

Article 97

Amendments to Decree Law 350/2001 converted with amendments as Law 409/2001 and to Decree Law 262/2006 converted with amendments as Law 286/2006

1. In implementation of Council Regulation EC 44/2009 dated 18 December 2008, amending Council Regulation 1338/2001 dated 28 June 2001 laying down measures necessary to protect the euro against counterfeiting, Decision 2010/14 of the European Central Bank dated 16 September 2010 on the authenticity and fitness checking and recirculation of euro banknotes, and Regulation 1210/2010 EU of the European Parliament and of the Council of 5 December 2010 concerning authentication of euro coins and handling of euro coins unfit for circulation and in order to adapt Italian law to that of the European Union, the following amendments are made to Decree Law 350/2001 converted with amendments as Law 409/2001:

a) Article 8 is replaced by the following:

“Article 8 – (Handling and distribution to the public of euro banknotes and coins).

“1. Cash handlers shall make sure of the authenticity and fitness of euro banknotes and coins that they intend to put back into circulation and shall take appropriate measures to detect counterfeit and unfit notes and coins.

“2. For the purposes of this section, cash handlers shall be understood to mean banks and, within the framework of their payment activities, Poste Italiane S.p.A., other financial intermediaries and payment service providers as well as economic agents who take part in the handling and distribution to the public of banknotes and coins, including:

“a) persons whose activity consists in exchanging notes or coins in other currencies;

“b) the persons who engage in the custody and/or transport of cash specified in Article 14(1)(b) of Legislative Decree 231/2007, only as regards the performance of activities of handling cash;

“c) economic agents such as merchants and casino operators who as an accessory to their principal business engage in the handling and distribution to the public of banknotes by means of banknote dispensers, only as regards the performance of these accessory activities.

“3. The checking of euro banknotes envisaged in paragraph 1 shall be conducted in compliance with the European Central Bank Decision of 16 September 2010 (Decision ECB/2010/14), as subsequently amended, on the authenticity and fitness checking and recirculation of euro banknotes. The checks on coins envisaged in paragraph 1 shall be conducted in compliance with European regulations and specifically with Regulation (EC) 1338/2001 as amended by Regulation (EC) 44/2009 and Regulation (EU) 1210/2010.

“4. Cash handlers shall withdraw from circulation the euro banknotes and coins they receive in whose regard they are certain or that they have sufficient grounds to believe are counterfeit and shall promptly consign the banknotes to the Bank of Italy and the coins to the State Mint.

“5. Cash handlers, only as regards the activities specified in paragraph 2, shall withdraw from circulation the euro banknotes and coins that are unfit for circulation but that are not suspected of being counterfeit and shall give the bearer their value. The notes and coins shall be consigned, respectively, to the Bank of Italy and the National Centre for Coin Analysis (Centro Nazionale di Analisi delle Monete, CNAC) at the State Mint.

“Payment of the value of the banknotes that are unfit for circulation because they are damaged or mutilated is subject to the requirements laid down by European Central Bank Decision 2003/4 of 20 March 2003.

“Payment of the value of the banknotes that are unfit for circulation because they are damaged is subject to the requirements laid down in European regulations and in particular Regulation (EU) 1210/2010. With respect to the provisions of Article 8(2) of Regulation (EU) 1210/2010, euro coins

unfit for circulation that have been deliberately altered or subjected to procedures whose predictable effect was to alter them cannot be reimbursed.

“6. The ‘Centro nazionale di analisi delle monete (CNAC)’ at the State Mint, referred to in the list published by the European Central Bank in the *OJEC* of 19 July 2002 C 173/02, is assigned the tasks and functions referred to in Regulation (EU) 1210/2010, and in particular:

“- reception of euro coins suspected of being counterfeit and of those unfit for circulation;

“- performance of the tests specified in Article 5 of Regulation (EU) 1210/2010 on euro coin-processing machines;

“- performance of the annual controls specified in Article 6(2) and Article 6(6) of Regulation (EU) 1210/2010;

“- training of staff in compliance with the procedures established by the Member States.

“7. The Bank of Italy may carry out inspections at cash handlers to verify compliance with the obligations laid down by the Decision of the European Central Bank (Decision ECB/2010/14) of 16 September 2010 as amended, by the present Article and by its implementing provisions, with reference to euro banknotes. For the controls on cash handlers subject to inspection by the Finance Police pursuant to Article 53(2) of Legislative Decree 231/2007 as amended, the Bank of Italy can avail itself, also on the basis of ad hoc memoranda of understanding, of the collaboration of the Finance Police, which shall carry out the verifications requested using its powers for ascertainment of VAT and income taxes, within the framework of the human, financial and instrument resources envisaged by the legislation in force. The inspectors may require the exhibition of the documents and acts that they consider necessary and may take samples of banknotes handled in order to subject them to testing at the Bank of Italy; in this case the cash handler inspected has the right to have a representative present at the test.

“8. The Ministry for the Economy and Finance, the Bank of Italy, the ‘Centro nazionale di analisi delle monete (CNAC)’ and the other competent national authorities referred to in the decree of 26 September 2002 published in the *Gazzetta Ufficiale della Repubblica italiana*, Serie generale, no. 271 of 19 November 2002 shall sign ad hoc memoranda of understanding in order to coordinate the activities referred to in Article 8 and Article 8-bis of Decree Law 350/2001, converted with amendments as Law 409/2001, as amended and supplemented by the present Article.

“9. The Bank of Italy and the Ministry for the Economy and Finance, each within its sphere of competence on euro banknotes and coins, shall issue implementing provisions for the present Article, also in respect of the procedures and organization necessary to handle cash as well as data and information that cash handlers are required to transmit and, as regards euro coins, of the measures necessary to ensure proper implementation of Regulation (EU) 1210/2010. The provisions issued pursuant to this paragraph shall be published in the *Gazzetta Ufficiale della Repubblica italiana*.

“10. In the event of non-compliance with the provisions laid down in the European Central Bank Decision of 16 September 2010 (ECB/2010/14) as amended, in Regulation (EC) 44/2009 of the Council of 18 December 2008 amending Regulation (EC) 1338/2001 of the Council of 28 June 2001, in Regulation (EU) 1210/2010 of the European Parliament and of the Council of 5 December 2010 and in the present Article, or of the implementing provisions referred to in paragraph 9, the Bank of Italy and the Ministry for the Economy and Finance, each within its sphere of competence on euro banknotes and coins, shall apply to cash handlers a pecuniary administrative sanction of between €5,000 and €50,000 (five thousand and fifty thousand euros). For sanctions levied by the Bank of Italy, Article 145 of Legislative Decree 385/1993 as amended by Legislative Decree 104/2010 shall apply insofar as it is compatible.

“11. When in the course of an inspection the Bank of Italy detects cases of non-compliance with the provisions of the European Central Bank Decision of 16 September 2010 (ECB/2010/14) as amended, or with those of the present Article or with the implementing provisions referred to in paragraph 9, it shall require the cash handler to take corrective measures within a specified period of time. Until the non-compliance has been remedied, the Bank of Italy can prohibit the cash

handler from putting back into circulation banknotes of the denomination or denominations involved. In any event, the cash handler's failure to cooperate with the Bank of Italy in connection with an inspection itself constitutes non-compliance pursuant to this Article and its implementing provisions. Where the non-compliance is due to a defect in the type of machine used to process the banknotes, this may entail its deletion from the list of machines compliant with the rules published on the website of the European Central Bank.

“12. Non-compliance with the provisions of the European Central Bank Decision of 16 September 2010 (ECB/2010/14) as amended or those of the present Article or the implementing provisions referred to in paragraph 9, by banks or other financial intermediaries or payment service providers shall be evaluated by the Bank of Italy for their possible relevance to supervisory activity.

“13. In the event of non-compliance with the provisions of the European Central Bank Decision of 16 September 2010 (ECB/2010/14) as amended, or those of the present Article or the implementing provisions referred to in paragraph 9 by cash handlers other than those specified in paragraph 12, the Bank of Italy and the Ministry for the Economy and Finance, each within its sphere of competence on euro banknotes and coins, shall inform the competent control authorities so that they can consider the adoption of the sanctions provided for by the regulations in force.

“14. Without prejudice to the provisions of the preceding paragraphs, the Bank of Italy shall publish on its website the sanctions applied to cash handlers for non-compliance with the present Article or its implementing provisions.”

b) After Article 8 the following articles are added:

“Article 8-bis. (Provisions concerning the custody of euro banknotes and coins suspected of being counterfeit)

“1. The Bank of Italy shall keep in custody euro banknotes suspected of being counterfeit and withdrawn from circulation or confiscated pursuant to the rules of criminal procedure until their consignment to the competent authority.

“2. In derogation to the provisions of paragraph 1, the Bank of Italy shall, in the cases envisaged by Regulation (EC) 1338/2001 as amended by Regulation (EC) 44/2009, transmit the banknotes referred to in paragraph 1 to the other national central banks, to the European Central Bank and to other competent institutions and bodies of the European Union.

“3. The Bank of Italy shall inform the judicial authorities in advance of the transmission of banknotes pursuant to paragraph 2 when such transmission involves all the euro banknotes in custody or when the analysis to be performed consequent to the transmission may result in the destruction of all the banknotes in custody having the same counterfeit characteristics.

“4. From the moment of transmission carried out in compliance with paragraphs 2 and 3, the Bank of Italy shall no longer be subject to the national provisions requiring it to keep the objects in custody and present them upon request to the judicial authorities. If the return to their rightful owners of banknotes transmitted pursuant to paragraphs 2 and 3 whose falseness has not been established in court has been ordered, the Bank of Italy shall pay to such owners the equivalent value.

“5. No compensation shall be due to the Bank of Italy for the custody of euro banknotes suspected of being counterfeit; no surety deposit shall be required of the Bank of Italy for the custody of banknotes confiscated under penal law.

“6. The powers and functions of the Bank of Italy in respect of suspected counterfeit banknotes, specified in paragraphs 1 to 5 above, shall be exercised in respect of coins by the State Mint, without prejudice to the provisions of Article 1 of Law 154/1978 and Article 8 of the present Law.

“7. The Minister of Justice can issue a decree providing for the implementation of the foregoing paragraphs and for their coordination with the penal law and rules of penal procedure now in force, after consulting the Bank of Italy and the Ministry for the Economy and Finance, with regard

respectively to euro banknotes and coins. The decree shall be published in the *Gazzetta Ufficiale della Repubblica italiana*.

“Article 8-ter. (Official secrecy).

“1. The reports, information and data in the possession of public authorities by reason of the exercise of the powers envisaged in this section shall be covered by official secrecy also with respect to the public administration and may be used by the aforesaid authorities solely for the institutional purposes assigned to them by law. Official secrecy may not be claimed against the judicial authorities when the information requested is necessary to investigations or proceedings relating to criminal offenses.

“2. Article 2 of Decree Law 262/2006 as amended by the conversion Law 286/2006, shall be amended as follows:

“a) Paragraph 152 is replaced by the following:

“152. Cash handlers shall transmit electronically to the Ministry for the Economy and Finance the data and information relating to the withdrawal from circulation of euro banknotes and coins suspected of being counterfeit, according to the implementing provisions established by the Ministry for the Economy and Finance in a measure published in the *Gazzetta Ufficiale della Repubblica italiana*.

“b) Paragraph 153 is replaced by the following:

“153. In the event of non-compliance with paragraph 152 or with its implementing provisions, the cash handler responsible for the non-compliance shall be subject to a pecuniary administrative sanction of up to €5,000 (five thousand euros). The power to apply the sanction is assigned to the Ministry for the Economy and Finance, Treasury Department.

“c) After paragraph 153, the following paragraph is added:

“153-bis. Until the entry into force of the implementing provisions referred to in paragraph 152, the current provisions concerning transmission of data and information to the Ministry for the Economy and Finance shall remain in force.

“3. The implementation of the present article shall not entail new or increased charges to the State budget, and the competent administrations shall effect it with the human, instrumental and financial resources available under current legislation.”