EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

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

(CON/2005/34)

1. On 13 September 2005 the European Central Bank (ECB) received a request from the Italian Ministry of Economy and Finance for an opinion on a draft article that will be inserted in the draft law on the protection of savings (hereinafter the 'draft article').

2. The ECB's competence to deliver an opinion is based on 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 draft article contains provisions concerning 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.

3. The ECB notes that in 2004 it already provided an opinion on a previous draft of this law and welcomes the Italian Government's decision to consult the ECB again on this new draft article. It stands ready to comment on any further amendment to the draft law, whether concerning the Banca d'Italia or any other matter in which the ECB has a specific interest.

4. Paragraph 1 of the draft article mirrors Article 14.3 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute'), pursuant to which the NCBs are an integral part of the ESCB and act in accordance with the guidelines and instructions of the ECB. The ECB welcomes this paragraph, which is of declaratory value only.

5. Paragraph 2 of the draft article stipulates that the Banca d'Italia is a body governed by public law and the State holds the majority of the shares in its subscribed capital, while only other public bodies may hold the remainder. Currently private commercial banks hold a large part of the shares. Therefore, pursuant to the paragraph 9 of the draft article, a Government regulation adopted within three months from entry into force of the law will specify this provision's method of implementation. The Fund for the amortisation of government bonds (*Fondo per l'ammortamento dei titoli di Stato*) will bear the costs arising from this operation, pursuant to paragraph 10 of the draft article.

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1 OJ L 189, 3.7.1998, p. 42.

6. The ECB notes that the Treaty establishing the European Community is silent on the ownership structure and internal governance of NCBs, which are therefore left to each Member State's autonomous determination. However, the ECB has the following comments on the compatibility of both the financing of the planned transfer of the Banca d'Italia's shares to the State and of the Banca d'Italia overall structure with the principles established by the Treaty.

7. First, the ECB notes that, pursuant to paragraph 9 of the draft article, a Government regulation adopted within three months from entry into force of the law will specify the procedure for the Banca d'Italia's shares to be transferred. The Fund for the amortisation of government bonds (*Fondo per l'ammortamento dei titoli di Stato*) will bear the costs arising from this operation, pursuant to paragraph 10 of the draft article. The voting rights pertaining to the shares in the subscribed capital will be automatically suspended and exercised by the State until they have been transferred to the State and the other public bodies. In this respect, the compatibility with international conventions and Community law of such automatic attribution of the voting rights to the State pending the transfer of the shares should be carefully assessed.

8. As there are currently no indications of the modalities of such transfer, the consistency of this operation with the Treaty provisions on monetary financing (Article 101 of the Treaty) and fiscal policies (Article 104(2)(b) of the Treaty) cannot be ascertained at this stage. Therefore the ECB stands ready to provide an assessment in a future opinion on a draft Government regulation on the transfer of shares.

9. Second, the ECB notes that Article 108 of the Treaty requires independence for NCBs when exercising the powers and carrying out the tasks and duties conferred upon them by the Treaty and the Statute. This entails the absence both of shareholders' influence on decision-making in these fields and of a conflict of interests. In this respect, the ECB welcomes the proposed change and the confirmation in paragraph 3 of the draft article that primary and secondary Italian legislation will ensure the independence of the Banca d'Italia and of the members of its decision-making bodies. Additionally, pursuant to paragraph 8 of the draft article, the implementation of the draft article will determine whether the Banca d'Italia's Statutes need to be modified within two months from entry into force of the law. The ECB highlights that the amendments to be introduced in the Banca d'Italia's Statutes must respect the Treaty and in particular continue to safeguard central banking independence, with particular regard to the aspects mentioned below, and is ready to provide its opinion on the amendments to the Statutes.

10. Once the draft article has been fully implemented, the State will be the majority and perhaps almost the sole shareholder. According to the Statutes, the shareholders currently appoint, at separate meetings at the Banca d'Italia's main branches, the 13 members of the Board of Directors, one for each main branch. In the light of the changes to the shareholder's composition introduced by the draft article, it would be helpful to clarify and perhaps simplify the election procedure for these members. Moreover, the change in the shareholders' structure has two consequences. First, the role of the Board of Directors will need to be reviewed, including in relation to the procedure for the

appointment and dismissal of the Governor and the other members of the Directorate, consistently with Article 14.2 of the Statute. Second, the Banca d'Italia's financial independence, which is currently guaranteed by the provisions of the Statutes on the independence of the members of the Board of Directors and on the limits to the distribution of profits to shareholders, needs to be preserved. Therefore, Article 54 of the Statute needs to be modified to ensure that, as in the current situation, a sufficient amount of ordinary reserves and, if needed, extraordinary reserves, can be constituted to ensure that the Banca d'Italia has the financial means to perform its statutory tasks.

11. The ECB notes that paragraph 7 of the draft article provides that the Governor will have a seven-year term of office, without possibility of renewal. The draft article complies with the Treaty. However, the ECB notes that the Treaty provisions protecting the Governor's security of tenure of office also apply to other members of the decision-making bodies of NCBs involved in the performance of ESCB-related tasks. This applies in particular where such other members may have to deputise for the Governor. It is noted that there are currently no limits to the mandate of the other members of the Directorate. In light of the powers attributed to the Directorate, the introduction of a similarly limited mandate would be advisable. Any such change will of course need to comply with the Treaty.

12. Furthermore, the ECB notes that the draft law is silent on the application of the new rules to the Banca d'Italia's current Governor. In this context it would like to reiterate its previous opinion[2] that any transitional regime would need to be compatible with Article 14.2 of the Statute.

13. According to paragraph 4 of the draft article, the Banca d'Italia must respect the principle of transparency in carrying out its functions, in particular that of supervision, and will report every six months to the Italian Parliament and the Government on its activities. The ECB understands that ESCB activities are excluded from this reporting obligation. However, an express mention of this exclusion would be welcome, in particular to ensure the respect of the obligation of professional secrecy enshrined in Article 38.1 of the Statute. The same principle should apply to the minutes of the meetings of the collegial bodies, mentioned in paragraph 5 of the draft article.

14. The ECB welcomes the draft article's intention of increasing the transparency of the exercise of the functions assigned to the Banca d'Italia. The ECB notes that paragraph 6 of the draft article requires the Governor to consult the Directorate on measures related to non-ESCB tasks falling within the Governor's competence. However, in light of the widespread practice in the European Union for decision-making in supervisory matters a modification of the current draft to allow for collegiality would be desirable.

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

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

Done at Athens, 6 October 2005.

[signed]

The President of the ECB

Jean-Claude TRICHET