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EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 25 August 2006

at the request of the Banca d'Italia
on the amended Statute of the Banca d'Italia

(CON/2006/44)

Introduction and legal basis

On 7 August 2006 the European Central Bank (ECB) received a request from the Banca d'Italia for an opinion on its amended Statute (hereinafter the 'amended Statute').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the third indent of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions[1], as the amended Statute relates to a national central bank (NCB). 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 amended Statute

The revision of the Banca d'Italia's Statute is required by the first sentence of Article 19(9) of Law N. 262 of 28 December 2005 on the protection of savings (hereinafter 'Law 262/05'), according to which the Statute must be adjusted to take account of paragraphs 1 to 7 of the same article, within two months of entry into force of the law. The Italian Government consulted the ECB in 2004 on draft law 262/05, which broadly modified the institutional framework for the regulation and supervision of financial markets and intermediaries in Italy. Following the first opinion on this matter[2], the ECB was consulted twice in 2005 on certain amendments to Law 262/05 regarding specifically Article 19 thereof, dedicated to the Banca d'Italia[3].

1 OJ L 189, 3.7.1998, p. 42.

2 See ECB Opinion CON/2004/16 of 11 May 2004 at the request of the Italian Ministry of Economic Affairs and Finance on a draft law on the protection of savings.

3 See ECB Opinions CON/2005/34 of 6 October 2005 at the request of the Italian Ministry of Economy and Finance on an amendment to the draft law on the protection of savings concerning the Banca d'Italia and CON/2005/58 of 23 December 2005 at the request of the Italian Ministry of Economy and Finance on an amendment to the draft law on the protection of savings concerning the Banca d'Italia.

2. General comments

2.1 The ECB notes with satisfaction that most of the comments made in previous consultations have been endorsed.

2.2 In particular, the ECB welcomes:

- Article 17 of the amended Statute, expressly providing that the Banca d'Italia's Governor is appointed, reappointed and removed in accordance with Article 14.2 of the Statute of European System of Central Banks and of the European Central Bank (hereinafter the 'ESCB Statute')[4], and
- Article 21 of the amended Statute, expressly excluding decisions falling under the ESCB's authority from the measures of external significance that the Directorate may adopt in exercising the public functions entrusted by law to the Banca d'Italia or to its Governor, to fulfil the former's institutional purposes[5], and
- Article 22 of the amended Statute introducing the principle of collegiality for the Directorate's meetings, according to which its decisions are to be adopted by a majority of the votes of those present[6].

2.3 It is nevertheless considered that some of the provisions of the amended Statute, in connection with which previous ECB opinions had already stressed the need for more clarity and transparency[7], might benefit from further simplification in view of the changes in the shareholders' composition and the Banca d'Italia's new structure. These provisions, in particular, relate to the way in which shareholders' meetings are organised vis-à-vis the subdivisions in the Banca d'Italia's branches and the related procedure for the appointment of the Board of Directors' members.

3. Specific comments

Transfer of the Banca d'Italia's shares

3.1 According to Article 3 of the amended Statute, the Banca d'Italia's shares will be transferred only with the Board of Directors' prior consent, preserving at all times the Banca d'Italia's independence and ensuring a balanced distribution of the shares. In order to increase this provision's effectiveness as regards the safeguard of the Banca d'Italia's independence, the ECB would recommend introducing additional safeguards, including the Directorate's involvement, at least in a consultative capacity. Moreover, regarding the Banca d'Italia's ownership structure, which is governed by law, in its previous opinions on this matter the ECB has already expressed its concern that transfers must comply with the principles established by the Treaty as regards

4 See paragraph 10 of ECB Opinion CON/2005/34 and paragraph 4 of ECB Opinion CON/2005/58.
5 See paragraph 13 of ECB Opinion CON/2005/34.
6 See paragraph 14 of ECB Opinion CON/2005/34 and paragraph 3 of ECB Opinion CON/2005/58.
7 See paragraph 10 of ECB Opinion CON/2005/34.

monetary financing and fiscal policies[8]. The ECB is aware that this provision is transitional and stands ready to provide a further assessment of its compliance with these principles in the future.

Board of Auditors

3.2 Once the amended Statute enters into force, a new auditing and controlling structure will be in place to strengthen the Banca d'Italia's corporate governance. This will be shared by three entities as follows. The first is the Board of Directors which will henceforth be in charge of the Banca d'Italia's management supervision and internal control, in compliance with the ESCB Statute and the provisions adopted by the ECB (Article 18 of the amended Statute). The second is the Board of Auditors, which will not only exercise control on the legality of the Banca d'Italia's acts, but will also conduct accounting checks, examine accounts and express its opinion on the annual dividend (Article 19 of the amended Statute). While the attribution of these new tasks to the Board of Auditors is, in principle, compatible with central bank independence, it should be noted that such controlling activities should be subject to safeguards. Such safeguards should, in particular, include guarantees that the Board of Auditors' activities will not interfere with the review of the ESCB-related tasks of the Banca d'Italia to be undertaken by the Banca d'Italia's independent external auditor and that these activities may not jeopardise its independence[9]. The third is the independent external auditor who will audit the accounts of the Banca d'Italia, in accordance with Article 27 of the Statute (Article 38 of the amended Statute).

Directorate

3.3 The ECB takes note that Articles 25 and 26 of the amended Statute provide that members of the Directorate may have to deputise for the Governor in case both the Governor (Article 25) and the Director General (Article 26) are absent or unable to act. Therefore, the ECB would suggest that Article 17 of the amended Statute also contains an explicit provision concerning the grounds for dismissal of members of the Directorate other than the Governor, comparable to those applicable to the Governor, under Article 14.2 of the ESCB Statute.

Allocation of profits and reserve

3.4 Article 39 of the amended Statute provides that the Board of Directors determines the allocation to be made in the ordinary reserve for an amount of up to 20% of the net profit for the year. The remaining sum will be transferred to the State.

3.5 The ECB refers to its previous opinion concerning the importance of the Banca d'Italia's financial independence and, in particular, the need to maintain a sufficient amount of ordinary reserves, and,

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8 See paragraph 5 of ECB Opinion CON/2005/58.

9 See paragraphs 5 to 7 of ECB Opinion CON/2002/22 of 2 September 2002 at the request of the Swedish Ministry of Finance on a draft legislative proposal establishing the National Audit, including proposed amendments to the Sveriges Riksbank Act (1988:1385), paragraph 2.3 of ECB Opinion CON/2006/4 of 27 January 2006 at the request of the Central Bank of Cyprus on a draft law amending the Central Bank of Cyprus Laws of 2002 and 2003, and paragraph 2.3 of ECB Opinion CON/2006/33 of 28 June 2006 at the request of the Cypriot Ministry of Finance on a draft provision amending the draft law amending the Central Bank of Cyprus Laws of 2002 and 2003 and ECB Convergence Report, May 2006, p. 66, available at http://www.ecb.int.

if needed, also extraordinary reserves to ensure that it has the financial means necessary for the performance of its statutory tasks[10].

Transitional provisions

3.6 As the ECB noted in an earlier opinion[11], a transitional regime should be compatible with Article 14.2 of the ESCB Statute.

3.7 In general, the principle of personal independence, as laid down in Article 14.2 of the ESCB Statute[12], also requires that the same rules for the security of tenure of the office of governor apply to other members of NCB decision-making bodies involved in the performance of ESCB-related tasks. This applies in particular where a governor is first among equals between colleagues with equivalent voting rights or where such other members may have to deputise for the Governor. Thus, any NCB reorganisation affecting the tenure of office of the members of its decision-making bodies involved in the performance of ESCB-related tasks should foresee that they continue to perform their duties until the end of their term for which they have been appointed, in accordance with Article 14.2 of the Statute[13].

3.8 The transitional provisions of the amended Statute provide that the members of the Board of Directors and the Board of Auditors[14], as well as the councillors of local branches of the Banca d'Italia[15], remain in office until the completion of their current term of office and raise no issue of personal independence.

3.9 Concerning the transitional regime for all the Directorate members in office on 12 January 2006, other than the Governor, the amended Statute provides for expiry of their appointment precisely on the completion of 12 years as members of the Directorate, thereby also coinciding with the maximum mandate length in Article 26 of the amended Statute. The ECB takes note in particular of the following aspects: (i) the members of the Directorate specifically affected by Article 48 of the amended Statute have been appointed for an indefinite term of office and are subject to no retirement age requirement; and (ii) Article 48 of the amended Statute aims to ensure a transition to an entirely new institutional and organisational set up for the Banca d'Italia, and is only a one-off arrangement. In the light of these considerations, the ECB has no comments on Article 48 of the amended Statute.

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10 ECB Convergence Report, May 2006, 3.1.4, 'Distribution of profits, NCBs' capital and financial provisions', p. 66. See also paragraph 10 of ECB Opinion CON/2005/34.

11 Paragraph 8 of ECB Opinion CON/2004/16.

12 As further explained in the ECB Convergence Reports of 2004 and 2006 (October 2004, 2.3.1, 'Central bank independence', p. 27 and May 2006, 3.1.3, 'Personal independence', p. 64).

13 ECB Opinion CON/2004/16, ECB Opinion CON/2004/35 of 4 November 2004 at the request of the Hungarian Ministry of Finance on a draft law amending the Law on Magyar Nemzeti Bank and ECB Opinion CON/2006/32 of 22 June 2006 at the request of the French Senate on a draft law on the Banque de France.

14 Article 46 of the amended Statute.

15 Article 47 of the amended Statute.

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

Done at Frankfurt am Main, 25 August 2006.

[signed]

The President of the ECB

Jean-Claude TRICHET