

BANCA D'ITALIA

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The new oversight provisions of the Bank of Italy

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CONTENTS

The European legal framework



The Italian legal framework:

- art. 146 Italian banking law
- other relevant laws
- oversight provisions



The European Legal Framework



The ESCB shall “promote the smooth operation of payment systems”

Article 105(2) of the Maastricht Treaty and Article 3(1) of the Statute of the ESCB/ECB

“The ECB and national central banks may provide facilities, and the ECB may make regulations, to ensure efficient and sound clearing and payment systems within the community and with others countries”

Article 22 of the Statute

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The European Legal Framework



The ECB shall be consulted “on any proposed Community act in its fields of competence and by national authorities regarding any draft legislative provision in its fields of competence”

Article 105(4) of the Maastricht Treaty

“... the ECB shall be entitled to impose fines or periodic penalty payments or undertakings for failure to comply with obligations under its regulations and decisions”

Art. 34(3) of the Statute

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The European Legal Framework



Directives and regulations relevant for payment systems

Examples:

- 97/5/CE directive on cross-border credit transfer;
- 98/26/CE directive on “settlement finality”;
- Reg. 2560/2001 on retail payments in euro;
- The New Legal Framework.

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Role of ECB and NCBs

ECB is responsible for:

- defining policy guidelines
- carrying out direct interventions (e.g. TARGET management)
- overseeing payments between EU countries and with non-EU countries

NCBs are responsible for:

- implementing guidelines laid down by the ECB
- monitoring national systems
- carrying out direct interventions on national systems

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The Italian Legal Framework



(Oversight on payment system)

“Banca d’Italia shall promote the regular operation of payment systems. For this purpose it may issue regulations to ensure the efficiency and reliability of clearing and payment systems”

Article 146 of the 1993 Banking Law

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Main Specific Law Interventions



E-money schemes

Art. 114 quater, paragraph 3, banking law

Electronic signature

Legislative Decree 10 of 23 January 2002

Irregular cheques and payment cards data base (CAI)

Legislative Decree 507 of 30 December 1999

Postal regulation

Presidential Decree 144 of 14 March 2001

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Main Issues



- **What does regular operation mean?**
- **Which is the scope of application?**
- **What does the oversight enforcement consist of?**

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General Oversight Provisions Regulation 24th February 2004



- **Objectives**
- **Scope of application**
- **Enforcement**

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Objectives

Payment systems regular operation in terms of:

Reliability

limitation of systemic risk and other risks that may jeopardize or negatively affect the proper and continuous operation of the payment system and public confidence in payment instruments

Efficiency

ability to provide services which are rapid, economical and practical for users and advantageous for the financial markets and the economy

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Scope of application

- **Payment systems**
- **Infrastructure services**
- **Payment instruments**



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Scope of application - Payment systems



An organised set of technical and logical infrastructure, persons, procedures and rules designed for the transfer of money

(Public systems, private systems, payment circuits)

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Scope of application - Payment systems

- **Clear and transparent operating rules**
- **Risk-control mechanisms**
- **Transparent access criteria**
- **Transparent pricing mechanisms**
- **Transparent decision making and coordination mechanisms**



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Scope of application – Infrastructure Services



**Installations used by
one or more persons
that permit data management
for the transfer of money**

(SIA and others)

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Scope of application – Infrastructure Services

- **Technical and operational specifications**
- **Security measures and controls**
- **Operational continuity**
- **Service levels**



**Other requirements are requested for the
operators of significant infrastructures**

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Scope of application – Payment instruments

Every paper-based, electronic or
other means to effect the transfer
or withdrawal of money



*Traditional instruments (e.g. cheques),
innovative instruments (e.g. e-money)*

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Scope of application – Payment instruments



- Transfer or withdrawal of money
efficient and within a limited time frame
- Service reliability and continuity
- Illicit use (e.g. frauds) or use for illicit
purposes (e.g. money laundering)
prevention



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Enforcement



Disclosure requirements

- Bank of Italy can require data and information concerning activities falling within the scope of oversight rules
- Bank of Italy can ensure the general availability of information held to be relevant

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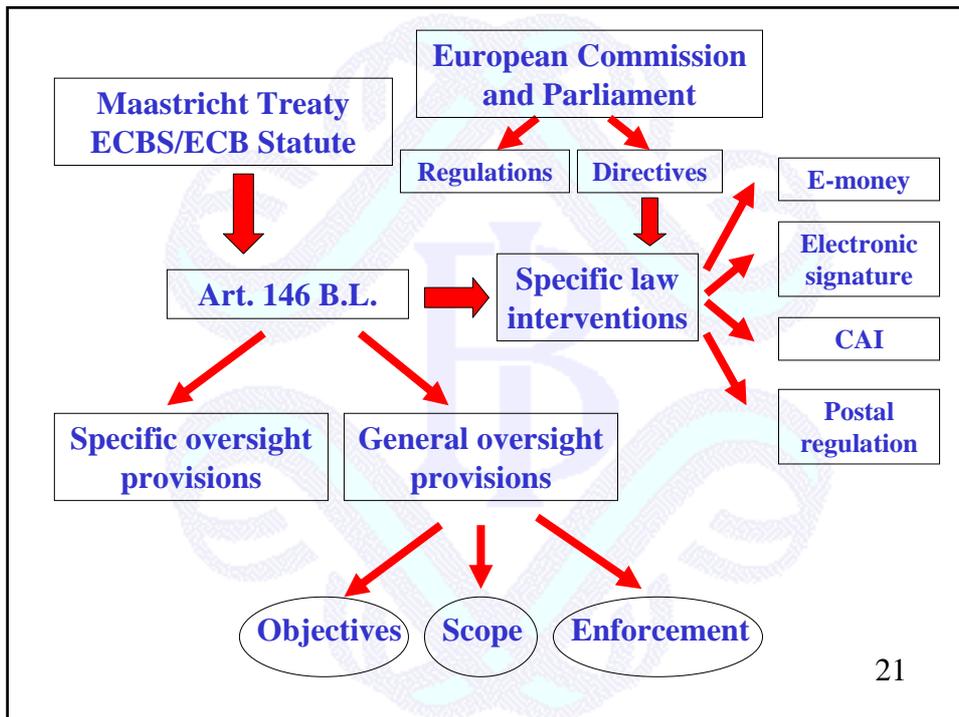
Enforcement



Sanctions

Penal sanctions in case of obstructions of financial control activity (art. 2638 civil code)

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