

# Public Consultation on the New Register of Agents of Payment Service Providers and E-Money Institutions

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On 7 October 2021 the Italian Ministry of Economy (“MEF”) launched a public consultation on the draft decree (the “Draft Decree”) regulating the new register of agents and affiliated distributors of payment service providers (“PSPs”) and e-money institutions (“EMIs”).

The Draft Decree implements Article 45 of the Italian Legislative Decree No. 231/2007 (the “AML Decree”), which requires the establishment of a digital register containing data on agents and affiliated distributors of PSPs and EMIs operating in Italy (the “Register”).

The purpose of the Register is to enhance the transparency on the business carried out by agents and affiliated distributors of PSPs and EMIs in Italy, and increase market integrity for anti-money laundering (“AML”) purposes.



## Agents and Affiliated Distributors of PSPs and EMIs

Under Italian law any person which promotes and concludes financing contracts or contracts for the provision of payment services on behalf, among others, of banks, EMIs or payment institutions must be enrolled in the register of financial agents (*agenti in attività finanziaria*) kept by a public body operating under the supervision of the Bank of Italy (*Organismo Agenti e Mediatori*) (“OAM”).

Financial agents that only perform payment services (*agenti nei servizi di pagamento*) must be enrolled in a special section of the OAM register and are subject to a “light touch” regulatory regime.

These registration requirements do not apply to affiliated distributors and agents (*soggetti convenzionati e agenti*) which exclusively carry out payment services on behalf of PSPs or EMIs established in other EU Member States.



Payment agents of EU PSPs or EMIs are accordingly exempt from the requirements applicable to payment agents of Italian PSPs or EMIs. They are subject to limited reporting obligations to the OAM and must comply with the Italian AML requirements, as well as with the rules on transparency of banking and financial products and services, as applicable.

EU PSPs or EMIs operating in Italy by way of “*establishments in forms other than a branch*” through local agents and affiliated distributors must appoint a central contact point (“**CCP**”) to ensure compliance with the Italian AML rules and facilitate the supervision by Italian competent authorities.



*PSPs and EMIs will be required to transmit a number of data regarding their agents and distributors to the OAM, which will be included in the OAM Register and made publicly available*

### **Purpose of the Register**

Article 45 of the Italian AML Decree provides for the establishment of a Register in digital form to be kept by the OAM. The Register will contain certain data concerning agents and affiliated distributors of PSPs and EMIs operating in Italy, as specified below.

The Register will be established for those agents and affiliated distributors – other than those registered in the register of financial agents kept by the OAM or the special section of payment agents referred to above – which are used by PSPs and EMIs for the purpose of their Italian business.

PSPs, EMIs, their branches and the CCPs will have to transmit the relevant data on a semi-annual basis (by 15 January and 15 July of each year) to the OAM via the OAM website. The data must be transmitted either directly by the PSP, EMI or branch, or – in case of PSPs or EMIs established in other EU Member States – by the appointed CCP.

The OAM will register such data in the Register and will attribute an identification code to each agent or affiliated distributor enrolled in the Register. The data registered in the Register will be publicly available.

### **Data to be Transmitted to the OAM**

PSPs and EMIs will have to transmit the following data to the OAM:

- ▶ their corporate name, registered office and home Member State;
- ▶ where applicable, their tax identification number, as well as the identification and registration number with the register kept by the competent authority of their home Member State;
- ▶ a certified e-mail address for the communications with the OAM;
- ▶ the name and surname of the agent or affiliated distributor (or, in case such agent or affiliated distributor is a legal entity, its corporate name and the name and surname of its legal representative);
- ▶ the name and surname of the person responsible for each operational office (*sede operativa*);



- ▶ the tax identification number of the agent or affiliated distributor;
- ▶ information on the residence, domicile or registered office of the agent or affiliated distributor, and the address of each operational office;
- ▶ the starting date of the mandate or distribution arrangement;
- ▶ confirmation on whether the agent or affiliated distributor performs money remittance services.



*The restricted section of the Register will contain information on the mandates terminated by PSPs and EMIs for serious irregularities or reputational issues concerning their agents or affiliated distributors*

### **Restricted Section of the Register**

PSPs and EMIs will have to notify the OAM if the mandate given to their agents or affiliated distributors is terminated as a result of serious or reiterated breaches of the AML procedures, or the loss of the reputational requirements ensuring the compliance with the law and the correct implementation of such procedures.

This information will have to be notified within 30 days and will be registered in a restricted section of the Register, which can be only be accessed by the Bank of Italy, the Italian Financial Intelligence Unit (*UIF*) and the Italian Fiscal Police (*Guardia di Finanza*) for AML purposes, as well as by other PSPs, EMIs, their branches and CCPs to ensure that market operators carry out their business in a correct manner and in compliance with the law.

The restricted section will also contain information on the suspension measures and pecuniary sanctions adopted by the OAM towards the agents and affiliated distributors.



*Specific notification requirements will apply to central contact points (CCPs) appointed by EU PSPs and EMIs*

### **Notification Requirements Relating to CCPs**

Under the Draft Decree PSPs and EMIs established in other EU Member States must promptly transmit the identification data of the CCP appointed to operate in the Italian territory to the OAM. The CCP must communicate to the OAM the date when it starts to operate. The OAM will specify the timing and modalities to transmit the above notifications.

The data concerning the appointed CCPs will be included in a separate section of the Register which will be publicly available.

### **Contributions and Implementing Regulations**

The OAM will specify the semi-annual contributions to be paid by PSPs and EMIs in order to finance the setting-up, development and management of the Register.

The OAM will also have to issue the implementing regulations laying down the technical aspects concerning the functioning of the Register. The implementing regulations must be issued within 60 days of the date when the Draft Decree will enter into force, and the Register is due to become operational within 3 months of such date.



*The establishment of the Register will facilitate the exercise of supervisory powers by Italian authorities on the activities carried out by agents and affiliated distributors of PSPs and EMIs in Italy*

## Implications for PSPs and EMIs

The public consultation launched by the MEF constitutes the first step of the legislative process for the establishment of the Register and will last until 5 November 2021.

Once the Register will be established, PSPs, EMIs and CCPs will be subject to the reporting requirements described above in respect of the agents and affiliated distributors operating on their behalf in the Italian territory.

The data transmitted to the Register will enable Italian authorities to supervise agents and affiliated distributors operating on behalf of PSPs and EMIs in Italy on the basis of a complete set of information. This will facilitate the exercise of supervisory powers on their activities, considering in particular that agents and affiliated distributors of PSPs and EMIs established in other EU Member States are exempt from the duty to be enrolled in the register of financial agents kept by the OAM.

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