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BANKING

Starting 14 September 2019, the Payment Services Directive 2 officially entered into force in Italy

Innovative actions of the PSD2 concern: (i) the Open Banking, positively accepted by operators and (ii) the Strong Customer Authentication, for which some critical issues have been identified.

In recent years, the European payment system has been affected by an unprecedented evolution. The progress of technology has determined the need to modify the regulatory framework of the European Union on payment services.

Consequently, it was considered appropriate to establish new rules in order to fill the gaps identified in Directive 2007/64/EC (so-called "Payment Services Directive" or "PSD"). In addition, it was necessary to ensure a uniform application of the legislative framework in the European Union. In fact, the application of the PSD1 had not been uniform in the Member States and many operators and intermediaries were not regulated. In addition, there was no a complete standardization of payment solutions and security systems and the rates applied to payments were not consistent among the various Member States.

For these reasons, the EU decided to adopt the new directive 2015/2366 (so-called "Payment Services Directive 2" or "PSD2"), which repealed the PSD, published at the end of 2015.

Starting from 14 September 2019, the PSD2 officially entered into force in Italy.

The PSD2 establishes new important rules especially in the fields of the so called "Open Banking" and the "Strong Customer Authentication".

The Open banking allows non-banking third party operators ("Third Party Providers") to directly access information relating to the bank current account contained in the Application Programming Interface (API) of the bank. In such a way, transactions will be easier to perform. The client will be entitled to make a payment with a simple click, without need of physical devices like *bancomat*, credit cards, etc.

APIs will allow Third Party Providers to offer innovative services and products aimed at satisfying users' needs. The e-commerce sector will benefit enormously in terms of operations and functioning. In fact, from now onwards, electronic transactions can be carried out directly from the bank current account, without commissions and intermediaries.

The reliability of the system is ensured by the fact that the API access will be allowed to startups approved by the financial services authorities and for specific needs only. Furthermore, the user will not have to share his credentials with operators outside his bank and will have the right to revoke his authorization at any time.

Open Banking has been positively accepted by operators. On the contrary, in relation to the Strong Customer Authentication (the other innovative aspect introduced by the PSD2) several critical aspects were identified.

The Strong Customer Authentication concerns the strengthening of the security system for authentications and authorizations for online payment card transactions, through a mechanism that combines the use of at least two of the instruments approved by the relevant legislation (password, pin, fingerprint, new generation token).

Not all operators are ready to adapt to what is required by the EU directive, therefore the Bank of Italy, upon advice of the European Banking Authority (EBA), has granted an extension of the terms for the completion of the process. Such an extension, however, is granted only to those operators who will present a detailed migration plan, which also includes the adoption of proper customer information actions.

In fact, the rules concerning the liability arising from the failure to comply with the safety requirements adopted by the legislation in the event of fraud during the interim period will be immediately applicable. In particular, under the new provisions, if fraud or abuse occurs, the service provider is required to refund the amount of unauthorized transactions within just one working day, starting from the relevant provided by the user.

TRUST

The Italian Supreme Court clarifies that the Italian real estate tax is to be paid by the trustee

With the judgment no. 16550 of 20 June 2019, the Italian Supreme Court stated an important principle and clarified an uncertain situation about the taxable person under the Italian real estate tax.

With the judgment no. 16550 of 20 June 2019, the Italian Supreme Court established that the taxable person for the purposes of the Italian Real Estate tax (the so called “IMU”, formerly “ICI”) is the trustee of the trust to which the real estates are transferred.

IMU is a local tax levied by the municipality on real estate properties, building areas and agricultural lands.

Italian tax laws expressly provide that a trust is a taxable person for the purposes of income taxes. However, nothing was provided for the purposes of IMU which is due by the owner of real estate assets located in Italy. For this reason, some doubts arose with respect to the taxable person in the specific case of real estate owned by a trust in consideration of the fact that the ownership of the trustee is not a full and free ownership but it is a sort of “finalized” ownership for the ultimate benefit of the beneficiaries.

The Supreme Court has stated that the fact that the trustee is obliged to manage and exploit the property for the ultimate benefit of the beneficiaries is not relevant for the purposes of IMU, being sufficient that the trustee results as the formal owner of the real estate in order to make him liable for the IMU. Therefore, the taxable person is the trustee.

The Supreme Court has also pointed out that recognizing the trustee as the taxable person for IMU purposes does not entail that the personal creditors of the trustee are entitled to attack in any way the estate of the trust: in fact, the segregation of the trust estate from the personal estate of the trustee is always applicable.

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