



OPINION OF THE EUROPEAN CENTRAL BANK

of 1 September 2009

**on the remuneration of the Treasury availability account held with the Banca d'Italia
(CON/2009/69)**

Introduction and legal basis

On 30 July 2007 the European Central Bank (ECB) received a request from the Italian Ministry of Economic Affairs and Finance (hereinafter the 'MEF') for an opinion on a draft law on accounting and public finance (hereinafter the 'draft law') and specifically on Article 48 thereof (hereinafter the 'draft article').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community 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 provisions¹, as the draft law relates to 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.

The draft law was approved on 24 June 2009 by the Senate of the Republic and transmitted to the Chamber of Deputies for its approval and adoption. The subject of this opinion is the version of Article 48 of the draft law that the consulting authority sent to the ECB with its consultation request.

1. Purpose of the draft article

1.1 The draft article contains provisions implementing the structural reform, which was initiated at the end of 2007, of the Treasury availability accounts held with the Banca d'Italia, regulated by the Law on consolidation of legislative provisions and regulations on public debt (hereinafter the '2003 Consolidated Law')². The draft article amends once more Article 5(5) of the 2003 Consolidated Law, which relates to the conditions under which the availability account is held and, in particular, its remuneration regime. According to the draft article, the conditions concerning the maintenance and remuneration of the account will be established by an agreement between the MEF and the Banca d'Italia and will be linked to market parameters. The draft article also amends provisions concerning the remuneration of other accounts held by the Treasury with the Banca d'Italia and lays down transitional provisions for the period preceding the entry into force of the new regime.

¹ OJ L 189, 3.7.1998, p. 42.

² Presidential Decree No 398 of 30 December 2003 (*Gazzetta Ufficiale* No 57, 9.3.2004, *Supplemento ordinario*).

Furthermore, it provides that accounting methods and criteria concerning the transactions connected to the abovementioned accounts will be determined by ministerial decree.

- 1.2 The ECB has already been consulted twice by the MEF on draft legislative provisions related to Article 5(5) of the 2003 Consolidated Law, which were aimed at initiating and improving the reform of the maintenance and remuneration regime of the Treasury availability account held with the Banca d'Italia³. The first consultation concerned amendments to Article 5(5) by the then draft Article 2(39) of the 2008 Budget Law⁴; the second consultation request was received in February 2009 and referred to a draft ministerial decree containing amendments to the OPTES procedures⁵. On these occasions, the ECB analysed the draft provisions intended to amend Article 5(5) from the point of view of compliance with the prohibition of monetary financing and with regard to implementation of monetary policy. It generally welcomed the efforts made to address the problematic provisions of the legislation in force, but also called on the Italian Government to undertake further legislative change to complete the structural reform of the availability account in a way that would meet Treaty requirements regarding the prohibition of monetary financing.

2. General observations

Compliance of the legislation with the prohibition of monetary financing

- 2.1 The ECB welcomes the fact that paragraph 1 of the draft article amends Article 5(5) of the 2003 Consolidated Law by making reference to an agreement between the MEF and the Banca d'Italia, to be concluded within three months of the entry into force of the draft law, under which the conditions of maintenance and remuneration of the availability account are to be established. Most importantly, the remuneration rate that the Banca d'Italia will pay is linked to market parameters.
- 2.2 The ECB had already identified in its 2008 opinion that the legislation then in force, regulating the account held by the Treasury with the Banca d'Italia, did not contain provisions on the maturity of deposits and, consequently, did not explicitly correlate the remuneration rate of the deposits with their maturity. This meant that the account arrangement was constructed in a way that did not exclude the possibility of Treasury deposit remuneration rates being higher than the market rates, in particular for the remuneration of overnight deposits. Such a remuneration rate would contravene the objectives of the monetary financing prohibition under the Treaty⁶. The attempt to amend Article 5(5) in order to address this issue was represented by the then draft Article 2(39) of the 2008 Budget Law, referred to above, which contained a provision which would have introduced a reference to market parameters regarding the remuneration of the account. However, this reference was deleted by the Parliament. The ECB, in the opinion given on the then draft Article 2(39) of the

³ See Opinions CON/2008/10 and CON/2009/23. All ECB opinions are published on the ECB website at www.ecb.europa.eu.

⁴ Law No 244 of 24 December 2007 (*Gazzetta Ufficiale* No 300, 28.12.2007, *Supplemento ordinario*).

⁵ At the present time, the draft ministerial decree has not been adopted.

⁶ See paragraph 3.4.2 of Opinion CON/2008/10.

2008 Budget Law, expressed its concerns in this regard⁷ and insisted, on the occasion of its subsequent opinion on the draft ministerial decree concerning the OPTES procedures that, until appropriate amendments to Article 5(5) were introduced, it would continue to consider the Italian legislation in force as incompatible with the prohibition of monetary financing⁸.

- 2.3 The ECB is therefore pleased to note that paragraph 1 of the draft article reintroduces a reference to market parameters, to which the interest rate to be paid by the Banca d'Italia will be linked. The ECB considers that this amendment would overcome the incompatibility with regard to the prohibition of monetary financing referred to in the previous paragraph.

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

Done at Frankfurt am Main, 1 September 2009.

[signed]

The President of the ECB

Jean-Claude TRICHET

⁷ See paragraph 3.4.3 of Opinion CON/2008/10.

⁸ See paragraph 2.1 of Opinion CON/2009/23.