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Electronic Money Institutions and Payment Institutions

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4.1 Introduction

In the early 2010s, the Italian discipline of payment services has, under the influence of EU legislation, undergone fundamental changes concerning both the persons enabled to provide such services and the activity itself.

At first, the transposition of Directives 2000/46/EC and 2000/28/EC, performed by l. no. 39/2002, has led to the insertion into Legislative Decree no. 385/1993 (Consolidated Law on Banking, hereafter Testo Unico Bancario, TUB) of Title V-bis, dedicated to the Electronic Money Institutions (EMIs).

Later, Legislative Decree no. 11/2010, implementing the Directive 2007/64/EC (the Payment Services Directive, PSD), has determined the introduction of Title V-ter of TUB, concerning the Payment Institutions (PIs).¹

Lastly, the implementation of Directive 2009/110/EC (Electronic Money Directive 2), through Legislative Decree no. 45/2012, has led to a significant rewriting of Title V-bis of TUB (now called Electronic Money and Electronic Money Institutions), aligning the EMI discipline with the rules on PIs, in order to ensure both a level playing field for all the providers of payment services and homogeneous supervisory regimes.

Due to these innovations, the Italian market for payment services – traditionally ruled by banks – has adapted to several and consistent changes. New operators, in fact, can compete with the banks in the provision of payment services, making the market more dynamic and competitive.²
Nevertheless, the current legislative framework has turned to be quite complex and fragmentary. First of all, in fact, the aforesaid provisions of the TUB need to be broadly complemented by the supervisory regulations issued by the Bank of Italy (Disposizioni di vigilanza per gli istituti di pagamento e gli istituti di moneta elettronica of 20 June 2012) and by Legislative Decree no. 11/2010 (containing the general discipline of payment services). Besides, we must take into account the rules on the transparency of contractual conditions (Art. 126-bis et seq. TUB), with the related regulations adopted by the Bank of Italy, as well as other different provisions, such as those on the anti-money laundering (Legis/la/tive Decree no. 231/2007).

Considering the extensive scope of the subject matter, we will focus especially on the payment service providers (other than banks), referred to in the TUB, that is the EMIs (Art. 114-bis et seq.) and the PIs (Art. 114-sexies et seq.). We will, however, omit the examination of the general discipline on the provision of payment services set out by Legislative Decree no. 11/2010.

It should be noted, moreover, that the matter will be further affected by the forthcoming PSD review, aiming at fostering the efficiency, competitiveness and safety of the European payment market, to the benefit of the consumer in particular.

4.2 Electronic money institutions

4.2.1 The main activity of EMIs

Electronic money is a specific payment instrument consisting in an electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions and which is accepted by a person other than the issuer (Art. 1, para. 2, letter h-ter TUB, as amended by Legislative Decree no. 45/2012). Therefore, as defined by the legislators (European and Italian), the notion of electronic money merely identifies the nature of this means of payment (a claim on the issuer) and its purposes (execution of payment transactions with a person different from the issuer), deliberately expressing neutrality with respect to the various (and evolving) technological solutions to be used for its issuance. But what falls outside the definition, instead, is any reference to another fundamental characteristic of the