory sandboxes and innovation hubs: <https://esas-joint-committee.europa.eu/Pages/ESAs-publish-joint-report-on-regulatory-sandboxes-and-innovation-hubs.aspx>

<sup>3</sup> <https://esas-joint-committee.europa.eu/Pages/Activities/EFIF/European-Forum-for-Innovation-Facilitators.aspx>

For a full list of the innovation facilitators currently in operation in the EU see [<https://esas-joint-committee.europa.eu/efif/innovation-facilitators-in-the-eu>].

<sup>4</sup> See EFIF Terms of Reference: <https://esas-joint-committee.europa.eu/Publications/efif/EFIF%20Terms%20of%20Reference.pdf>.

<sup>5</sup> Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions on a Digital Finance Strategy for the EU: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0591&from=EN>.

in seeking to scale up financial innovations across the EU,<sup>6</sup> which has been identified as an issue by the majority of NCAs, the European Commission, the European Supervisory Authorities and firms.<sup>7</sup>

By way of example, firms may have to engage separately with NCAs, duplicating engagement, in relation to the same innovative product, service or business model, potentially slowing down firm's capacity to scale cross-border and resulting in risks of forum shopping and regulatory arbitrage. This includes engagement with different NCAs about the concepts of their innovation and their measures to mitigate risks, where convergence in approach across NCAs is beneficial.

The EFIF already helps NCAs to benefit from the experiences of other NCAs from engagement with firms through innovation facilitators and to share technological expertise. Furthermore, discussions in the EFIF have shown that there is an interest among NCAs and firms alike to foster the coordination and the establishment of common practices among NCAs in order to facilitate testing on a cross-border basis.

'Cross-border testing' is about enabling firms looking to trial an innovative product, service, business model or delivery mechanism simultaneously or sequentially in multiple markets to engage with NCAs on a multi-jurisdictional basis.

### 3. Objective

This [document] establishes a common procedural framework on which NCAs may rely to share testing-related information in a structured manner after a firm has indicated interest in the involvement of multiple NCAs from two or more Member States.<sup>8</sup>

The core objectives of the framework are:

- to facilitate the scaling up of innovative products and solutions across Member States;
- to simplify communication between Member States in cases where a firm is interested in involving multiple NCAs from different Member States in its testing activities or outcomes; and
- to increase accessibility of information and transparency regarding regulatory sandbox testing cross-border.

This is because the sharing of testing-related information on a cross-border basis between NCAs is considered an important step to reduce the limitations and challenges observed regarding the scaling of financial innovations across the EU.<sup>9</sup>

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<sup>6</sup> For example, firms may find that different NCAs adopt different regulatory and supervisory stances towards the same innovation leading to challenges in extending the innovation in more than one Member State. This may also present risks in terms of 'forum shopping' and regulatory arbitrage, undermining the level playing field. (See further the January 2019 Joint ESA report on regulatory sandboxes and innovation hubs).

<sup>7</sup> See in particular the January 2019 Joint ESA report on regulatory sandboxes and innovation hubs, which identified a need for action to promote greater coordination and cooperation between innovation facilitators to support the scaling up of FinTech across the single market: <https://esas-joint-committee.europa.eu/Pages/ESAs-publish-joint-report-on-regulatory-sandboxes-and-innovation-hubs.aspx>.

<sup>8</sup> The sharing of information on a cross-border basis may be limited by applicable domestic provisions.

<sup>9</sup> January 2019 Joint ESA report on regulatory sandboxes and innovation hubs: <https://esas-joint-committee.europa.eu/Pages/ESAs-publish-joint-report-on-regulatory-sandboxes-and-innovation-hubs.aspx>

The rules of procedure set out in this document aim to facilitate bilateral and multilateral cooperation between NCAs across borders, without neglecting the different scopes and characteristics of regulatory sandboxes across the EU.

The EU Digital Finance Strategy<sup>10</sup> commits the EC to set up, in close cooperation with the ESAs, an EU Digital Finance Platform<sup>11</sup> aiming to connect digital finance stakeholders and public authorities across the EU on an on-going basis.

As it is considered important that all information regarding the involvement of more than one NCA from different Member States in sandbox tests is published at a single destination, the present framework sets out the idea to use the new EU Digital Finance Platform also as the single point of contact for firms to indicate such interest.

In particular, the framework includes a template for a form, to be used by firms, to indicate to the relevant NCAs an interest in leveraging this procedural framework.

Finally, it is considered to be important that lessons learned from sandbox testing may be transmitted to EFIF in order to support dialogue and assist NCAs in reaching common views on the treatment of innovative technologies. Therefore, the framework sets out rules of procedure for the process of transmitting certain high-level information on cross-border testing to EFIF.<sup>12</sup>

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<sup>10</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0591>.

<sup>11</sup> To encourage cooperation between private and public stakeholders, the European Commission, in cooperation with EFIF, will establish a new EU digital finance platform. The new platform will serve as a channel to interact online and on an ongoing basis with this new digital finance ecosystem. It will also offer an interface to the EFIF and to national innovation facilitators and national e-licensing procedures. Going forward, it could be developed into a broader platform for cooperation and a data space that could be used by industry or supervisory authorities to test innovation.

<sup>12</sup> The sharing of information on a cross-border basis may be limited by applicable domestic provisions.

### III. SCOPE AND DEFINITIONS

#### **Scope:**

The procedural framework does not introduce any additional eligibility criteria for access to regulatory sandboxes in the EU, which are established in accordance with the applicable framework(s) for sandbox testing at national level.

This implies that the final decision as to whether an interested firm is eligible and admitted for regulatory sandbox testing making use of this procedural framework for cross-border testing depends on the national eligibility criteria in place.

The framework allows all types of firms<sup>13</sup> to indicate interest in invoking it in accordance with any national regulatory sandbox eligibility criteria, should the firm have applied for at least one regulatory sandbox in the EU.

For example, if a company plans to test its product in Member State A in the regulatory sandbox of NCA A and would like to make the corresponding testing results available to NCA B from Member State B, then this is only possible if the firm meets NCA A's eligibility criteria for its regulatory sandbox and is admitted to sandbox testing, following which the testing results can be shared with NCA B in accordance with this framework [and any applicable domestic provisions regarding information exchange].

Therefore it is important to highlight that information about the regulatory sandboxes at national level including information about eligibility criteria, and the application procedure should be made available on the websites of the respective NCAs in charge of the relevant sandbox.<sup>1415</sup>

The framework is non-binding and provides guidance to all NCAs in the European Economic Area (EEA).

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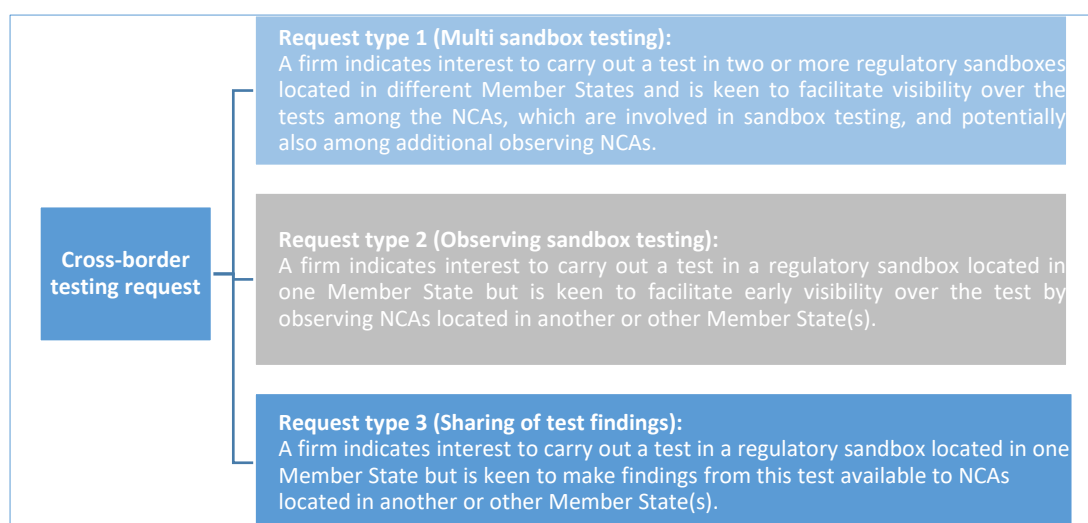
<sup>13</sup> For example the present framework covers both financial institutions and technology firms partnering with regulatory sandboxes for the purposes of a test. In particular, the framework does not require a particular firm size or maturity level (startup/incumbent player).

<sup>14</sup> The following list provides an overview of the innovation facilitators (innovation hubs and regulatory sandboxes) in place across the EU and also indicates where more information about each of them can be found: <https://esas-joint-committee.europa.eu/efif/innovation-facilitators-in-the-eu>.

<sup>15</sup> In order to facilitate cross-border testing in the EU, it is considered important to publish any information regarding regulatory sandbox testing also in English language.



The following cases are covered by the present framework:



Whilst in *case 1* testing is carried out in more than one regulatory sandbox in *cases 2 and 3* only one sandbox is engaged but other NCAs may observe the test and/or receive test findings.

*Case 3* covers a situation in which a firm is interested in carrying out a test in a regulatory sandbox located in one Member State, but is keen to make findings from this test available to NCAs located in another or other Member State(s). This case can be engaged independently or in combination with cases 1 and 2.

In addition, NCAs, which have not been included by an interested firm in its request to invoke the present framework, should get a chance to indicate interest in getting involved as observers (cases 1 and 2) or as recipients of test findings (case 3).<sup>16</sup>

In such instances it is then for the firm to decide whether or not these additional NCAs may become observers to a particular testing case or recipients of test findings.

Observers should be seen as NCAs, whose regulatory sandboxes (if existent) are not used for testing purposes, but as such, who, by definition, observe the testing in regulatory sandboxes in other jurisdictions only. In case a firm sees a clear need for an observer to get involved in the discussions to a larger extent or to answer pressing questions, this may be possible on a case-by-case basis if there are no objections from those NCAs, whose regulatory sandboxes are used for testing purposes and if the respective observing NCA agrees to get involved more extensively.

Applicable domestic provisions may not allow those NCAs, whose regulatory sandboxes are used for testing activities, to provide observing NCAs (cases 1 and 2) or those who are receiving test findings (case 3) with all relevant information about the testing activities in their regulatory sandboxes. In such cases the NCAs, whose regulatory sandboxes are used for testing activities, may share at least some high level information, which do not interfere with the domestic provisions, with the other involved NCAs. The involved NCAs should agree on the amount of information to be shared with each other on a case-by-case basis. The information that may be shared between participating NCAs may differ depending on the status of the respective NCAs (regulatory sandbox used for testing purposes/observer/recipient of test findings).

<sup>16</sup> Interested NCAs may indicate such interest only if in accordance with applicable domestic provisions.

Participating NCAs in *cases 1 and 2* may:

- be in charge of the testing activities that are carried out in their own regulatory sandbox (if the NCA's regulatory sandbox is being used for testing purposes)
- observe the preparation of the testing in a regulatory sandbox, which includes in particular the determination of testing parameters, the imposition of limitations or restrictions, the establishment of operational requirements to support the test and the determination of a suitable testing window;
- observe the test;
- observe the review and evaluation of test results.

In principle, it is understood that participating NCAs in *cases 1 and 2* would not be entitled to:

- get involved in the definition of eligibility criteria for a regulatory sandbox operated by another NCA;
- judge an application to a regulatory sandbox located in another Member State against eligibility criteria and carry out the assessment against eligibility;
- decide on the participation of an interested firm in the regulatory sandbox of an NCA located in another Member State;
- get involved in the design of testing parameters for a test conducted in another Member State;
- get involved in discussions between the NCA in charge of the test and the interested firm about the need to apply for an appropriate licence, if the firm's activity involves the carrying out of a regulated activity and the appropriate licence is not held (only if a licence is required for being eligible for regulatory sandbox testing);
- get involved in the decision on the establishment of operational requirements to support a test which is under the remit of another NCA;
- decide on a suitable form for the engagement between the interested firm and the NCA in charge of the test;
- decide on limitations or restrictions of the testing plan imposed by the NCA in charge of the test;
- decide on the testing window for a regulatory sandbox of an NCA located in another Member State;
- determine a suitable exit plan for a regulatory sandbox of an NCA located in another Member State;
- influence the testing in a regulatory sandbox of an NCA located in another Member State;
- influence the review and evaluation of test results if the test has not been carried out in their own regulatory sandbox;
- decide on the most appropriate approach to exiting the regulatory sandbox of an NCA located in another Member State and on any further measures taken (as appropriate).

For the purpose of the present procedural framework, the following definitions apply:

- **National competent authorities (NCAs):** Authorities and bodies that supervise financial sector operators and are competent for ensuring their compliance with national and EU law.
- **Data Protection Authorities:** Authorities and bodies that monitor and supervise the application of data protection laws, provide expert advice on data protection issues and handle complaints that may have breached the law.

- **Regulatory sandboxes:** Schemes to enable firms to test, pursuant to a specific testing plan agreed and monitored by a dedicated function of the NCA, innovative financial products, financial services or business models. Sandboxes may also imply the use of legally provided discretions by the relevant supervisor (with use depending on the relevant applicable EU and national law), but sandboxes do not entail the disapplication of regulatory requirements that must be applied as a result of EU law and implementing national law.
- **Interested firms:** All entities, which are interested in triggering the application of this procedural framework should they have applied for at least one regulatory sandbox in the EU or should their initiative already be accepted for testing in at least one regulatory sandbox in the EU.
- **European Forum for Innovation Facilitators (EFIF)<sup>17</sup>:** The EFIF provides a platform for supervisors to meet regularly to share experiences from engagement with firms through innovation facilitators (regulatory sandboxes and innovation hubs), to share technological expertise, and to reach common views on the regulatory treatment of innovative products, services and business models, overall boosting bilateral and multilateral coordination. Members of the EFIF include representatives of innovation hubs and regulatory sandboxes established by NCAs, representatives of interested NCAs which have not established an innovation facilitator and representatives of each of the ESAs. The European Commission sits as an observer in the EFIF.
- **European Supervisory Authorities (ESAs):** The ESAs are independent EU Authorities which work to ensure effective and consistent prudential regulation and supervision across the European financial services sector. There are three ESAs, namely:
  1. The European Banking Authority (EBA)<sup>18</sup>
  2. The European Insurance and Occupational Pensions Authority (EIOPA)<sup>19</sup>
  3. The European Securities and Markets Authority (ESMA)<sup>20</sup>

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<sup>17</sup> <https://esas-joint-committee.europa.eu/Pages/Activities/EFIF/European-Forum-for-Innovation-Facilitators.aspx>

<sup>18</sup> Regulation (EU) No 1093/2010 establishing the EBA: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010R1093>

<sup>19</sup> Regulation (EU) No 1094/2010 establishing the EIOPA: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010R1094>

<sup>20</sup> Regulation (EU) No 1095/2010 establishing the ESMA: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010R1095>

## IV. SINGLE POINT OF CONTACT

The objective of this section is to outline how a firm, which is interested in involving more than one NCA from two or more Member States in its sandbox test, can inform the respective NCAs about this interest and to describe where an interested firm may find all relevant information.

It is considered important that all information regarding the involvement of more than one NCA from two or more Member States in sandbox tests is collected at a single destination.

As the EU Digital Finance Strategy<sup>21</sup> commits the EC to set up, in close cooperation with the ESAs and the EFIF, an EU Digital Finance Platform aiming to connect digital finance stakeholders and public authorities across the EU on an on-going basis, it is foreseen to use this platform as the single point of contact for any information in relation to the involvement of multiple NCAs from at least two different Member States in sandbox testing.

For any kind of information about the national regulatory sandboxes, and in particular about national eligibility criteria and about the application procedures to the national regulatory sandboxes in the EU, firms should refer to the websites of the NCAs.

It is foreseen that NCA websites include information about the fact that the involvement of multiple NCAs from different Member States in regulatory sandbox testing is possible. For this purpose the websites of participating NCAs may entail a link, which guides interested firms to the respective information on the EU Digital Finance Platform.

The following information may be made available on the EU Digital Finance Platform:

### **1. Publication of the present procedural framework for cross-border testing**

For transparency reasons and in order to allow interested firms to get a comprehensive overview of the scope and processes in relation to the involvement of multiple NCAs from at least two different Member States, the present framework may be made available publicly on the EU Digital Finance Platform.

### **2. Publication of information about the three types (“cases”) of request to involve multiple NCAs in sandbox testing**

The three different cases, which are covered by the present framework and which are specified above, including a short description of each case, may be made available on the EU Digital Finance Platform.

### **3. Publication of a list of NCAs participating in the EU initiative on cross-border testing**

The following information about all NCAs, who are participating in this initiative, may be made available on the EU Digital Finance Platform:

- Member State and name of all participating NCAs;
- Information as to whether the NCAs operate a regulatory sandbox or as to whether they can be involved as observers or recipients of test findings only;
- Links to the websites of the participating NCAs (English version if available);
- Links to the regulatory sandboxes of participating NCAs (if applicable);
- Information about which sectors are covered by the regulatory sandboxes of each of the participating NCAs: Banking, Insurance, Securities/Markets.

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<sup>21</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0591>.

#### **4. Provision of a standardised common form to indicate interest in the involvement of multiple NCAs in sandbox testing including a notification process**

It is considered a key priority of the present framework to enable firms to indicate interest in involving multiple NCAs from at least two different Member States in its testing activities. Therefore the present framework envisages that a standardized common form may be made available to interested firms on the EU Digital Finance Platform, which should be the only way for firms to indicate such interest.

The benefit of the concept of a standardized common form is that firms can indicate an interest towards multiple NCAs at the same time. This is to avoid a burdensome process for firms where each NCA, which should become an observer or a recipient of test findings, has to be approached separately, and to facilitate the information sharing between NCAs on a cross-border basis for the benefit of firms.

The standardized common form should neither be seen as an application form nor as an element of the formal application process to national regulatory sandboxes. Instead, firms should refer to the national regulatory sandboxes of interest (and to national eligibility criteria), if they would like to carry out testing in their respective markets. The standardized common form is to support interested firms in facilitating visibility about testing in (a) national sandbox(es) only.

This implies that in order to involve multiple NCAs in testing activities a firm should submit (step 1):

- two or more application forms to national regulatory sandboxes of interest (for case 1) or
- an application form to a national regulatory sandbox of interest (cases 2 and 3)

as well as the standardized common form to indicate interest in facilitating an information exchange between multiple NCAs about the testing (step 2). For NCAs, which are supposed to become observers or recipients of test findings, no application form is required.

This implies that a request to share testing information with multiple NCAs from at least two Member States would only be considered if:

- The firm's innovative product, service or business model has been subject to testing in at least one EU Member State and testing has been terminated successfully;
- The firm's innovative product, service or business model is currently subject to testing in at least one EU Member State;
- The firm has just applied for admittance to testing in a regulatory sandbox in the EU.

See annex 1 for a template of the standardised common form.

#### **5. Publication of a list of Frequently Asked Questions (FAQ) with regards to the involvement of multiple NCAs in sandbox testing**

As firms have to navigate through a large amount of information in relation to the involvement of different NCAs from at least two different Member States in sandbox testing, a list of frequently asked questions and answers may be provided on the EU Digital Finance Platform.

This list is to assist firms, who are interested in involving multiple NCAs in its testing activities. The list is designed in a way to provide firms with:

- explanations about the purpose and advantages of involving multiple NCAs in sandbox testing;
- an overview of the process involved;
- an overview of requirements for submitting an indication of interest;
- an overview of expectations and limitations;

- information about the timeline regarding the involvement of multiple NCAs from different EU Member States in testing activities;
- information about the sharing of data;
- other relevant information.

See annex 2 for a non-exhaustive list of Frequently Asked Questions (FAQ) to be published on the EU Digital Finance Platform.

**6. Publication of the names of the firms, which have taken part in the EU initiative on cross-border testing**

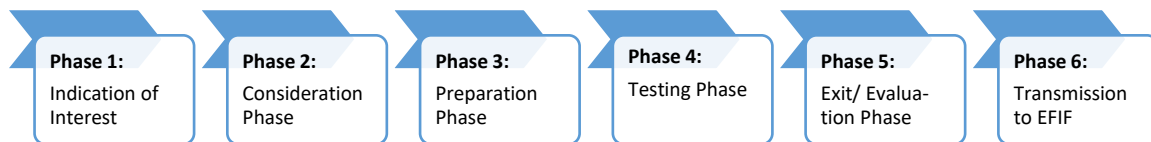
In case of interest to firms, which have taken part in the EU initiative on cross-border testing, their business names may be published on the EU Digital Finance Platform as soon as the testing activities in all involved regulatory sandboxes have been terminated.

## V. PROCEDURES FOLLOWING AN INDICATION OF INTEREST

This section is supposed to specify the rules of procedure for collaboration, which should be followed by the NCAs if a firm has indicated *via* the standardized common form that it would like to involve multiple NCAs in its testing activities.

The Joint ESAs Report on Regulatory Sandboxes and Innovation Hubs<sup>22</sup> sets out that regulatory sandboxes involve several phases. These can be loosely described as an application phase, a preparation phase, a testing phase and an exit or evaluation phase with a decision on the approach to the exit from the regulatory sandbox (with either the continuation or the discontinuation of the activities).

Based on these four regulatory sandbox phases, and taking into account that this framework is supposed to specify the rules of procedure for information sharing between NCAs from different Member States with regards to sandbox testing, the process has to be modified and looks as follows:



In this respect it should be noted that case 1 of the framework is about enabling firms looking to trial an innovative product, service, business model or delivery mechanism either simultaneously or sequentially in multiple regulatory sandboxes in at least two different Member States. This implies that after the positive consideration of a request, phases three to five may either be performed simultaneously or sequentially by the NCAs, whose regulatory sandboxes are used for testing purposes.

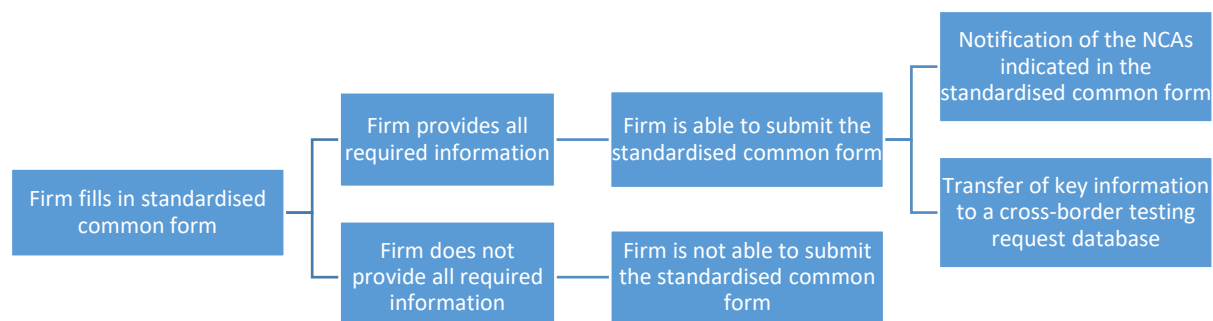
For case 1 firms can indicate their preferred type of testing (simultaneous or sequential) in the standardized common form as this may have a significant impact on the length of the cross-border testing exercise. However, as this largely depends on the setup of the national regulatory sandboxes, the final decision about the type of testing will be made by the involved NCAs taking into account the firm's preferred option. Data Protection Authorities may be engaged by participating NCAs on an ad hoc basis in relation to specific tests.

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<sup>22</sup> January 2019 Joint ESA report on regulatory sandboxes and innovation hubs: <https://esas-joint-committee.europa.eu/Pages/ESAs-publish-joint-report-on-regulatory-sandboxes-and-innovation-hubs.aspx>

## Phase 1: Indication of Interest

The process, which follows after the indication of interest *via* the standardized common form looks as follows:



The standardized common form is to be used by firms to indicate towards multiple NCAs its interest in the involvement of those in their testing activities (see section IV of the present document).

In order to support NCAs in screening incoming requests it is considered to be important that the standardized common form asks for some mandatory information. This implies that firms should not be able to submit a standardized common form if the information for which the standardized common form asks is not provided. Practically speaking, a firm should only be able to submit a standardized common form if all mandatory information/fields have been filled in.

As soon as a firm has provided all required information, it should be possible to submit the standardized common form.

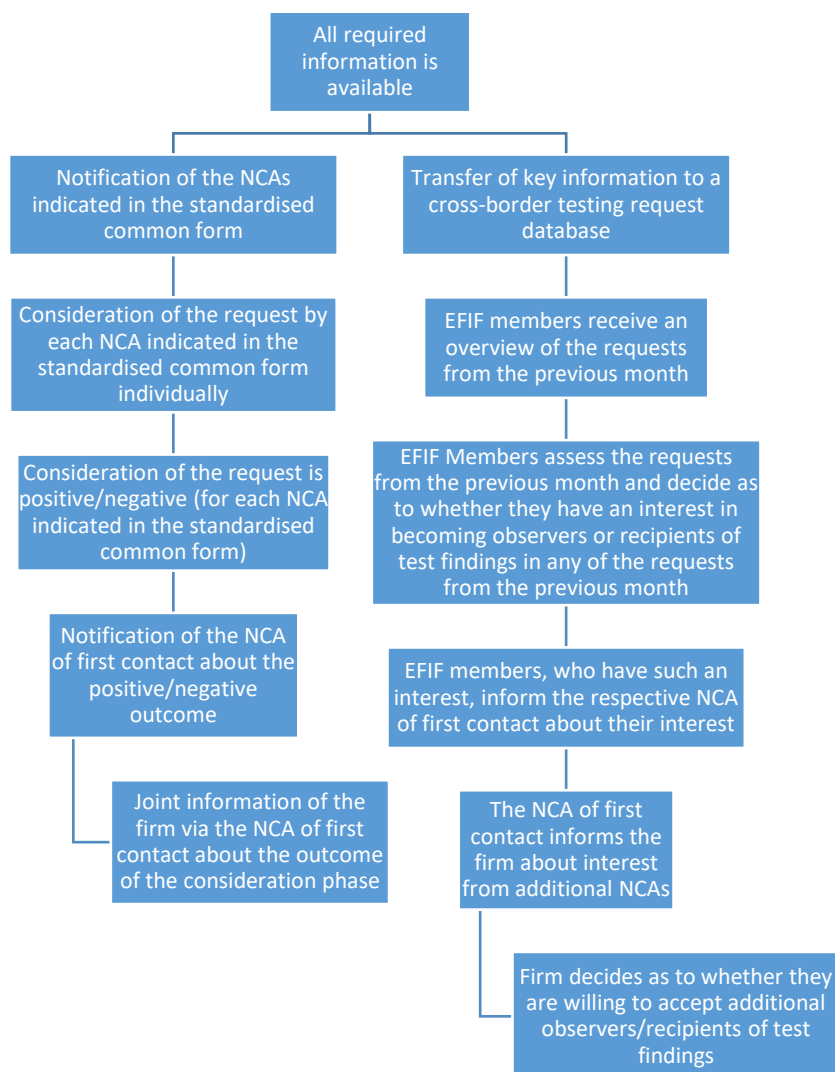
The NCAs, which have been indicated by the firm in the standardized common form, should get notified automatically by the EU Digital Finance Platform.

In parallel, the key information provided in the standardized common form will automatically be captured in a cross-border testing request database, which will be monitored by the ESAs. Please note that, as explained below, only high level information provided by a firm in this form is going to be shared with those NCAs who are members of the EFIF and with the ESAs.



## Phase 2: Consideration Phase

The below chart provides an overview of the processes of the consideration phase<sup>23</sup>:



As described in phase 1 (indication of interest) NCAs, which have been indicated by the firm in the standardized common form, get notified automatically about the new request.

### Process for the involvement of additional NCAs as observers or as recipients of test findings:

In parallel, the information provided in the standardized common form is automatically captured in a cross-border testing request database.<sup>24</sup> Based on the information in this database, some anonymized high-level information<sup>25</sup> about the requests from the previous month should be shared with EFIF

<sup>23</sup> It should be noted that regulatory sandboxes in the EU follow different timeframes. In particular, the involvement of regulatory sandboxes which run 'cohort' processes (under which applicants are able to apply for testing during designated periods only) may have an impact on the timeline for cross-border testing.

<sup>24</sup> In line with provisions regarding the processing of firm-specific data, the ESAs may not have access to all information provided by firms via the standardized common form, but to some anonymized high-level information only.

<sup>25</sup> In line with provisions regarding the processing of firm-specific data.

members on a monthly basis. EFIF members should be informed also if there have been no requests in the previous month. The monthly report to EFIF members should contain the following information:

- Information about the type of request;
- Information about whether firm is licensed or registered in any country worldwide and if yes, in which ones;
- Registration jurisdiction (if firm is registered in an EU Member State);
- Information about the stage of application to regulatory sandbox/testing in a regulatory sandbox;
- Information about which NCAs the firm would like to notify of its interest;
- Information about which regulatory sandbox(es) is (are) intended to be used for testing purposes;
- Information about the preferred type of cross-border testing (parallel or sequential).

Based on the information provided in this monthly report, other NCAs, who are members of the EFIF, but who have not been indicated by the firm in the standardized common form, will get a chance to indicate interest in getting involved as an observer (cases 1 and 2) or to indicate interest in receiving test findings (case 3).

Additional interested NCAs should inform the NCA of first contact<sup>26</sup> about their interest. The final decision as to whether additional NCAs will be able to observe the test/receive test findings is with the firm.

Process for the consideration of a request through those NCAs indicated in the standardized common form:

The involved NCAs may consider the request individually and make sure that there are no obstacles, which impede them from getting involved in the respective request. In particular, NCAs may want to assess:

- The scope and characteristics of the proposition and as to whether the proposition falls under the respective NCA's remit and is in line with the respective national eligibility criteria;
- The innovative nature of the proposition;
- The interest for the involvement of multiple NCAs in a firm's testing activities (as indicated by the firm in the standardized common form);
- The readiness of a firm to involve multiple NCAs in its testing activities;
- As to whether the information provided is in line with information provided in the separate application to the regulatory sandbox (if applicable).

The consideration of a request to involve multiple NCAs from different Member States in testing activities is separate from, but dependent on, the assessment that is carried out in relation to an application to (a) regulatory sandbox(es). NCA(s), whose regulatory sandbox(es) are used to carry out testing judge the applications to their regulatory sandboxes separately against the individual eligibility criteria of their regulatory sandboxes.

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<sup>26</sup> For cases 2 and 3 the NCA of first contact is the one whose regulatory sandbox is envisaged to be used for testing purposes. If it is envisaged to carry out testing in multiple regulatory sandboxes (case 1), the decision about the NCA of first contact should depend on whether the firm is licensed or registered in any of these countries.

The involved NCAs may decide to discuss the request with each other and share additional information, which they may have.<sup>27</sup> In particular, the involved NCAs should express their interest and capability to be involved in the testing case. In case one of the involved NCAs does not express a respective interest or does not have the respective capability to be jointly involved with NCAs from other Member States in testing activities, the discussion should proceed between the remaining involved NCAs.

The NCAs, who have been indicated by a firm in the standardised common form, may inform the NCA, whose regulatory sandbox is (indicated to be) used for testing about the outcome (positive or negative) of its consideration. In case 1 (multi sandbox testing) the NCAs may appoint one of the NCAs, where testing takes place, to communicate the results of the consideration phase to the firm.

If the outcome of the consideration phase is negative for each of the NCAs, who have been indicated by the firm in the standardised common form, the firm should be informed about the fact that the request is discontinued. The same holds if only NCAs, which are supposed to be involved as observers (cases 1 and 2) or as the recipients of test findings (case 3), consider the request positively or if only one NCA, whose regulatory sandbox is used for testing activities, considers it positively.

If for a case 1 request only one NCA, where actual testing is supposed to take place, and an indefinite number of observers is willing to proceed with the request then the case 1 request may be transformed into a case 2 request. This requires a notification of the respective firm and its confirmation.

### **Phase 3: Preparation Phase**

Those NCAs, whose regulatory sandbox(es) is(are) being used for regulatory sandbox testing, prepare for the testing individually and in accordance with the national regulatory sandbox rules. In particular, the development of a testing plan for the (different) regulatory sandbox(es) involved is under the remit of the respective NCA(s) and therefore not part of the present procedural framework.

However, one of the core objectives of this document is to simplify the communication procedure between Member States in cases where a firm is interested in involving multiple NCAs from different Member States in its testing activities (see above). This is considered to be an important step to reduce the limitations and challenges observed regarding the scaling of financial innovations across the EU.

In order to facilitate the information exchange between the involved NCAs and in order to give NCAs with an observer role a chance to express their views regarding the development of a testing plan, a cooperation tool may be put in place.

This cooperation tool may be integrated in the EU Digital Finance Platform and could consist of dedicated folders for each request to which the involved NCAs (and potential observers) could have access to. This form of information exchange may be extended by the creation of an additional folder per request to which the involved NCAs (and potential observers) as well as the respective firms have access to.

Even though an open dialogue between the involved NCAs and the firm may enhance the level of the discussions, all testing parameters are ultimately determined by the NCA, who operates the regulatory sandbox.

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<sup>27</sup> The sharing of information on a cross-border basis may be limited by applicable domestic provisions.

#### **Phase 4: Testing Phase**

Those NCAs, whose regulatory sandbox is being used for testing, are solely in charge of the testing and have to make sure that the testing is in accordance with their respective domestic regulatory sandbox provisions. For any information about the processes of the testing phase firms should refer to the information about the national regulatory sandboxes, which can be found at the NCAs' individual websites.

Throughout the testing phase, the firm may interact with the involved NCAs; this interaction will vary depending on the roles of the involved NCAs.

NCAs may use the collaboration folder, which is only accessible by the involved NCAs, to discuss relevant issues at a supervisory level and to share relevant information.

If, under request type 1, the testing period in one jurisdiction has to be extended, but such an extension is not possible for the other regulatory sandboxes involved, this should not have a negative impact on the outcome of the testing. In particular, the sharing of testing-related information in a structured manner between the involved NCAs should not be narrowed by such a timeline extension.

Testing can be terminated by a NCA (or at the request of the firm) at any point during the testing phase. The reasons for NCAs to terminate testing early may vary between Member States depending on the rules set out in the national regulatory sandbox frameworks. Termination may in particular seize if:

- the firm fails to comply with any testing parameters;
- it is necessary to mitigate consumer detriment;
- there is no demand for the proposition, or the proposition fails to work as expected.

For more information about the conditions under which testing can be terminated by an NCA, firms should refer to the information provided at national level by the respective NCA.

#### **Phase 5: Exit/ Evaluation Phase**

At the end of the testing period, each NCA, whose regulatory sandbox has been used for testing purposes, will evaluate the success of the test in line with the national regulatory sandbox rules and requirements.

The NCAs, whose regulatory sandboxes were used for testing purposes, may share with the other NCAs involved relevant testing results. In particular, NCAs whose regulatory sandbox has been used, may share with the other NCAs involved the final report about the test, which is used by the NCA in charge of the test to carry out an assessment of the success of the test (against the previously determined framework in line with national rules and requirements).<sup>28</sup>

The NCA, whose regulatory sandbox was used to carry out the testing, is ultimately in charge of the evaluation of testing results. However, a discussion with the other involved NCAs about the testing results is considered an important element of the present framework.

If the test is terminated prematurely in one of the regulatory sandboxes involved owing to issues identified during the testing, the exit plan, which is part of the national regulatory sandbox process, comes into effect.

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<sup>28</sup> The sharing of information on a cross-border basis may be limited by applicable domestic provisions.

The respective NCA may inform the other involved NCAs immediately about the fact that the test had to be terminated prematurely. For cases 2 and 3 the premature termination of the testing implies that also the involvement of other NCAs from different Member States has to be terminated.

The NCA, whose regulatory sandbox has been used for the testing, may lead the communication about the premature termination of the testing with the firm.

For case 1 the involved NCAs may discuss the implications of a premature termination of testing in one regulatory sandbox on a case-by-case basis. Only if testing continues in at least one other regulatory sandbox, the involved NCAs will continue their information exchange and cooperation with regards to the respective test.

If testing continues in only one regulatory sandbox (for case 1), it should be possible that the case will be transformed into a case 2 request. This requires a notification of the respective firm and its confirmation.

#### **Phase 6: Transmission to EFIF**

The process for the transmission of information by leveraging testing results and lessons learned to EFIF members is described in chapter VI of this framework.

## VI. PROCEDURES FOR LEVERAGING TESTING RESULTS AND LESSONS LEARNED

The European Forum for Innovation Facilitators (EFIF) provides a platform for supervisors to meet regularly to share experiences from engagement with firms through innovation facilitators (regulatory sandboxes and innovation hubs), to share technological expertise, and to reach common views on the regulatory treatment of innovative products, services and business models, overall boosting bilateral and multilateral coordination.

In line with this main objective of the forum and to further enhance the convergence of supervisory practices and to support the scaling up of technological innovation in the financial sector across the EU, it is considered to be important that some high level testing results and lessons learned may be transmitted to EFIF.

Besides the maintenance of a cross-border testing request database (see chapter V), it is therefore envisaged that for each request about the involvement of multiple NCAs in testing activities, the involved NCAs report back to the EFIF. In this respect it should be noted that any reporting to the EFIF will be high level only and should be in accordance any applicable domestic provisions regarding information exchange.

Depending on the substance of testing results and lessons learned and the general demand for cross-border testing in the EU, the regular EFIF events may be used for the purpose of transmitting some high level testing information and lessons learned to the EFIF. The NCAs, whose regulatory sandboxes have been used for testing activities, may give a short presentation at the EFIF event which is the closest one to the termination of the testing activities.

The high level testing information and lessons learned may then also be captured in the cross-border testing request database and be made available to EFIF members.

In addition, given there are many substantive testing results and lessons learned to be shared, it may be considered publishing a report highlighting the key findings from the cross-border testing initiative in the EU in an aggregated and anonymized kind of way.

As the area of regulatory sandbox testing evolves rapidly and cross-border testing is a newly introduced initiative in the EU, the rules of procedure set out in this document may need to be revised in due course.

## ANNEX 1 – Standardised common form to indicate interest in involving multiple NCAs in testing activities

### 1. Information about the type of request ('tick applicable box(es)')<sup>29</sup>:

<b>Cross-border testing request</b>	<b>Request type 1 (Multi sandbox testing):</b> A firm indicates interest to carry out a test in two or more regulatory sandboxes located in different Member States and is keen to facilitate visibility over the tests among the NCAs, which are involved in sandbox testing, and potentially also among additional observing NCAs.
	<b>Request type 2 (Observing sandbox testing):</b> A firm indicates interest to carry out a test in a regulatory sandbox located in one Member State but is keen to facilitate early visibility over the test by observing NCAs located in another or other Member State(s).
	<b>Request type 3 (Sharing of test findings):</b> A firm indicates interest to carry out a test in a regulatory sandbox located in one Member State but is keen to make findings from this test available to NCAs located in another or other Member State(s).

### 2. General information about the interested firm(s):

- Business name;
- Head office address;
- Contact details;
- Mailing address;
- Email address (to be used for communication with NCAs) and name of a contact person;
- Website name (if website exists);
- Information about whether firm is licensed or registered in any country worldwide and if yes, in which ones;
- Sector of activity;
- Registration jurisdiction and registration number (if firm is registered in an EU Member State);
- Technology used;
- Remarks.

### 3. Information about stage of application to regulatory sandbox/testing in a regulatory sandbox:

Firm to tick applicable box(es):

- The firm's innovative product, service or business model has been subject to testing in at least one EU Member State and testing has been terminated successfully;

<sup>29</sup> Firms should be able to engage case 3 independently or in combination with cases 1 and 2, i.e. firms should be able to tick either case 1, case 2 or case 3 independently or alternatively a combination of cases 1 and 3 or cases 2 and 3.

- The firm's innovative product, service or business model is currently subject to testing in at least one EU Member State.
- The firm has just applied for admittance to testing in a regulatory sandbox in the EU.

The firm should be asked to provide information about the NCA(s), whose regulatory sandbox(es) have been, are or are intended to be used to carry out testing.

#### **4. Information about which NCAs the firm would like to notify of its interest:**

- Firm should choose from a list of participating NCAs (drop-down menu) which ones they would like to notify;
- Firms should assign each of the selected NCAs with one of the three possible roles ('tick a box'):
  - o Actual testing envisaged for the regulatory sandbox of the respective NCA (for cases 1, 2 and 3);
  - o Observer status (for cases 1 and 2);
  - o Recipient of test findings (only for case 3).
- Disclaimer (for cases 1 and 2 only) to be shown on the standardised common form:
 

*NCAs, which have not been included by an interested firm in this form will get a chance to indicate interest in getting involved as an observer. For this purpose some anonymized high level information provided by a firm in this form is going to be shared with those NCAs who are members of the EFIF and with the ESAs.*

*The final decision as to whether additional NCAs will become observers sits with the firm. Those NCAs, which have been included by an interested firm in this form, may share firm-confidential information on a cross-border basis with each other in accordance with domestic provisions.*

*Information will only be shared with additional observers (if any) after approval by the firm.*

#### **5. [For case 1 only] Information about the preferred type of cross-border testing:**

Firm to tick preferred type of cross-border testing:

- Parallel testing (testing is conducted in multiple regulatory sandboxes simultaneously)
- Sequential testing (testing is conducted in one regulatory sandbox after the other)
- *Disclaimer: The possible type of cross-border testing largely depends on the setup of the national regulatory sandboxes involved. A firm's preferred type of cross-border testing will be taken into account by the involved NCAs, but the final decision lies at the discretionary of them. It may have a significant impact on the length of the cross-border testing exercise.*

#### **6. Information about the reasons for interest in involving multiple NCAs in testing activities:**

- Text box where firms should elaborate on reasons for interest in involving multiple NCAs in testing activities



**7. Confirmation that all information provided in the common form are complete and correct:**

- Firms should tick box if they confirm

**8. Confirmation that the firm is fine with sharing some anonymized high-level information taken from the standardised common form with all EFIF members and the ESAs:**

- Firms should tick box if they confirm

**9. Personal data**

- The processing by the relevant NCAs of any personal data submitted by the firm for the purposes of the testing activities will be carried out in accordance with GDPR<sup>30</sup>. Please refer to the website of the relevant NCAs for the privacy statements.

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<sup>30</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1–88.

## ANNEX 2 – Non-Exhaustive List of Frequently Asked Questions (FAQ) to be published on the EU Digital Finance Platform

- 1. What is the purpose and what are the advantages of involving multiple NCAs from different Member States in sandbox testing and what is offered in this respect in the EU?**
- 2. How do I indicate interest in involving multiple NCAs from different Member States in sandbox testing?**
- 3. Are there any requirements for submitting an indication of interest?**
- 4. What can I expect once accepted for involving multiple NCAs in testing activities?**
- 5. Does an indication of interest in involving multiple NCAs come with any costs?**
- 6. What timeline is foreseen for the involvement of multiple NCAs in tests?**
- 7. With whom/which NCAs will (test) data be shared?**