



EUROPEAN CENTRAL BANK

**OPINION OF THE EUROPEAN CENTRAL BANK****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****(CON/2005/58)**

1. On 21 December 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<sup>1</sup>, 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 it has been already consulted twice on previous drafts of this provision and welcomes the Italian Government's decision to consult the ECB again on this new draft article. The ECB notes with pleasure that the Italian Government has endorsed most of the comments made in such previous opinions. More specifically, the ECB particularly welcomes the fact that specific amendments have been introduced to the draft article to introduce the principle of collegiality for the Directorate's decision-making on measures related to non-ESCB tasks and a mandate of six years for its members, renewable once, similar to that one introduced for the Governor.
4. The ECB notes that the draft article will modify the current procedure for both the appointment and the revocation of the Governor in the cases indicated by Article 14.2 of the Statute of the European System of Central Banks and of the European Central Bank: he/she will be appointed with a decree of the President of the Republic, upon proposal of the President of the Council of Ministers, after deliberation of the Council of Ministers, having heard the opinion of the Banca d'Italia's Board of Directors. The draft article complies with the Treaty. The ECB also notes that paragraph 7 of the draft article envisages that the Banca d'Italia's statute will provide for staggered appointment of the members of the Directorate to ensure a degree of continuity in its functioning and welcomes it. The ECB stands ready to provide an assessment of such aspects in a future opinion on the amendments to be introduced into the Statute of Banca d'Italia.

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<sup>1</sup> OJ L 189, 3.7.1998, p. 42.

5. According to the draft article a Government regulation will specify the procedure for the transfer of Banca d'Italia's shares owned by entities other than the State and other public bodies within three years from entry into force of the law. The ECB recalls the comments made in its earlier opinion as regards the need for ensuring the compatibility of both the financing of the planned transfer of the Banca d'Italia's shares to the State with the principles established by the Treaty as regards monetary financing and fiscal policies<sup>2</sup>. The ECB stands ready to provide an assessment of such aspects in a future opinion on the above-mentioned draft Government regulation.
6. Furthermore, the ECB recalls its earlier comments as regards the need for preserving the Banca d'Italia's financial independence upon transfer of the shares and to review the role of the Board of Director. The ECB takes note that the draft article envisages a modification of the Banca d'Italia's Statute to redefine the functions of such body and stands ready to provide an assessment of the overall internal governance in a future opinion.
7. Finally, the ECB notes that the draft article provides for the abrogation of the current provisions of Law No. 287 of 10 October 1990 concerning the exercise of the antitrust functions as regards the banking system and the transfer of the powers from the Banca d'Italia to the "Autorità garante della concorrenza e del mercato" (AGCM). More specifically, the draft article provides that when acquisitions of significant holdings in banks and banking mergers occur, the authorizations of both Banca d'Italia and AGCM – pertaining, respectively, to sound and prudent management issues and to the competitive effects – are necessary and will be adopted in one single measure. Co-ordination between the two authorities is also required.
8. The ECB highlights that, as already commented on an earlier version of the draft article<sup>3</sup>, while co-ordination between authorities is highly needed to avoid an overly complex framework for supervised entities, it is appropriate to maintain a clear distinction between procedures leading to antitrust and banking supervision decisions. However, cases might occur in which a banking merger would be deemed necessary on stability grounds, although it raises concerns for its effects on competition. To address such issue, the draft article might envisage a provision similar to that contained in the draft law submitted for consultation in 2004, according to which the AGCM would be entitled to authorise concentrations upon request of the Banca d'Italia based on stability grounds.

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<sup>2</sup> See paragraphs 8 and 10 of ECB Opinion 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.

<sup>3</sup> See paragraphs 4 of 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.

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

Done at Frankfurt am Main, 23 December 2005.

[ signed ]

*The President of the ECB*

Jean-Claude TRICHET