EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 1 November 2005

at the request of the Banca d'Italia
on a draft regulation concerning the oversight of low-value payment systems

(CON/2005/41)

1. On 2 September 2005 the European Central Bank (ECB) received a request from the Banca d'Italia for an opinion on a draft regulation concerning the oversight of low-value payment systems (hereinafter the 'draft regulation').

2. The ECB's competence to deliver an opinion is based on the second, third, fifth and sixth indents 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 provisions[1], as it contains provisions concerning means of payment, the Banca d'Italia, payment and settlement systems and rules applicable to financial institutions that materially influence the stability of financial institutions and markets. 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 contents of the draft regulation

The draft regulation concerns the oversight and operation of the BI-COMP system, which covers the clearing and transmission for settlement of low-value payments. BI-COMP consists of two sub-systems (*Recapiti locale* for the exchange of cheques and paper-based instruments and *Dettaglio* for electronic payment instructions), as well as the national clearing procedure (*Compensazione nazionale*) to which the balances of the two sub-systems are transmitted. The draft regulation results from the Banca d'Italia's decision to enable legal persons other than the Banca d'Italia to perform certain parts of the processing of low-value retail payments, which makes it necessary to update the relevant legal framework. More specifically, as regards the *Dettaglio* sub-system, the draft regulation provides that the phases preceding the calculation of the multilateral clearing balances will no longer be exclusively exercised by the Banca d'Italia, but also by market participants in free competition in accordance with the rules and principles set out in the Regulation concerning the oversight of payment systems issued by the Banca d'Italia on 24 February 2004[2].

1 OJ L 189, 3.7.1998, p. 42.

2 The ECB was consulted on this Regulation: see ECB Opinion CON/2003/14 of 7 August 2003 at the request of the Banca d'Italia on a draft regulation on payment systems, payment infrastructures and payment instruments.

The draft regulation highlights that the *Recapiti locale* sub-system will continue to be exclusively operated by the Banca d'Italia.

4. The Eurosystem's policy statement on central bank provision of retail payment services

In general, the ECB welcomes the draft regulation's provisions allowing free competition in the 'organisation, management and execution of the exchange of payment instructions to be entered in the "Dettaglio" sub-system'. As stated in the Governing Council's policy statement of 4 August 2005[3] (hereinafter the 'Eurosystem policy statement'), 'in order to avoid competitive distortions or a crowding-out of market initiatives, NCBs [national central banks] which offer retail payment services to credit institutions take due account of the requirements and competitive environment of the market concerned, including cost recovery'. The ECB notes that the opening-up of certain parts of the BI-COMP retail payment system to competition does not raise oversight concerns provided that the systems in question continue to comply with Eurosystem oversight standards. Furthermore, the ECB notes that this opening-up is a policy decision of the Banca d'Italia, the aim of which is to facilitate the creation of the Single Euro Payments Area (SEPA) and to ensure compliance with the Eurosystem policy statement.

5. The opening-up of certain parts of the *Dettaglio* sub-system to competition

The ECB notes that it is clearly the intention of the draft regulation to create free competition in the *Dettaglio* sub-system. Therefore, the relevant provisions, in particular Article 2, could make this clearer by using wording such as: 'The organisation, management and execution of payment instructions to be entered in the "Dettaglio" sub-system may be exercised by any person, in compliance with ... '.

6. Measures to ensure a level playing field

The ECB notes that, alongside private operators, the Banca d'Italia itself may continue to organise, manage and execute the exchange of payment instructions to be entered in the *Dettaglio* sub-system. In order to ensure a level playing field, the recitals to the draft regulation should clarify that the obligations being imposed on private operators are also applicable to the Banca d'Italia in its role as operator. Appropriate measures should be put in place to ensure that observance of these requirements by both private operators and the Banca d'Italia can be transparently assessed.

7. The ECB welcomes the reference in recital 8 to the application of the principle of cost recovery by central banks which directly provide low-value payment services in competition with the market, which is also intended to ensure a level playing field.

8. Also, in the light of the Eurosystem policy statement, the ECB would propose the provision of further explanation regarding the statement in recital 11 that the Banca d'Italia's exclusive operation is 'indispensable' in the phase of determination of the participants' clearing balances and their consequent transmission for settlement, as far as concerns payment instructions flowing into

3 'Central banks' provision of retail payment services in euro to credit institutions'; available on the ECB website (www.ecb.int).

the *Dettaglio* sub-system. This would clarify that the provision is not intended to prevent private entities from providing comparable services in Italy, outside the scope of BI-COMP (i.e. those services that are described in recital 3 as the components of a clearing process). Otherwise the provision might be considered a competitive distortion or a crowding-out of market initiatives in the retail payments field.

9. The *Recapiti locale* sub-system

The final recital to the draft regulation states that the characteristics of paper-based payment instruments make it 'advisable' for the Banca d'Italia to maintain operation of the entire clearing process of the *Recapiti locale* sub-system. However, it is noted that the explanatory note accompanying the draft regulation refers to 'specific legal and operational characteristics that preclude the direct intervention of market operators, even in the exchange phase alone, requiring that the entire clearing process continue to be operated by the Bank of Italy'. The ECB understands that this refers to the fact that the Banca d'Italia – as a public authority – may issue an official statement certifying that a cheque has not been paid (*dichiarazione sostitutiva del protesto*), pursuant to the first paragraph of Article 45 of Royal Decree 1736 of 21 December 1933 (according to which a clearing house can issue such a statement), read in conjunction with Article 18 of Royal Decree-Law 812 of 6 May 1926, ratified as Law 1262 of 25 June 1926 (according to which the Banca d'Italia is responsible for managing clearing houses). However, pursuant to Royal Decree 1736 of 21 December 1933 and Law 349 of 12 June 1973, various other authorities (e.g. public notaries) could issue an equivalent legal document (*protesto*) if private operators were able to clear cheques. Given the requirement under Article 105(1) of the Treaty establishing the European Community for the Eurosystem to act in accordance with the principle of an open market economy with free competition, the ECB proposes that the relevant Italian authorities amend the abovementioned legislative provisions to ensure that specific functions of the Banca d'Italia in the payment system do not act as a competitive distortion or as a crowding-out of market initiatives in the retail payments field.

10. Oversight requirements

Article 2 of the draft regulation sets out the Banca d'Italia's oversight role in relation to the activities of private operators which will organise, manage and execute the exchange of payment instructions to be entered in the *Dettaglio* sub-system. This Article builds on the Regulation concerning the oversight of payment systems issued by the Banca d'Italia on 24 February 2004. Payment systems oversight is a core competence of the Eurosystem and the common oversight policy defined by the Governing Council is the basis for the Banca d'Italia's oversight activities. Article 3 of the draft regulation sets out that system operators will submit regular reports to the Banca d'Italia on the quantitative and qualitative characteristics of their activity. The ECB recommends that the design, reception and processing of these reports is performed in a way that allows the data to be aggregated and the resulting statistics to be delivered to the ECB.

11. SEPA

The changes to the BI-COMP system are clearly intended to take account of two important Eurosystem goals: creating SEPA and setting up SEPA-compliant infrastructure allowing for euro area-wide interoperability. In this respect the Eurosystem welcomes the migration from national to SEPA-compliant infrastructures in order to foster competition[4].

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

Done at Frankfurt am Main, 1 November 2005.

[signed]

The President of the ECB

Jean-Claude TRICHET

4 See 'Towards a single euro payments area - Third progress report', 2 December 2004; available on the ECB website (www.ecb.int).