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Regulation concerning the oversight of retail payment services and systems (18 September 2012)

THE GOVERNING BOARD OF THE BANK OF ITALY

In implementation of Article 146 of Legislative Decree 385 of 1 September 1993 (the Consolidated Law on Banking) amended by Article 35.18 of Legislative Decree 11 of 27 January 2010;

Having regard to Article 127.2 of the Treaty on the Functioning of the European Union;

Having regard to Article 22 of the Protocol on the Statute of the European System of Central Banks and the European Central Bank;

Having regard to Legislative Decree 210 of 12 April 2001 (transposing Directive 98/26/EC on settlement finality in payment and securities settlement systems) amended by Legislative Decree 48 of 24 March 2011 (transposing Directive 2009/44/EC amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims);

Having regard to the provisions issued by the Governor of the Bank of Italy on 24 February 2004 concerning the oversight of payment systems pursuant to Article 146 of Legislative Decree 385/1993;

Having regard to the regulation issued by the Governor of the Bank of Italy on 11 November 2005 concerning the oversight of low value payment systems;

Having regard to Legislative Decree 11 of 27 January 2010 (transposing Directive 2007/64/EC on payment services in the internal market, amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC);

Whereas in 2003 the Eurosystem established the oversight framework for euro-area retail payment systems, classifying them into three categories (retail systems of systemic importance, retail systems of prominent importance and other retail payment systems), and drew up the relevant oversight standards, based on the core principles for systemically important payment systems issued in 2001 by the Bank for International Settlements;

Whereas in 2004 the Eurosystem and the European Commission promoted the creation of the Single Euro Payments Area (SEPA) to foster the progressive elimination of national barriers to the supply of payment services and the creation of a more competitive framework for European retail payment infrastructures, with common rules and standards;

Whereas in 2005 the Eurosystem published a policy statement on the principles to be observed by central banks offering retail payment clearing and settlement services in competition with private systems;

Whereas the Bank of Italy (2004) and the Eurosystem (2006) issued business continuity guidelines concerning respectively qualified infrastructures of payment systems and operators of systemically important payment systems;

Whereas in 2011 the Eurosystem published the Eurosystem Policy Framework that defines the scope of application of the Eurosystem oversight function including retail payment systems;

Whereas in 2012 the Committee on Payment and Settlement Systems (CPSS) of the BIS and the Technical Committee of the International Organisation of Securities Commissions (IOSCO) published a report on new principles for Financial Market Infrastructures;

Whereas Article 146 of the Consolidated Law on Banking assigns the Bank of Italy powers not only to issue regulations but also to gather information, conduct inspections, take measures and impose sanctions in the form of administrative fines;

Considering the need to regulate the access of payment service providers to retail payment systems in accordance with the principles set out in Article 30 of Legislative Decree 11/2010;

Considering the need to review the secondary legislation on retail payment systems with a view to introducing provisions that consider the functions of exchange, clearing and settlement together even where managed by different subjects and that take account of the principles of oversight and the best practices agreed at the international level;

Considering that the definition of “retail payment system” used in the present regulation is consistent with that used by the Eurosystem and that it does not rule out the possibility for providers to process different payments in terms of amount and characteristics within the same system;

Considering that this regulation does not cover the exchange, clearing and settlement phases related to credit card transactions whenever they are executed outside a retail payment system, in line with the policy defined in the Eurosystem Oversight Framework for card payment schemes;

issues the following Regulation:

TITLE I – INTRODUCTORY PROVISIONS

Article 1

(Definitions)

1. In these provisions:
 - a) “retail payment system” means a system – with formal and standardized mechanisms of operation and governed by common rules – for the exchange, clearing and/or settlement of payment transactions for an amount of €500,000 or less, generally of low priority and transmitted in aggregate form;
 - b) “reliability” means limitation of the risks that may compromise or adversely affect the correct and smooth functioning of payment systems, with repercussions on public confidence in means of payment;
 - c) “efficiency” is the ability of a system to offer fast, cost-effective and practical services for its users that also bring benefits to the financial markets and the whole economy;
 - d) “manager” means the company or organization managing retail payment systems or single phases thereof; if a manager satisfies the requirements, it can also act as a participant;

- e) “participant” means a company or organization that participates in a retail payment system and accepts the obligations imposed by the law regulating participation in the system;
- f) “exchange” means the activity in which participants in the system exchange payment instructions, that is messages and orders for the transfer of funds or the extinguishing of obligations via clearing; a manager may directly draw up rules for the exchange activity or make reference to rules defined by others;
- g) “clearing” means the conversion into a single credit or debit position – in accordance with the rules of the system – of the claims and debts of one or more participants vis-à-vis one or more other participants pursuant to the exchange of payment instructions;
- h) “settlement” means the sending of participants’ credit or debit positions to Target2;
- i) “payment service providers” means electronic money institutions and payment institutions and, where providing payment services, banks, Poste Italiane S.p.A., the European Central Bank and the national central banks not acting as monetary authorities, other public authorities, and central, regional and local government departments not acting as public monetary authorities;
- j) “linkages” mean the set of operating rules and procedures permitting the exchange, clearing and settlement of payment information among participants in different retail payment systems;
- k) “malfunction” means disruption of system operation, procedural errors, deterioration in payment transaction processing times, loss of confidentiality and unauthorized alteration of data.

Article 2

(Purpose and scope)

These provisions are designed to increase reliability and efficiency in the provision of retail payment services in Italy. They apply to payment service providers and managers of retail payment systems whose registered address and/or centre of operations is in Italy.

TITLE II - OBLIGATIONS

CHAPTER I – PAYMENT SERVICE PROVIDERS

Article 3

(Notification requirements)

Payment services providers intending to use payment systems other than those falling within the scope of this regulation for the exchange, clearing or settlement of retail payments are required to notify in writing to the Bank of Italy: a) the name of the system and its manager; b) the country of location.

If the system's registered address and/or centre of operations is located in a country outside the euro area, the Bank of Italy must also be supplied with a statement by the competent oversight authority describing the type of control exercised; the Bank of Italy will verify consistency with the principles on which this Regulation is based.

CHAPTER II – RETAIL PAYMENT SYSTEM MANAGERS

SECTION I - ORGANIZATION

Article 4 **(Organisation)**

Retail payment system managers shall design the organizational model according to the system's operational complexity. They must ensure i) that the competence of each organisational unit is defined clearly and unambiguously in order to ensure the coordination of functions and reduce possible overlapping roles and conflicts of powers; ii) that decision-making responsibilities in respect of the main management activities are specifically identified and suitably documented; and iii) that mechanisms are defined for verifying and measuring the performance of operating units.

In order to meet the needs of participants, managers shall consider setting up committees with advisory functions, which shall operate according to rules that are clearly defined and notified to participants.

Where exchange, clearing and/or settlement functions are carried out, in whole or in part, by different managers, coordination of activities performed must be ensured.

Article 5 **(Effectiveness of controls)**

Managers shall adopt a control framework that is commensurate with business, legal and operational risks and any other risks that might compromise the system's reliability. In particular, they shall: i) make sure that the services offered comply with the legislation in force, as well as with internal strategies, regulations and procedures; ii) determine the content and the timing of the control bodies' reports to the decision-making bodies; iii) review – at least once a year – the overall effectiveness of the internal control system; iv) draw up each year a control plan concerning the risks associated with performed activity and a priority order of measures to be taken; and v) draw up a classification of malfunctions and decide the content and timing of reports to be submitted by the operating units to the management and control bodies.

In the course of everyday operations, managers shall be responsible for i) promptly identifying any malfunctions on the basis of the classification referred to in point v), determining their causes and eliminating them; ii) recording the frequency and characteristics of events and continuously updating the relative data; and iii) determining the measures needed to prevent the occurrence of malfunctions. In the more serious cases, both the management and the control function shall be notified without delay.

The manager shall submit a yearly report to the Bank of Italy concerning any malfunctions occurring in the course of the previous year.

Article 6 **(Outsourcing)**

Managers shall assess the efficiency and risk profiles associated with the outsourcing of core functions for the provision of the service.

In deciding whether to outsource, managers shall make a cost/benefit analysis of that decision and lay down the criteria to be followed in the choice of provider. Furthermore, they shall make sure that the contract sets out i) the rights, obligations and responsibilities of the parties concerned, also vis-à-vis system participants; ii) the rules governing the service levels and the penalties for failure to comply with them; iii) the type of information that the provider is required to provide periodically to the manager; iv) the means by which the manager and the Bank of Italy can access information held by the provider; and v) the alternative measures available to minimize the impact

in the event of the provider's bankruptcy and the steps to be taken either to replace the provider or to in-source the outsourced activities.

Managers shall verify compliance with the contract and monitor the activity of the provider in order to guarantee the quality of outsourced services.

SECTION II – RISK MANAGEMENT

Article 7

(Business risk)

Managers shall periodically draw up and approve a plan to maintain and develop the service – including any linkages with other systems – taking account of the characteristics and situation of the market, participants' requirements, opportunities offered by the new technologies.

Managers shall maintain an economic/financial situation such as to allow the smooth supply of services and the economic sustainability of the investment needed for the maintenance and development of services.

Article 8

(Legal risk)

Managers shall ensure that the rules, procedures and contracts relating to system operations be consistent with the applicable legal framework and valid in all the jurisdictions involved.

Managers shall i) formulate the terms of supply of the service (including fees and minimum service levels) in a clear and transparent way; ii) describe in the system's operating rules their own responsibilities, those of the participants, and those of the parties they use to operate the system; iii) define the moment when the payment order is entered and conditions for its revocation; and (iv) arrange for suitable mechanisms to trace an order through the various phases of the processing cycle.

The system's rules of operation must govern the case of default of a participant, providing for suitable procedures to reduce the possible adverse effects on the system and on the other participants, by defining the procedures to be activated, the operating units responsible and the procedures for involving the participants.

Managers may process personal data whenever this is necessary in order to prevent, identify and investigate cases of payment fraud. Such data must be processed in accordance with Legislative Decree 196 of 30 June 2003 (Personal Data Protection Code).

Article 9 (Operational risk)

Managers shall adopt a framework for managing operational risk in order to prevent: i) the disruption of operations; ii) procedural errors, iii) a reduction in the processing function; and iv) the loss of confidentiality and unauthorized alteration of data.

To this end, managers must identify a policy for operational risk management that establishes objectives in terms of a) availability of the system; b) reliability (maximum number of interruptions in a certain period); c) recovery time (maximum time limit for restoration of service in the event of an anomaly); and d) point in time of recovery (the exact time up to which the integrity of consolidated data is guaranteed).

Managers shall also set up mechanisms to identify and evaluate risk and implement strategies in response to specific incidents; managers must evaluate the risk management framework annually by carrying out self-assessment exercises.

The operational risk management framework shall also include technical and organizational measures to reduce the likelihood of malfunctions and to limit any related effects. Managers of systemically important systems must observe the specific rules on business continuity notified by the Bank of Italy.

SECTION III – ACCESS AND LINKAGES

Article 10

(Access)

Managers shall set the operational, financial and legal requirements that the participants must satisfy to ensure the regular and timely fulfilment of the participants' obligations towards the system and towards the other participants. These requirements must be objective, non-discriminatory and proportionate and should not inhibit access more than is necessary to safeguard the system against specific risks, such as settlement risks, operational risks and business risks and to protect the financial and operational stability of the payment system.

The regulations governing access to retail payment systems cannot impose any of the following requirements on payment service providers, payment services users or other payments systems: i) restrictions on effective participation in other payment systems; ii) discrimination between authorized and registered payment service providers in relation to the rights, obligations and prerogatives of participants; and iii) restrictions based on institutional status.

The two preceding paragraphs do not apply to: i) payment systems designated pursuant to Legislative Decree 210/2001; ii) payment systems exclusively made up of payment service providers belonging to a group composed of connected companies linked by capital, where one of the connected companies effectively controls the others; and iii) payment systems in which the same payment system provider: 1) acts or can act as a payment service provider for both the payer and the beneficiary and has exclusive responsibility for managing the system and 2) authorizes other payment service providers to participate in the system and the latter do not have the possibility of negotiating fees among themselves in relation to the payment system, although they can establish their own charges for payment service users.

Article 11

(Linkages)

Managers may establish linkages with other systems to enlarge the range and reach of the services provided. In this case, managers shall come to an agreement with the linked systems as to the mechanisms to be used to exchange relevant information and to take decisions on matters of common interest.

Managers shall analyse the risks deriving from the linkage and, in particular: a) whether the linked systems are subject to oversight; b) whether there are mechanisms in the linked systems to manage the risks deriving from a participant's default; and c) whether the contractual rules governing the linkage are valid, applicable and compatible with the general rules of system operations. The managers, unlike the central banks, shall ensure that the funds used to settle payments passing through the links are kept separate from the manager's own funds.

The functioning of the link must be monitored and incidents identified, managed and catalogued, ensuring the business continuity of the link. With reference to the management of operational risk, the measures described in Article 9 of this regulation will be applied.

SECTION IV – COMMUNICATIONS

Article 12

(Information obligations)

Managers shall transmit the following information to the Bank of Italy at the start of operations and then within the established terms:

- (a) statute, articles of association and internal regulations relating to the matters referred to in Title II, Chapter 2 of the present Regulation;
- (b) organization chart, function chart, and any management committees dealing with the provision of payment services;
- (c) financial statement;
- (d) strategic and operational plan;
- (e) resolution setting up the committees pursuant to Article 4.2, if any;
- (f) report on reviews made pursuant to Article 5.1 (iii);
- (g) annual control plan to be made pursuant to Article 5.1 (iv);
- (h) plan for the classification of malfunctions pursuant to Article 5.1 (v);
- (i) report on malfunctions of the control function pursuant to Article 5.2;
- (j) outsourcing contract pursuant to Article 6;
- (k) feasibility studies for new activity development projects, including linkages;
- (l) system operation rules;
- (m) technical/operational requirements for entry of payment orders into the system;
- (n) participants' master contract;

- (o) fees;
- (p) service level agreement;
- (q) list of reachable participants;
- (r) documentation on operational risk management pursuant to Article 9;
- (s) access and exclusion criteria;
- (t) linked systems master contract.

Managers must also send periodic reports on malfunctions and statistical data on system operations; the characteristics and frequency of such reports to be set by the Bank of Italy.

Article 13 **(Means of communication)**

Documentation shall be sent to the certified e-mail address smp@pec.bancaditalia.it. After the first e-mail, managers shall update the documents as and when there are important changes made and, in any case, on a yearly basis.

This obligation will be considered fulfilled when the documents and information have been sent to the Bank of Italy as part of the obligations to be fulfilled under the Consolidated Law on Banking.

SECTION V – RETAIL PAYMENT SYSTEMS **MANAGED BY THE BANK OF ITALY**

Article 14 **(Legal aspects)**

For the purposes of this Regulation, Article 5 (Effectiveness of controls) paragraph 1, Article 10 (Access), Article 12 (Information obligations), Article 13 (Means of communication) and Article 16 (Sanctions) shall not apply to the retail payment systems directly managed by the Bank of Italy as a not-for-profit public service. Article 4 (Organisation) and Article 7 (business risk) shall apply insofar as applicable.

The information obligations towards the Bank of Italy as manager are fulfilled with the activation of internal information channels. The documents and information to be provided are the following:

- a) report on malfunctions of the control function pursuant to Article 5.2
- b) outsourcing contract pursuant to Article 6;
- c) participants' master contract;
- d) system operation rules;
- e) technical/operational requirements for entry of payment orders into the system;
- f) fees;
- g) service level agreement;
- h) list of reachable participants;
- i) documentation on operational risk management pursuant to Article 9;
- j) linked systems master contract;
- k) any plans to maintain, develop and broaden the services offered;
- l) periodic reports on malfunctions and statistical data on system operations.

Article 15
(Recovery of costs)

The principle of cost recovery shall apply to the Bank of Italy's retail payment systems.

TITLE III - SANCTIONS

Article 16
(Sanctions)

For the violation of the rules under Title II of this Regulation the pecuniary and administrative sanctions foreseen under Article 144.1 of the Consolidated Law on Bank shall apply.

TITLE IV – FINAL PROVISIONS

Article 17
(Abrogation)

From the date of entry in force of the present Regulation, the Regulation of the Governor of the Bank of Italy of 11 November 2005 concerning the oversight of low-value payment systems is abrogated.

Article 18
(Entry into force)

The present Regulation shall be published in the *Gazzetta Ufficiale della Repubblica italiana* and enter into force on the fifteenth day following publication.

The Governor
(Ignazio Visco)