EUROPEAN CENTRAL BANK

EUROSYSTEM

**OPINION OF THE EUROPEAN CENTRAL BANK**

**of 13 February 2012**

**on the management of liquidity in the Treasury accounts at the Banca d'Italia and the selection of counterparties for related operations**

**(CON/2012/9)**

## Introduction and legal basis

On 7 November 2011, the ECB received a consultation request from the Italian Ministry of Economic Affairs and Finance on a Ministerial Decree concerning the use of liquidity in the payment account and similar accounts held by the Treasury at the Banca d'Italia, as well as for the selection of counterparties eligible for related operations[1] (hereinafter the 'Ministerial Decree'). The Ministerial Decree was adopted on 25 October 2011.

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 of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions[2], as the draft legislation concerns 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 Ministerial Decree

1.1 The Ministerial Decree regulates the system for managing liquidity held by the Treasury in accounts at the Banca d'Italia and selecting counterparties for this purpose. The liquidity is managed through lending or borrowing on the money market and by recourse to other financial market operations. In addition, the Ministerial Decree allows the Ministry to place liquidity into fixed term deposits with the Banca d'Italia, pursuant to the Agreement between the Ministry and the Banca d'Italia of 22 March 2011 for the management of the payment account for receipts and disbursements and similar accounts held by the Treasury at the Banca d'Italia[3] (hereinafter the 'Agreement'), without prejudice to the possibility of terminating any of the abovementioned operations. The Ministerial Decree also defines which counterparties are eligible for operations and the procedures the Banca d'Italia is to follow when carrying out these operations on behalf of the Treasury. It allows the Banca d'Italia to require counterparty compliance with technical

1 Ministerial Decree of 25 October 2011 (*Gazzetta Ufficiale* No 254, 31.10.2011).

2 OJ L 189, 3.7.1998, p. 42.

3 Some of the provisions contained in the Agreement are further specified in non-public technical protocols.

agreements, sets out rules for the management of credit risk in lending operations and refers to a separate decree in relation to the framework applicable to collateral.

1.2 The Ministerial Decree implements the second sentence of Article 5(5) of the Law on consolidation of legislative provisions and regulations on public debt[4], as amended by Article 47(1) of Law No 196/2009[5]. According to the Ministerial Decree, the procedure for liquidity management and selecting counterparties is to be established by a separate Ministerial decree on detailed rules on the operations, based on transparency, efficiency and competitiveness, and in accordance with an agreement between the Ministry and the Banca d'Italia.

## 2. General observations

2.1 *The obligation to consult the ECB*

The Ministerial Decree is part of a single broader framework of acts aimed at implementing the legislative provisions set out in Article 47 of Law No 196/2009. The Ministry adopted two Ministerial Decrees[6] for the execution of the Agreement, the first regulating accounting methods and criteria concerning transactions connected to the Treasury accounts at the Banca d'Italia[7] and the second containing detailed rules on operations for managing liquidity held by the Treasury in its accounts at the Banca d'Italia[8]. In addition, a Ministerial decree was adopted on planning related to public administration financial needs in the context of managing the Treasury accounts at the Banca d'Italia[9]. The ECB was not consulted on any of these acts. As a result, the ECB is not in a position to give a full assessment of the Ministerial Decree.

2.2 *The appropriate time to consult the ECB*

The consultation request on the Ministerial Decree was received by the ECB after it was adopted[10]. The ECB stresses that even in cases of extreme urgency national authorities are not relieved from their duty to consult the ECB and to allow sufficient time to take its views into account as laid down in Articles 127(4) and 282(5) of the Treaty. The second sentence of Article 4 of Decision 98/415/EC provides that the ECB must be consulted 'at an appropriate stage' in the legislative process. This implies that the consultation should take place at a point in the legislative

4 Presidential Decree No 398 of 30 December 2003 (*Gazzetta Ufficiale* No 57, 9.3.2004, *Supplemento ordinario* No 37*)*.

5 Law No 196 of 31 December 2009 (*Gazzetta Ufficiale* No 303, 31.12.2009, *Supplemento ordinario* No 245).

6 Ministerial Decree of 29 July 2011 (*Gazzetta Ufficiale* No 190, 19.8.2011) and Ministerial Decree of 29 September 2011 (*Gazzetta Ufficiale* No 231, 4.10.2011).

7 Ministerial Decree of 11 November 2011 (*Gazzetta Ufficiale* No 276, 26.11.2011), implementing Article 47(5) of Law No 196/2009.

8 Ministerial Decree of 28 November 2011 (*Gazzetta Ufficiale* No 279, 30.11.2011), implementing Article 6(2) of the Ministerial Decree, on which the ECB has adopted this Opinion.

9 Ministerial Decree of 13 July 2011 (*Gazzetta Ufficiale* No 178, 2.8.2011), implementing Article 47(5) of Law No 196/2009.

10 It should also be noted that the consultation request sent by the Italian authorities did not set any time limit and announced the adoption of further decrees on the same matter. As underlined in several ECB Opinions, Article 3 of Council Decision 98/415/EC specifies that consulting authorities may set a time limit for the submission of an ECB opinion, but this time limit may not be less than one month, unless a shorter time limit is justified with reasons for the extreme urgency.

process that affords the ECB sufficient time to examine the draft legislative provisions and to adopt its opinion in all required language versions, and also enables the relevant national authorities to take the ECB's opinion into account before the provisions are adopted. Article 3(4) of Decision 98/415/EC obliges Member States to suspend the process of adoption of draft legislative provisions pending receipt of the ECB's opinion. On this occasion, the Ministry failed to comply with the consultation obligation pursuant to Council Decision 98/415/EC.

## 3. Prohibition of monetary financing

The Ministerial Decree establishes the procedure to be used by the Banca d'Italia when managing the liquidity held by the Treasury on its accounts at the Banca d'Italia. It specifies that management operations do not give rise to fees or commissions payable by the Ministry[11]. Moreover, the Banca d'Italia is to manage the operation of credit lines and guarantees, although there is no specific mention of remuneration of the Banca d'Italia by the Ministry in the Ministerial Decree.

Taking into account the express recognition in Article 21.2 of the Statute of the European System of Central Banks and of the European Central Bank of the provision of fiscal agency services as a legitimate function traditionally performed by central banks, the ECB notes that provision by central banks of fiscal agency services[12] complies with the monetary financing prohibition, provided that such services remain within the scope of the fiscal agency function and do not constitute central bank financing of public sector obligations vis-à-vis third parties[13] or central bank crediting of the public sector outside the narrowly defined exceptions specified in Regulation (EC) No 3603/93[14]. The ECB considers that the provision without remuneration by the Banca d'Italia of fiscal agent services under the Ministerial Decree does not raise monetary financing concerns, provided they are core fiscal agent services.

## 4. Monetary policy implementation

In Opinion CON/2009/69, the ECB highlighted that Government deposits held with the Eurosystem reduce the amount of liquidity available to the euro area banking sector. Therefore, the deposits have to be forecasted when calibrating the ECB's open market operations, and the precision of the forecasts provided by the national central banks of the Member States whose currency is the euro to the ECB is, to

11 See Article 3(2) of the Ministerial Decree.

12 See the ECB's Convergence Report of May 2010, p. 25, stating that 'The purpose of Article 21.2 of the Statute is, following transfer of the monetary policy competence to the Eurosystem, to enable NCBs to continue to provide the fiscal agent service traditionally provided by central banks to governments and other public entities without automatically breaching the monetary financing prohibition.' See also, e.g., Opinion CON/2009/23. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

13 i.e. one of the prohibited forms of monetary financing; see Article 1(1)(b)(ii) of Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty (OJ L 332, 31.12.1993, p. 1). See the ECB's Convergence Report of May 2008, p. 233, which states with reference to the provision by Česká národní banka of administrative and financial support to the Financial Arbitrator, an administrative body entirely independent from the central bank, 'constitutes a form of central bank financing of the public sector's obligations'.

14 See Article 4 (non-extendable intra-day credits), Article 5 (crediting, under specified conditions, the public sector's account with cheques issued by third parties) and Article 6 (holding, within specified limits, coins issued by and credited to the public sector) of Regulation (EC) No 3603/93.

a large extent, dependant on the procedures for managing government deposits. In this context, the ECB welcomed the introduction of the provision, later confirmed by Article 47 of Law No 196/2009, stipulating that deposits in excess of a threshold agreed between the Ministry and the Banca d'Italia, would no longer be remunerated. This measure was expected to provide an incentive for the Ministry to transfer funds in excess of the threshold to the banking sector, and thus reduce forecasting errors in the liquidity management transactions procedures.

As noted in paragraph 2.1, the Ministerial Decree is part of a wider framework, thus it is an insufficient basis for assessing whether the measures to be implemented for managing government deposits will reduce forecasting errors and improve the overall scheme for the management of government deposits as outlined above. In particular, pursuant to Article 2(4) of the Ministerial Decree, the detailed rules have been laid down in specific non-public protocols between the Ministry and the Banca d'Italia, and in a separate Ministerial decree[15], on which the ECB was not consulted. Since the details contained in the technical decree are outside the scope of the present consultation, the ECB is unable to conclusively assess future government deposit procedures in Italy.

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

Done at Frankfurt am Main, 13 February 2012.

[signed]

*The President of the ECB*

Mario DRAGHI

15 Ministerial Decree of 28 November 2011.