EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 13 October 2014

on conflict of interest rules for members of the governing bodies and executives of the Banca d'Italia

(CON/2014/73)

Introduction and legal basis

On 5 September 2014 the European Central Bank (ECB) received a request from the Minister responsible for Simplification and Public Administration for an opinion on a draft decree implementing Article 22(2) of Law No 114 of 7 August 2014[1] (hereinafter the 'draft decree'). Article 22(2) concerns conflict of interest rules for members of the governing bodies and executives of the Banca d'Italia.

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and the third indent of Article 2(1) of Council Decision 98/415/EC[2], as the draft decree relates to the Banca d'Italia. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. Purpose of the draft decree

1.1 Article 22(2) of Decree-Law No 90 of 24 June 2014[3] (hereinafter the 'Decree-Law') amended Law No 262 of 28 December 2005[4] by the addition of Article 29 bis, which provides that members of the governing bodies and executives of the Commissione Nazionale per le Società e la Borsa (Consob, Italian Companies and Stock Exchange Commission) may not engage, directly or indirectly, in any business, consultancy or employment relationship with entities regulated by Consob, or the subsidiaries of such entities, for a period of two years after cessation of employment or ceasing to hold office. Any contracts entered into in breach of this provision will be void. Article 29 bis does not apply to executives who were, in their last two years of employment, in charge of offices providing support services.

1.2 The Decree-Law was subsequently submitted to the Parliament for conversion into law. Law No 114 of 7 August 2014 (hereinafter 'the Law'), as adopted, extended the abovementioned restrictions to members of the governing bodies and executives of the Banca d'Italia and provided

1 *Gazzetta Ufficiale della Repubblica Italiana* No 190, 18.8.2014.

2 Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

3 *Gazzetta Ufficiale della Repubblica Italiana* No 95, 24.4.2014.

4 *Gazzetta Ufficiale della Repubblica Italiana* No 301, 28.12.2005.

that a decree of the President of the Council of Ministers could set a period of restriction of up to two years.

1.3 The draft decree of the President of the Council of Ministers, on which the ECB has now been consulted, sets the period of restriction at the maximum limit of two years.

2. The appropriate time to consult the ECB

2.1 The ECB was consulted on the draft decree before its enactment, but no request was made for an opinion on the Law, which extended the scope of the relevant conflict of interest rules to the members of governing bodies and executives of the Banca d'Italia. It is well-established doctrine that the ECB must be consulted at an appropriate stage in the legislative process, that this should take place at a time that enables the ECB to adopt its opinion in all required language versions and that this should enable the authority initiating the legislative provisions to take the ECB's opinion into account before it decides on the substance[5].

2.2 In the Italian legal system, a decree-law adopted by the Government enters into force on publication in the Official Journal and must be submitted to the Parliament for conversion into law on the date of its adoption. Amendments may be made by the Parliament in the process of conversion into law, which was the case in the present matter.

2.3 In this situation, as the restrictions imposed by the Decree-Law were extended to members of the governing bodies and executives of the Banca d'Italia by the Parliament in the process of conversion into law, a consultation request should have been sent to the ECB by the Parliament before the Decree-Law was converted into the Law. The ECB would like to draw the Parliament's attention to this aspect of the procedure for consultations of the ECB.

3. General observations

3.1 Article 7 of the Banca d'Italia's Code of Conduct for Staff Members and Article 8 of the Banca d'Italia's Code of Conduct for Members of the Governing Board[6] currently provide for restrictions on engaging in private business activities after cessation of employment or ceasing to hold office. In particular, during the first year after the end of their employment relationship with the Banca d'Italia or after ceasing to hold office, former employees and members of the Governing Board must avoid any conflict of interest, arising from their former duties with the Banca d'Italia, when undertaking new private or professional activities. Article 22(2) of the Law tightens this restriction by extending the period of restriction to two years for members of all governing bodies and executives, under the terms and conditions referred to in paragraph 1.1 of this Opinion. The ECB understands that the codes of conduct will remain in force and that the further restrictions introduced by Article 22(2) will only apply to the categories of persons and to the situations

5 See Title IV, Section I of the Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions.

6 Available at http://www.bancaditalia.it/.

referred to therein. However, the application of the legal restrictions may vary depending on the meaning of the terms 'governing bodies', 'executives' and 'offices providing support services'. It is therefore advisable to provide clear definitions of such terms in order to clarify the precise application of the restrictions to the various categories of persons and situations.

3.2 Without prejudice to the need for clarification of the application of the restrictions, the ECB welcomes the aim of the Law to contribute to ensuring the effectiveness and independence of the supervisory tasks carried out by the Banca d'Italia. In accordance with Article 31(3) of Council Regulation (EU) No 1024/2013[7], the ECB is in the process of establishing comprehensive and formal procedures, including ethics procedures and proportionate periods, to assess in advance and prevent possible conflicts of interest where members of the Supervisory Board of the ECB and ECB staff members who are engaged in supervisory activities are employed elsewhere, within a period of two years after cessation of employment or ceasing to hold office. Pursuant to subparagraph 2 of Article 31(3), such procedures will be without prejudice to the application of stricter national rules. Significant differences between the post-employment conflict of interest rules and restrictions applicable to the members of the joint supervisory teams appointed by the ECB and those appointed by the Banca d'Italia for the performance of the ECB's supervisory tasks should be avoided. It would therefore be advisable to provide for the possibility to review the Italian rules, as appropriate, to take into account ethical rules at the European level, including rules on post-employment business activities, which may be adopted in the context of the Single Supervisory Mechanism[8].

3.3 In line with the principle of financial independence, which is an element of the principle of central bank independence referred to in Article 130 of the Treaty, Member States may not interfere with the ability of a national central bank (NCB) to employ and retain the qualified staff necessary for the NCB to perform independently the tasks conferred on it by the Treaty and the Statute of the European System of Central Banks and of the European Central Bank. Accordingly, the proposal in the draft decree to fix the period of restriction on former members of the governing bodies and executives of the Banca d'Italia at two years should be decided after close and effective cooperation with the Banca d'Italia, to ensure that any concerns as regards its ability to employ and

7 Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

8 See Opinion CON/2014/22. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

retain qualified staff are sufficiently and appropriately addressed[9].

This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 13 October 2014.

[signed]

The President of the ECB

Mario DRAGHI

9 See, by analogy, the ECB's Convergence Report 2014, p. 35, and Opinions CON/2013/92 and CON/2014/12.