

Blockchain and Smart Contracts: Italy First to Recognize an Overarching Legal Foundation

IN SHORT

The Situation: After joining the Blockchain Partnership and setting up a task force dedicated to digital innovation, Italy enacted a set of rules establishing an overarching legal foundation for the validity and enforceability of distributed ledger technologies ("DLTs") and smart contracts.

The Result: New rules provide for: (i) legal definitions of DLTs and smart contracts; (ii) legal validity of any record stored on a DLT that will benefit from an electronic time validation pursuant to EU laws; and (iii) validity and enforceability of smart contracts.

Looking Ahead: Specific regulatory technical standards for DLTs and smart contracts will soon be enacted.

Recently, Italy started focusing on innovation, technological advancement, and digitalization. This led to several sector-specific developments in Italian legislature, including, the introduction of statutory electronic invoice requirements and the allocation of a portion of the State budget for supporting investments by start-ups and small and medium-sized enterprises in artificial intelligence, DLTs, and the internet of things.

On February 7, 2019, the Italian Parliament approved a law aimed at simplifying and improving public administration and enterprises' operations. This law introduces among others, a legal definition of both DLTs and smart contracts and recognizes their full legal validity and enforceability in Italy.

As a result, Italy is one of the first countries to introduce an overarching set of rules on DLTs and smart contracts not specifically linked to any single business area but generally applicable to all types of transactions. This means that anyone is in the position to benefit from DLTs and smart contracts' technical features within a certain and transparent legal framework.



This law introduces a legal definition of both DLTs and smart contracts and recognizes their full legal validity and enforceability in Italy.



DLTs

The newly enacted law specifically defines DLTs (*tecnologie basate su registri distribuiti*) as those technologies and IT protocols based on a shared, distributed, replicable, simultaneously accessible, structurally decentralized ledger, built on cryptographic keys which enable the registration, validation, update and storage of either decrypted or encrypted data, verifiable by each participant and that cannot be altered nor modified.

This definition is along the lines of the principles set out in the advice rendered by EU regulatory bodies in the last months on specific issues (i.e., initial coin offerings and cryptoassets).

The Agency for Digital Italy (*Agenzia per l'Italia Digitale*, "AgID") will set by mid-May 2019, the

technical standards for DLTs suitable for producing the same legal effect of an electronic timestamp pursuant to EU Regulation 910/2014 (or, the eIDAS Regulation) in respect of any digital document stored thereon. In other words, this will entail the presumption of the accuracy of the date and the time it indicates and the integrity of the data to which the date and time are bound.

Smart Contracts

In the new Italian law, smart contracts are defined as software based on DLTs which, once the relevant ledger entry has been validated, automatically give effect to the relevant terms agreed between two or more parties. Smart contracts are deemed by law to be equivalent for certain purposes (i.e., consensus formation and evidentiary value) to traditional written contracts to the extent that the digital authentication of the parties is made in accordance with the procedure to be established by AgID. The procedure will be set in specific guidelines to be issued by mid-May 2019, and providing for the applicable technical standards.

THREE KEY TAKEAWAYS

1. The new legal framework confirms the Italian legislature's trust in digital innovation as a way to simplify processes and improve the Italian economy.
2. Recent developments are expected to attract investments in a wide range of businesses including those previously anchored to traditional business models.
3. Italian regulation fits within the European common approach on DLTs in the international arena.



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