



## **OPINION OF THE EUROPEAN CENTRAL BANK**

**of 18 June 2007**

**at the request of the Italian Ministry of Economic Affairs and Finance**

**on a draft law on the regulation and supervision of markets and the functioning of the competent independent authorities**

**(CON/2007/17)**

### **Introduction and legal basis**

On 14 May 2007 the European Central Bank (ECB) received a request from the Italian Ministry of Economic Affairs and Finance for an opinion on a draft law on the regulation and supervision of markets and the functioning of the competent independent authorities (hereinafter the 'draft law').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the third 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 legislative provisions<sup>1</sup>, as the draft law relates to the Banca d'Italia and rules applicable to financial institutions insofar as they 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.

### **1. Purpose of the draft law**

- 1.1 The draft law was approved by the Italian Council of Ministers on 2 February 2007 and submitted to the Parliament on 5 March 2007. It is currently being discussed by the competent Senate committees. This opinion is based on the version of the draft law that the consulting authority sent to the ECB with its consultation request. The ECB notes that the preparation of the draft law is a dynamic process, whereby amendments may still be introduced. It stands ready to comment on any such amendments to the extent possible.
- 1.2 The aims of the draft law are to strengthen the existing legislative framework as regards the Italian authorities for the regulation and supervision of markets, to fill current lacunae and to eliminate overlapping jurisdictions. In particular, as regards the financial sector, the draft law further modifies the institutional supervisory framework in Italy and represents another step in the direction of the refinement of the Italian supervisory model on the basis of allocating regulatory and supervisory tasks to authorities in accordance with their objectives. The ECB has already been

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

consulted previously on other Italian draft legislative provisions which had as their aim the establishment of a functional supervisory model<sup>2</sup>.

## 2. Refinement of the supervisory model

- 2.1 In general, the draft law further refines the current functional supervisory system regarding the financial sector. The *Istituto per la Vigilanza sulle Assicurazioni Private e di Interesse Collettivo* (ISVAP, the insurance supervisory authority) and the *Commissione di vigilanza sui fondi pensione* (COVIP, the pension funds authority) will be abolished by legislative decrees which must be adopted within one year from the date of entry into force of the draft law. These two bodies' existing tasks and duties are allocated to the Banca d'Italia and the *Commissione nazionale per le Società e la Borsa* (CONSOB, the National Commission for Companies and the Stock Exchange), in accordance with their respective objectives. As a result, as stated in Article 7 of the draft law, there will be two supervisory authorities: the Banca d'Italia, which will be responsible for matters relating to the stability of financial institutions, and CONSOB, which will be responsible for matters relating to the transparency of the market and the propriety of conduct. Moreover, the *Ufficio Italiano dei Cambi* (UIC, the Italian Foreign Exchange Office) will be liquidated and its functions and assets attributed to the Banca d'Italia.
- 2.2 The ECB confirms its positive assessment of this supervisory model, which involves a functional division of responsibilities for supervising the financial sector<sup>3</sup>, and welcomes the draft law's aim of enhancing the model's efficiency and effectiveness. First, the proposed institutional framework is oriented towards recognising the essential role of the central bank in promoting the safety and soundness of financial institutions and the stability of the financial system as a whole. Second, the chosen approach fully recognises the emergence of financial groups that provide different types of financial services and the need to address prudential concerns relating to such groups in a highly coordinated manner. However, careful attention should be paid to some elements of the new institutional framework, as further specified below.
- 2.3 The ECB notes that the *Comitato Interministeriale per il Credito ed il Risparmio* (CICR, Interdepartmental Committee for Credit and Savings) is proposed to be abolished and that the tasks and duties assigned to it by the consolidated Law on Banking (TUB) will be allocated to the Ministry of Economic Affairs and Finance and the Banca d'Italia by means of legislative decrees (which must be adopted within one year from the date of entry into force of the draft law). The ECB recalls its previous request for a clarification of CICR's role, in particular with a view to

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<sup>2</sup> See ECB Opinions: 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; 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; 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; CON/2006/44 of 25 August 2006 at the request of the Banca d'Italia on the amended Statute of the Banca d'Italia; and CON/2006/51 of 3 November 2006 at the request of the Italian Ministry of Economic Affairs and Finance on a draft legislative decree exercising powers delegated under the Law on the protection of savings.

<sup>3</sup> See ECB Opinion CON/2004/21 of 7 June 2004 at the request of the Ministry of Finance of the Netherlands on a draft Financial Sector Supervision Act.

safeguarding the operational independence of supervisory authorities, which is an essential and internationally recognised standard<sup>4</sup>. The ECB therefore welcomes the specific reference to ‘ensuring the independence of supervisory activities’ in Article 10(1)(g) as regards the matters to be specified by subsequent legislative decrees, which will regulate in detail the transfer of powers and resources between authorities and coordinate between existing laws concerning financial intermediaries and markets. The ECB stands ready to provide a further assessment of such matters when consulted on these legislative decrees. However, the reference in Article 1(3) to the ‘functions for the general direction and for the high supervision of the Government and of the Ministers’ in relation to the matters referred to in the draft law, particularly in connection with the cross-reference to this provision in Article 9(4), might merit further clarification to safeguard the independence of supervisory authorities.

- 2.4 Furthermore, the ECB welcomes the improved accountability of supervisory action introduced by Article 18 of the draft law, which establishes a duty for supervisory authorities to consult stakeholders, give reasons for their decisions and explain the consequences of their actions. Indeed, supervisory independence must be accompanied by clear accountability as regards the action undertaken by the authorities. The ECB also notes that Article 21 of the draft law establishes an ad-hoc bicameral committee, to which all authorities will present annual reports, and welcomes the explicit prohibition of any interference by this committee in day-to-day supervision.
- 2.5 In addition, in line with the experience of other EU Member States, Article 9 of the draft law establishes a new Committee for Financial Stability (CFS), composed of the Minister for Economic Affairs and Finance (who will chair the CFS), the Banca d’Italia’s Governor and CONSOB’s President. The ECB welcomes the establishment of the CFS, as it responds to the need to promote financial stability and take coordinated action in financial crises that may have an impact on the entire financial system. The establishment of such coordination at national level is also in line with recommendations made at EU level. However, the ECB considers that the tasks attributed to such committees must not compromise the central bank’s independence, in particular with regard to the preservation of the stability of the financial system and crisis management, which may directly concern certain central bank functions<sup>5</sup>.

### **3. The UIC**

- 3.1 The ECB notes that the UIC’s tasks and duties will in the future be performed by the Banca d’Italia, including responsibility for anti-money laundering measures, which will be assigned in particular to the Financial Analysis Service<sup>6</sup>. Moreover, an Anti-Money Laundering Committee

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<sup>4</sup> On this issue, see paragraph 10 of ECB Opinion CON/2004/16 and paragraph 2.3 of ECB Opinion CON/2006/51.

<sup>5</sup> See paragraph 11 of ECB Opinion CON/2002/13 of 24 April 2002 at the request of the Belgian Ministry of Finance on a draft proposal for a law on prudential supervision of the financial sector and financial services.

<sup>6</sup> Article 12 of the draft law.

will be established within the Ministry of Economic Affairs and Finance<sup>7</sup>. The ECB welcomes that the Committee will be established for coordination purposes only, without affecting the Financial Intelligence Unit's independence.

- 3.2 The fact that the UIC and its tasks will be absorbed by the Banca d'Italia will constitute a transfer of additional powers to a national central bank (NCB). The ECB has always made clear that 'Member States may not put their NCBs in a position where they have insufficient financial resources to carry out their ESCB- or Eurosystem-related tasks, as applicable'<sup>8</sup>. The ECB therefore expects that, in implementing the new structure, care will be taken to ensure that the Banca d'Italia's operational capacity to carry out Eurosystem-related tasks will not be affected<sup>9</sup>.
- 3.3 Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing<sup>10</sup> requires that Member States ensure that their Financial Intelligence Unit 'has access, directly or indirectly, on a timely basis, to the financial, administrative and law enforcement information that it requires to properly fulfil its tasks'. The Italian legislation implementing Directive 2005/60/EC will therefore have to ensure that the Banca d'Italia is entrusted with such powers, in order to be able to request and receive all necessary information from the institutions and persons covered by that Directive<sup>11</sup>.

#### **4. Relationship between the Banca d'Italia and the Competition Authority**

Article 14(5) of the draft law provides that, in the event of a merger in the banking sector, the Banca d'Italia must issue a non-binding opinion within 30 days of receiving the relevant documentation. In the event of non-compliance with this obligation, the *Autorità Garante della Concorrenza e del Mercato* (AGCM, the Competition Authority) may adopt its decision without it. The ECB welcomes this solution, which reflects the principle of allocating powers to authorities in accordance with their respective objectives and maintains a clear distinction from the merger authorisation process<sup>12</sup>.

#### **5. The Banca d'Italia's ownership structure**

- 5.1 Pursuant to Article 14(6) and (7) of the draft law, upon a proposal by the Minister for Economic Affairs and Finance, the Government is delegated the power to adopt, within one year from the date

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<sup>7</sup> Article 11 of the draft law. See also paragraph 9 of ECB Opinion CON/1998/35 at the request of the Italian Ministry of the Treasury, Budget and Economic Planning under Articles 109f (6) and 109l (2) of the Treaty establishing the European Community, Article 5.3 of the Statute of the European Monetary Institute and Council Decision 93/717/EC of 22 November 1993 on a draft legislative decree implementing Article 108 of the Treaty concerning the Ufficio Italiano dei Cambi.

<sup>8</sup> See e.g. the ECB's Convergence Report 2007, p. 19.

<sup>9</sup> See paragraph 2.3 of ECB Opinion CON/2006/38 of 25 July 2006 at the request of the Bank of Greece on a draft provision on the Bank of Greece's powers in the field of consumer protection.

<sup>10</sup> OJ L 309, 25.11.2005, p. 15.

<sup>11</sup> See Articles 21 and 22 of Directive 2005/60/EC.

<sup>12</sup> On this issue, see paragraph 14 of ECB Opinion CON/2004/16, paragraphs 7 and 8 of ECB Opinion CON/2005/58 and Section 3 of ECB Opinion CON/2006/51.

of entry into force of the draft law, a legislative decree redefining the criteria for participation in the Banca d'Italia's capital and introducing limits on the possession of participation shares, as a guarantee of the Banca d'Italia's independence, as well as criteria for the remuneration of participation shares, having regard to the public nature of the functions exercised.

- 5.2. The ECB reiterates what it has already stated in this regard in past opinions, in particular the need for the modified ownership structure to comply with central bank independence and the public nature of the Banca d'Italia. It expects to be consulted by the Italian Government on the relevant draft legislative decree<sup>13</sup>.

## **6. Compatibility with Article 14.2 of the Statute of the European System of Central Banks and of the European Central Bank**

Article 16(6) of the draft law provides for a penalty of 'termination' if a member of the board of any of the authorities referred to in the draft law breaches the rules regarding conflicts of interest. The ECB would point out that Article 14.2 of the Statute contains an exhaustive list of the grounds for dismissal of Governors and other members of NCB decision-making bodies who are involved in the performance of ESCB-related tasks. Therefore, to avoid any incompatibility with Community law, the ECB strongly recommends that Article 16(6) of the draft law is listed in Article 16(8) of the draft law as one of the provisions which do not apply to Banca d'Italia.

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

Done at Frankfurt am Main, 18 June 2007.

[signed]

*The President of the ECB*

Jean-Claude TRICHET

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<sup>13</sup> See paragraphs 8 and 10 of ECB Opinion CON/2005/34, paragraph 5 of ECB Opinion CON/2005/58 and paragraph 3.1 of ECB Opinion CON/2006/44.