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THE SYSTEM OF ADR IN PAYMENT SERVICES AND ITS IMPLEMENTATION IN THE ITALIAN LEGAL SYSTEM

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The paper examines the Italian ADR system for financial and banking disputes. It moves from PSD framework and examines the transposition Decree n. 11/2010 and the regulations of the Bank of Italy. Finally, the paper takes into account PSD2 dispositions.

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1. The protection of out-of-court users of payment services in the Community framework.

Directive 2007/64/EC, known as PSD, has, among its main objectives (as stated in the Recital n.4), the provision to the payments industry of a modern and consistent legal framework, guaranteeing equal working conditions for all businesses by allowing (users also including non consumers) a choice of services, taking also advantage of the benefits associated with the higher levels of safety and efficiency compared to the (pre) existing standards at national levels. In this context one would need to put the provisions relating to the prudential requirements for access to the market of new providers (payment institutions), the rules setting out the requirements that must be met, in terms concerning information and transparency, in the conditions of contracts and the specific provisions regarding the rights and obligations of the parties. Particularly re1evant to the users of these services are the contractual transparency and disclosure requirements, which are set up in ways that vary according to whether or not one is dealing with consumers (which include microenterprises).

Of essential value are, also, the rules aimed at boosting user confidence in the system of payment services, by providing a set of adequate and effective supervisions on the prescribed regulatory framework.

With this in mind, we must consider the rules laid down in Article no. 80 of the PSD, which requires member states to establish procedures allowing users of payment services and other interested parties, including consumer associations, to submit complaints to the competent authorities regarding alleged violations by payment service providers of the provisions of domestic law adopting to the provisions of the PSD.

Paragraph 2 of Art. 80 also provides that, where appropriate, and without prejudice to the right to file a complaint before a court in accordance with national legislation relating to the procedures , the response of the competent authority shall inform the complainant of the existence of extra-judicial appeal procedures provided for pursuant to art. No.83.

The system of protection established by the PSD takes on a particular value , in the first instance because the complaints procedures have reached a full and complete form , compared to other "models" in Community legislation setting up "consumer protection", and also because it is a system designed to introduce a wel1-articulated protection procedure for complaints and out-of¬court appeals, which art. No.80 already identifies as a potential connection and lastly because, compared to the previous and analogous

systems of protection provided by the EU, the PSD gives a central role to the protection of the individual user of payment services.

To start with, one should observe that the Community rules on the subject of "complaints " is, in broad terms, subjective and objective: it extends the possibility of complaints to users, other interested parties as well as to consumer associations, and puts the remedy of the complaint in relation to violations potentially concerning all the provisions in domestic law, enacting the wording of the PSD.

Secondly, the rule sets the procedure to be fol1owed after the complaint, leaving space for the national legislator to determine whether the authority receiving the complaint should or not inform users about the existence of out-of-court redress procedures mentioned in art.83 of the PSD. In any case the right to seek redress from the judicial authority is made safe and, therefore, is a sanctioned right which cannot be forsaken even if a complaint to the administrative authority has already been made.

The PSD does not take a position, nor in relation to the authority delegated to collect the claims, nor on the issue, raised in literature, on whether it should be the same authorities which receive the complaints also to decide the disputes between users and providers of services. The PSD mere1y stresses the desirability that said authority publicizes the information regarding the existence of out¬of-court procedures protecting the rights of users of payment services. This puts on very meaningful value to the success of ADR systems, very often so little known to the potential users of this service,

In implementing Article no.80 of the PSD Directive, the delegated legislator, in art. 39 of Legislative Decree no.11/2010, has reproduced the provisions of Community law, completing them with additional rules, The active legitimacy remains ample: it establishes that any claims, whether by payment service users or their associations or other interested parties, be presented to the Bank of Italy, which is therefore identified as the competent authority . Instead the subject of these complaints is limited, instead, to alleged violations relating only to the rules introduced in Titles II and N of the adoption Decree and not the transposition and implementation of all the provisions of the Community guidelines.

One can propose claims to all the actors who provide payment services, as identified in art. No.1 of Leg. Decree No.11/2010. The decision to recognize the Bank of ItaIy as the competent authority to ensure compliance with the regulations implementing the PSD, has been taken on the basis that the Delegating Law of JuIy 7th, 2009, no.88 (Community Law 2008) , confers a central role to it in the creation and application of the delegated rules for the supervision of payment institutions and for monitoring of the compliance of

the overall national framework of implementation of the PSD. Specifical1y, Article no.32, paragraph 1, of the aforementioned Law n.88/2009 identifies the Bank of Italy as the competent authority for issuing regulations implementing Legislative Decree no. No. 11/2010 and, in addition , directly to incorporate the "related implementing measures adopted by the European Commission through committee procedures" (paragraph p). The Bank of Italy must "authorize the start of operations and exert control over the authorized payment institutions, verifying their compliance with the conditions laid down by the PSD for the execution of payment transactions" (paragraph f), and "specify the rules governing the access to payment systems" (paragraph g). Therefore, as the "creator" and guardian of these rules, the legislator has entrusted it with dealing with the related "claims".

For the purpose of setting the frame the "appeals" regulation, of particular interest is the second sentence of Artic1e. No.39 of Legislative Decree No.11/2010, where it states that the Bank of Italy "informs" (must inform) the claimant of the existence of alternative dispute resolution systems established pursuant to art. No.12S-bis of the Italian Banking Act. The rule, in any case, echoing the Community framework, does not exclude the possibility of action through the competent judicial authority.

The Bank of ItaIy has been identified as the body responsible for receiving complaints. Moreover, the Bank of Italy will be entrusted with informing the complainant of the existence of an alternative dispute resolution procedure as laid down in the Italian Banking Act and, thirdly, as originator of the activity of the Arbitro Bancario Finanziario (hereinafter ABF), established by the Bank of ItaIy in 2009, for the resolution of disputes between financial intermediaries and customers. Therefore, the Bank of Italy, pursuant to art. No.39, does not settle disputes it self, but has channeled the complaints of entitled subjects to the ABF.

Consistent with the provisions of art. No.39 - such provision relating more in general to users and providers of banking and financial services - art. No.35 of the adoption Decree strengthens the connection between the moment in which complaints are forwarded and the time of the actual out-of-court settlement and it provided that the Italian Banking Act is amended as follows: "The Bank of Italy, when it receives a complaint from the customers of those subjects referred to in paragraph 1, must indicate to the complainant the existence of the possibility of applying to systems provided for under this article". These provisions create a dotted line between the c1aiming phase and the further phase of actually enacting the system of out-of- court settlement of disputes between brokers and c1ients, provided for in art.No.128-bis of the Italian Banking Act (hereinafter IBA), which extends the provisions, in favor

of users of payment services of art. No.39 of Decree no.11/2010, to all persons covered by Article no.115 of the Italian Banking Act.

The cross reference with art. No.115 has also a new and significant meaning: the regulation, as pointed out in case literature, identifies the scope of operation of the rule for the transparency of contractual terms and conditions, which is set to apply in all banking and financial transactions, whether carried out by banks or other financial intermediaries, and only in part, when called upon, for payment services, for which there is a special rule of transparency in Chapter II-bis, and also in Heading II of the consumer credit contracts.

Payment services may be provided for by a range of actors, who are not only the banks and financial intermediaries mentioned in the IBA, but also, among other things, payment institutions which, in operating payment transactions, are subject to the rules of transparency contained in Title VI of the IBA (notwithstanding the distinction between "common" and "special" rules on transparency) .This shows a strong link between the targets of efficiency of the financial system and the need to strengthen the confidence of the users of banking and financial services, ensuring the protection of the compliance with the transparency rule of banking and financial transactions (in a broader sense, so as also to include payment services). Among the instruments available to reach these targets, a recent banking regulation has provided a system of out-of-court dispute resolution represented by the aforementioned ABF and its related regulation which, in virtue of the reference to art. No.115 and the connection between acting subjects and their activities, should therefore also apply to disputes to which payment institutions are a party.

At the same time, one should note that Article. No. 35, paragraph 2, of Legislative Decree No.11/2010 includes: payment institutions, EU payment institutions and subsidiaries of payment institutions in art. No.1 of the IBA, for definition purposes. The above rule serves to broaden the category of intermediaries regulated by the IBA, to which a special rule is applicable or, when called far, the one provided for other brokers.

1.1. The claims rules of procedures in the PSD and in the adoption Decree

While the rule set by art. No. 39 establishes the connection between the system of complaints and the one of appeals and art. No. 40 of Legislative Decree No.11/2010 deals more specifically with complaints, giving effect to a very important (in way of contents) Community Directive. Section 2 of Chapter 5 of the PSD, dedicated to the procedures of "out-of-court redress ",

deals with the topic in a single article , art.No.83. This rule states that "Member States shall ensure that appropriate and effective procedures are in place for complaints and out-of-court redress, allowing for the resolution of disputes between users and their payment service providers in disputes concerning rights and obligations arising from this Directive; for such procedures it is possible to use existing organizations, when such is the case.

In case of cross-border disputes, Member States shall ensure that those organizations cooperate actively in resolving these disputes".

This rule has a broader obligational content: a) it calls upon states to establish out-of-court procedures for resolving disputes between payment service providers and users of payment services, b) establishes requirements of "adequacy and effectiveness" for the set out procedures, c) states that the out-of-court settlement should be adopted for resolution of disputes concerning rights and obligations pertaining to users of payment services, d) and, last but not least, gives Member States the possibility to use existing ADR organizations.

First of all, Member States shall establish the procedures outlined in letter a) having all requirements referred to in letter. b). This rule must be read in the light of recital no.51, in which "without prejudice" to the right of customers to start a legal action, Member States shou1d ensure that an accessible and cast effective extrajudicial resolution of conflicts between providers and consumers of payment services arising from the rights and obligations mentioned in the PSD be put into place.

Article no.5, par. 2, of the Rome Convention on the law applicable to contractual obligations, ensures that no contractual clause on the applicable law may weaken the protection afforded to consumers by the mandatory rules of the law of the country of this habitual residence.

Recital no. 51, does, indeed, introduce additional elements that should distinctly mark the procedures of out-of-court conflicts, such as its effectiveness and accessibility in terms of costs. It also refers to disputes with consumers. In contrast, the Community legislator, in the provision of art. No.83, adopts a broader diction: appropriate and effective procedures in favor of all users. One rnay also include accessibility in the term "appropriate", that is to say adapted to the customer's status that, in case of consumers, is viewed with greater favor and, therefore, intended to bear lower costs. One should not forget, however, that the PSD is not a "consumers' protection" directive. It pursues a broader goal of establishing a speedy and effective competitive rnarket, allowing adequate protection to all its users.

The form of dispute settlement is not meant to substitute "legal action". A different solution would have posed problems of conflict between national legislation and the EU directive p1acing itse1f at odds with the art. No.24 of the Italian Constitution. I would like to note that the PSD is primarily concerned with the implementation of alternative dispute reso1ution systems and, whereas it does not place specific obligations of participation to services providers, it 1eaves Member States (if applicable) the possibility of using existing systems.

In line of principle art. No. 32, letter n) of the de1egation 1aw limits itse1f to establishing that the law implementing the PSD wou1d have to "provide for out-of-court procedures for resolving disputes re1ating to the use of payment services".

The Legislative Decree n. 11/2010 did not transpose the EU directive in a very literal manner and allows the users of payment services to choose between various systems, organizations and procedures of alternative dispute resolution governed by domestic 1aw, maintaining the right to refer the matter to the competent judicial authority. In order to allow users to resolve disputes out of court with providers of payment services, the Decree states that any payment service providers must be participants to systems, organizations or procedures constituted by law or by an act of se1f¬regulation of the category. In particular, banks, e1ectronic cash institutions and payment institutions must necessarily participate to a system of dispute settlement provided for by art. NO.128-bis of the IBA. The identification of the subject of the dispute is entrusted to provisions implementing the Article no.l28-bis itself

In case of cross-border disputes, Member States shall ensure that those organizations cooperate actively in resolving them.

2. The support of the Arbitro Bancario Finanziario- ABF (Organization for Banking and Financial Arbitration)

The Explanatory Report to the transposing decree highlights the choice made by the delegated legislator to employ the existing organizations for the purposes of out-of-court resolution of disputes. The Decree transposing the Directive has therefore extended the competence of the ABF to disputes re1ating to the provision of payment services. Although the provision imposing the obligation on all authorized financial intermediaries providing payment services to be member of ABF, the same obligation does not exist for payment service users, who remain free to adopt other systems of out-of -

court disputes settlement, within the limits of the existing 1egislation (see be1ow). In addition, the Bank of Italy issued a regulation regarding the system of out-of-court settlement of disputes with customers related to transactions in banking and financial services (Regulations of the Bank of Italy dated 18th June 2009, hereinafter the "Regulations"), which all financial intermediaries are obliged to abide by and, as mentioned before, was already amended on entering into force of the transposition of the PSD.

Having regard to the subjective realm of application of the system, the active subject of the procedure is the customer, that is to say anyone who has or has had a contractual relationship with a financial intermediary concerning the provision of banking and financial services, including payment services, but expressly exc1uding from these those categories that engage professionally in banking and finance, insurance , social security and payment services. The "customer" in art. No.128-bis, is not meant to mean only the individual consumer but also a business. It seems reasonable to assume that the category of customers entitled to appeal also covers so-called "Occasional customers".

Concerning those to whom the system applies to, said regulations, in the details of the provisions issued by the Bank of Italy, are addressed to all financial intermediaries, which include, as we have said before, the payment institutions.

It is "mandatory for all financial intermediaries" to be participant to the system of art. No.128-bis and is a "condition for the conduct of banking and financial services and the provision of payment services". The financial intermediaries of new constitution and those who wish to start business operations in Italy in banking and financial services, or are offering payment services in Italy, must inform the authorities that they have become member of the ABF, before starting their activity. The Bank of Italy, according to the regulations, "monitors any possible infringement within the scope of its controlling action". These mandatory terms, the breach of which involves the foreclosure of the activity or the imposition of an administrative sanction, emerge from the Bank of Italy regulations themselves. One should connect the control activity of the Bank of Italy, generally referred to financial intermediaries, to the Bank of Italy's central role in creating and applying the rules, delegated to it, regarding the supervision of payment institutions and monitoring the compliance with its rules of the overall national framework implementing the PSD.

In matters regarding the subject of the disputes, the rules in question provide for a time limit. It is possible to refer disputes to the ABF only for those relating to facts occurring or behaviors carried out after 1 January 2009

and which, however, are not time-barred under the general rules of our legal system. The ABF's competence is limited to disputes re1ating to banking and financial services transactions (including payment services), excluding litigation in relation to investment services that can be subjected to other means of out-of¬court protection provided for in our system, such as procedures operated by conciliation organizations as described in Legislative Decree of March 4,2010 n .28 (and its related implementing legislation) - i.e. the Conciliatore Bancario finanziario (Banking and Financial Ombudsman) or the Ombudsman-Giurì Bancario (Financial and Banking Jury) , or the Chamber of Conciliation and Arbitration active within Consob (Italian Securities and Exchange Authority), In the context of disputes relating to banking and financial services transactions, these may be addressed ABF in relation to disputes concerning the determination of rights, obligations and actions, regardless of the value of the transactions to which they re1ate . If, however, the customer's request re1ates to the payment of a sum of money, ABF's competence is limited to claims of an amount not exceeding € 100,000.

Remain excluded from the competence of the ABF (in addition to issues re1ating to investment services) also those already submitted to the ruling of a court or arbitration. In addition, ABF cannot act in cases for which an attempt at conciliation is pending and for which the damages claims are not immediate and direct consequence of a fault or violation of the financial intermediary. Also exc1uded are issues related to material goods or services other than banking and financial services covered by the contract between the c1ient and the financial intermediary or contracts related to it.

Recently, the ABF has c1arified that the provisions must be interpreted to mean that their Deciding Panel may also be informed of disputes regarding pre-contract negotiations, inc1uding those related to compliance with the rules on transparency (respecting the Supervisory Authority's Instructions dated July 29th, 2009) and regardless of the actual execution of the contract.

The "decision" on the appeal is taken by the Deciding Panel on the basis of documents col1ected during the investigation and by applying the provisions and regulations of law, as well as those provided for by any code of conduct to which the financial intermediary is part As to the content of the decision, said Panel is not limited to asserting the existence of the violated right, but can also order the intermediary to hold a specific behavior (*dare, facere aut non facere*). This assumption seems to be confirmed by the concept on the basis of which the decision regarding the c1aim must contain information designed to foster relationships between intermediaries and customers, which means that the Deciding Panel, in addition to dec1aring the right of the claimant to a sum of money , can also condemn the intermediary

to hold a specific behavior. The decision, together with the related motivations, will be communicated to the parties within 30 days of such decision, and as from that moment, except if otherwise provided , the intermediary will have an additional 30 days to abide by it, without prejudice to the right of both parties to resort to a Judicial Authority , or any other means envisaged by law far the protection of their rights and interests. Within the same period the intermediary must inform the Technical Secretariat of actions taken to abide by the decision of the Deciding Panel.

2.1. Nature and effects of the decisions of the ABF

The first doctrinal reflections on ABF converge on the nature of its conclusive proceedings, noting how it appears devoid of the typical features of a ruling. The Deciding Panel is not invested with the power to settle the dispute between the parties involved directly (the financial intermediary and the c1ient) , nor is the decision binding on those same parties producing the primary effect of defining the dispute.

ABF decisions cannot, therefore, produce new rights for the parties involved such that would be liable of protection by the Ordinary Judicial Authority, nor do they produce any corresponding obligations to abide by, with the specific result that, if the intermediary does not comply with the decision of ABF, the c1ient cannot put forth the noncompliance as such, in a court action or arbitration against the intermediary,

In short, the final act of the proceedings before the ABF does not produce any legal effect between the parties, starting from the effects provided for by art. 1372 cc; in fact, although it assumes that there have been distinct acts of will by the parties involved, also evidenced on the one hand with the participation to the system by the intermediary and the other with the c1aim of the customer, the same final ad envisaged in Article no.128-bis is not set as binding on the parties. In fact, it cannot be a "contractual determination" (Article 808 -ter of the Code of Civil Procedure).

The action brought before the ABF, however, does not affect the right of the intermediary to bring the dispute before ordinary courts. In any case, even assuming that judicial proceedings are started, the law provisions allow the customer to opt for the continuation of the proceedings before the ABF. This later provision - intended to prevent the intermediary to avoid decision on the claim by submitting the dispute to judicial court - theoretically allows for the coexistence of two different decisions (one of the ABF, the other of the ordinary judicial authority) in relation to the same dispute, with the risk of finding us in front of two conflicting decisions. However, these

provisions, do not contain any rule that establishes the prevalence of a judicial decision on one issued by ABF. Therefore, on the assumption that these decisions have a different nature and that the independence of the extrajudicial instrument in respect of any other means of protection envisaged by law is sanctioned by the law in art. No. 128-bis of the IBA, the Bank of Italy has stated that, in the event of a decision by ABF against the intermediary, it must abide by the decision, regardless of the outcome of the proceedings it may have initiated before the ordinary courts.

2.2. Features of the procedure before the ABF

At this point the question arises whether the characteristics of these procedures: speediness, low cost of the disputes resolution and effectiveness of the protection that Article. No.128-bis intends to ensure, match the characteristics identified by the PSD for extra-judicial settlement procedures. Artic1e 82 required Member States to provide for procedures that should: 1) be usable by all users of payment services, 2) be appropriate (and affordable), 3) be effective.

On the first point, one can see that European rules and domestic law converge by giving an ample significance to the figure of the "client", In relation to the suitability and accessibility of the ABF system, one should note that the establishment of rules of procedure and the assistance of a Technical Secretariat (a structure of support in investigations and organization) have marked the phases of its activity. On the other hand, emphasis should be put on the costs of the procedure which are extremely cheap for the claimant.

In relation to the characteristic of "effectiveness" of the ABF system it is worth mentioning that in the Preamble to the Regulations, the Bank of Italy focuses on the role that effective systems for defining litigations can play in encouraging compliance with the principles of transparent and fair relationships with customers, in improving public confidence in banking and financial services providers, in providing a useful "a legal and reputational risk supervision for the benefit of the stability of financial intermediaries and the financial system as a whole",

The effectiveness refers to the problem of the real protection of the customer, concerned that the intermediary abides by ABF's decision. The law (art. NO.128-bis of the IBA) does not provide for the imposition of administrative sanctions against failure on behalf of intermediaries to abide by ABF decisions; therefore a resolution of the ICSC has established that the

Bank of Italy may take reputational measures, in cases of manifest violations of ABF decisions, consisting in publicizing the failure to comply.

The reputational penalty is applicable not only in cases of non-compliance with ABF's decisions (which, as mentioned, is treated as an infringement of the provisions relating to the contribution to its costs), but also in cases of non-cooperation to the well-functioning of the procedure (that is to say the non- payment of contributions due and the non-reception by ABF of the required documentation, where this would avoid a ruling on the merits of the dispute). In the mentioned cases, the Technical Secretariat publicizes the fact 011 the ABF website, on the one of Bank of Italy and, at the expense and care of the intermediary, in two widely circulated national newspapers. The outcome of the appeals are assessed by the Bank of Italy for their relevance related to its supervisory activities, as stated by the Bank itself stating that for the outcome of claims will be used as a source of information so as to highlight any signs of abnormal behavior or particular exposure to legal and reputational risks of intermediaries.

3. The ruling of the Constitutional Court no.272/20 12 and the repeal of the provisions of Legislative Decree no.28/2010 regarding mandatory mediation

The framework set by the national ADR legislation has been further enriched by the Decree of the Ministry of Justice no.I80 of 18th October 2010, which has issued "Regulations on the establishment of the criteria and the procedures for the registration and maintaining a registry of mediation organizations and a list of mediation training specialists as wel1 as the approval of the compensations payable to these organizations", The regulation implements Art. No.1 6 of Legislative Decree dated 4th March 2010 n.28, regarding the regulation of mediation aimed at resolving civil and commercial disputes .

Legislative Decree No. 2812010 stated that a tentative reconciliation was a mandatory before being able to proceed with judicial actions far matters related, among others, to disputes and litigations in the field of banking contracts (Artic1e 5), in which one can also include contracts for the provision of payment, financial and insurance services.

This mandatory requirement, for judicial procedures starting after March 20th, 2011, could be satisfied by using, alternatively:

- One of the official mediation "organizations", authorized in this activity by an entry in the registry of the Ministry of Justice. Organizations which

can be approached by the customer, not necessarily in the form of a complaint, or by the intermediary and can make suggestions for a settlement, which must be accepted by both parties, making the agreement approvable by the Court and therefore becoming enforceable;

- The ABF, in relation to disputes regarding the establishment of rights, obligations and entitlements arising from banking and financial transactions and services (see above);

- The Chamber of Conciliation and Arbitration created by Consob (the "Chamber"), for disputes relating to the alleged violation of disc1osure, fairness and transparency requirements that arise from contracts providing investment services. The Consob Chamber, as well as ABF, may be called upon only by the (non professional) client, subject to having already submitted a complaint to the intermediary. Unlike ABF, the Chamber makes conciliation proposals and does not issue a decision.

We are speaking of remedies for the resolution of bank and financial disputes, which are very different, both in terms of procedure and in terms of legitimacy, from Court actions. The legislator intended to furnish an equivalent only in order to provide users of banking and financial services and also providers, further possibilities to resolve their disputes faster than the time required by ordinary courts. Not surprisingly the Ministry of Justice, at the time of presenting the rules on mandatory mediation announced: “ The main goal of the reform of civil mediation has been to reduce the inflow of new cases in the justice system, thus providing citizens with a more simple and fast instrument in terms of cost and time".

The document, which provides an overview of ABF's "Principles and Recommendations" contained in the published collection of the first year of the Deciding Panel's decisions, pointed out that the entry into force of mandatory mediation in civil disputes relating to banking contracts represents a "Further opportunity to find, places and ways provided for by the Law, for a mutually acceptable agreement in the settlement of disputes between intermediaries and customers".

There still exist a number of problems concerning the coordination of the new rules with those existing before the establishment of a system of out-of-court settlement of disputes in the banking and financial field, which cannot be addressed here.

In order to establish a degree of coordination, the Bank of Italy has updated the Regulations issued on the 18th of June 2009, inter alia also addressing the problem of relations with the other mediation or conciliation procedures. Legislative Decree NO.28/20 l O provides for a dispute resolution criteria based the possibility multiple mediation requests based on

the so-called "Precautionary principle ", under which the mediation takes place before the body first seized with the claim. However a possible extension of this principle to the ABF procedure -which can only be activated by the customer , unlike the mediation procedure which can instead also be activated the intermediary would, according to the Bank of Italy, significant1y hamper the inalienable right of the customer to request a decision by ABF should the intermediary precede the customer in the request for a decision by ABF,

In view of this, the above Regulations state that, when an attempt at conciliation or mediation is still pending or when the interruption of proceedings before ABF, if the mediation or conciliation are to be attempted at a later time, the provisions providing for the inadmissibility of a request to ABF are restricted to contemplate only those cases in which the settlement procedure has been promoted or agreed upon by the customer, In relation to the mandatory court procedure, as a condition of admissibility for a judicial action , the customer is allowed to renew the c1aim in cases when over 12 months have elapsed since the prior claim was made to the intermediary in order to make use of ABF then. For the same reasons, the limitation of a maximum period of 6 months, after a mediation or conciliation attempt had failed, was deleted, so as to allow a claim to be addressed to ABF at any time, following the failed mediation or conciliation attempt.

It is well to also remind the reader that the revised version of the Regulations established a Coordination Panel which is vested in issues of particular importance or which have given or may give rise to differing orientations of the individual Panels. The decision on such differences is posted, in the form of an Appeal, by each individual Pane! to the examination of the Coordination Panel. Bach Panel President, however, has the power to post the Appeal to the Coordination Panel even prior to the Appeal itself being examined by the competent Panel. In addition, one must note, that under Article, No. 27-bis, paragraph l-e, the legislative decree No1, dated January 24th, 2012, has recognized the possibility of Prefects to report specific problems relating to banking and financial services transactions to the ABF.

4. Final Remarks

In conclusion, despite the evolution and the repeated changes brought to so called "Mandatory mediation ", one can deem as accomplished the fact that our system is guided, instead, by paragraph 1 of article no.40 of the

Legislative Decree No .11/2010, which, for disputes relating to payment services, has established that users of these services can make use of systems, organizations or out-of-court procedures, in brief, a variety of solutions that the legislator and the operators have previously established .

Effective mechanisms for defining litigations are functional, as pointed out by the Bank of Italy, to the principles of transparency and fairness in dealings with customers, They strengthen public confidence in providers of banking and financial services , are useful "in supervising legaI and reputational risks for the benefit and stability of banking intermediaries and the financial system as a whole".

What will change after the transposition of PSD2? In my opinion, the Italian ADR mechanism for banking and financial disputes will be almost the same. Indeed, directive 2017/2366 of the 25 November 2015 (OJEU L 337/35 OF 23.12.2015) does not make any material changes to the existing ADR framework (see, article 99 – 103).

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