



**OPINION OF THE EUROPEAN CENTRAL BANK**  
**of 30 July 2012**  
**on the reform of supervision of insurance and retirement provision**  
**(CON/2012/61)**

**Introduction and legal basis**

On 5 July 2012, the Italian Government adopted Decree Law No 95<sup>1</sup> on public spending review (hereinafter the 'Decree Law'), which entered into force on 6 July 2012. On 18 July 2012, the European Central Bank (ECB) received a request from the Ministry of Economic Development for an opinion on Article 13 of the Decree Law. Article 13 concerns the establishment of a new institution for the supervision of the insurance and retirement provision sectors (*Istituto per la vigilanza sulle assicurazioni e sul risparmio previdenziale*, IVARP).

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 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>2</sup>, as the Decree Law relates to the Banca d'Italia and the 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 Decree Law**

1.1 Under Article 13 of the Decree Law, the IVARP will be established as a public law institution with legal personality. The IVARP will replace the ISVAP<sup>3</sup> and the COVIP<sup>4</sup>, and take over their competences, tasks and administrative and financial resources. With regard to the insurance sector, the IVARP will have the same competences and tasks as the ISVAP, and will be entitled to receive the fees charged to insurance companies, insurance intermediaries and insurance assessors under the relevant legislation<sup>5</sup>. With regards to the retirement provision sector, the COVIP's competence

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<sup>1</sup> *Gazzetta Ufficiale della Repubblica Italiana*, No 156, of 6.7.2012, p. 1, *Supplemento Ordinario*. No. 141 .

<sup>2</sup> OJ L 189, 3.7.1998, p. 42.

<sup>3</sup> *Istituto per la vigilanza sulle assicurazioni private e di interesse collettivo*, Institution for the supervision of private and public interest insurance.

<sup>4</sup> *Commissione di vigilanza sui fondi pensione*, Commission for the supervision of pension funds.

<sup>5</sup> With regard to the competences and tasks, see Article 4 of Law No 576 of 12 August 1982 and Article 5 of Legislative Decree No 209 of 7 September 2005. Articles 335 to 337 of the latter contain provisions on the fees due to the ISVAP. In particular, according to Article 335(2) insurance and reinsurance companies are subject to a fee based on the premia collected by such companies; the fee cannot exceed 0,2% of the premia. Insurance and reinsurance intermediaries are subject to a fee whose maximum amount depends on the specific category in question. Insurance assessors are subject to

concerning the supervision of pension funds is transferred to the IVARP, as well as the entitlement to receive the fees which pension funds pay to the COVIP under the relevant legislation<sup>6</sup>. Some other competences will be transferred to the Ministry of Labour and the Welfare State and to the CONSAP<sup>7</sup>. Where competence is transferred to the Ministry of Labour and the Welfare State, the latter and the IVARP may enter into special agreements for the exercise by the IVARP of powers of verification and control, including via inspections.

- 1.2 The Governance of the IVARP will consist of a President, a Council and the Directorate of the Banca d'Italia, which pursuant to Article 21 of the Statute of the Banca d'Italia consists of the Governor, the Director General and three Deputy Directors General<sup>8</sup>, enlarged by the addition of the two IVARP Councillors, solely for the purposes of the performance of the institutional functions assigned to the IVARP in insurance and pension matters. The Council, which will be responsible for the overall administration of the IVARP, will consist of the President and two Councillors, chosen among persons of unquestioned integrity, independence and professional expertise in insurance or pension matters. The Director General of the Banca d'Italia will be the President of the IVARP, who will in this capacity be the legal representative of the IVARP and chair the Council. The two Councillors will be appointed for a term of office of six years, renewable once, within 120 days from the entry into force of the Decree Law, by decree of the President of the Republic upon a resolution adopted by the Council of Ministers at the initiative of the President of the Council of Ministers, acting on a proposal from the Governor of the Banca d'Italia, and in agreement with the Minister for Economic Development and the Minister for Labour and the Welfare State. The enlarged Directorate will be responsible for setting guidelines and for the strategic direction of the IVARP and will have the power to take all measures of external importance relating to the performance of the IVARP's institutional functions of insurance and pension supervision. It will also be responsible for the approval of the IVARP's annual report and the adoption of regulatory measures.

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a fee whose maximum amount is 100 euro. The amount of the aforementioned fees is currently determined on a yearly basis by means of a decree of the Ministry of Economy and Finance on a proposal of the ISVAP.

<sup>6</sup> With reference to the competences transferred from the COVIP to the IVARP see Legislative Decree No 252 of 5 December 2005. As for the provisions concerning the fees on pension funds, see Article 13(3) of Law No 335 of 8 August 1995, according to which the COVIP can be funded by means of a fee not exceeding 0,05% of the yearly contributions inflows of pension funds. The competences which are transferred to the Ministry of Labour and the Welfare State are those set out in Article 14 of Decree Law No 98 of 6 July 2011, converted with amendments into Law No 111 of 15 July 2011.

<sup>7</sup> The CONSAP (*Concessionaria servizi assicurativi pubblici*, Concessionaire for public insurance services). will be responsible for keeping a registry of insurance assessors. The Ministry of Economic Development will make provision for assigning a quota of the aforementioned fees to the CONSAP by means of decree, after having consulted the IVARP.

<sup>8</sup> The Directorate has authority to adopt measures of external significance regarding the exercise of the public functions entrusted by law to the Banca d'Italia or to the Governor in pursuit of the Banca d'Italia's institutional aims, other than decisions falling under the authority of the ESCB. Within the scope of its authority, the Directorate may grant mandates to managers of the Bank, establishing how they are to be performed, for the adoption of measures that do not require discretionary assessments but merely involve the acknowledgement of facts, circumstances and qualifications. According to Article 17 of the Statute of the Banca d'Italia, the Director General and the three Deputy Directors General are appointed by another decision-making body of the Banca d'Italia, the Board of Directors, on a proposal of the Governor. The appointment, reappointment and removal from office of the Director General and the Deputy Directors General must be approved by a decree of the President of the Republic acting on a proposal from the President of the Council of Ministers in agreement with the Minister for the Economy and Finance after consulting the Council of Ministers.

- 1.3 The Statute of the IVARP will be adopted by the Directorate of the Banca d'Italia within 120 days from the entry into force of the Decree Law, and approved by decree of the President of the Republic acting on a proposal from the President of the Council of Ministers, in agreement with the Ministry of Economic Development and the Ministry of Labour and the Welfare State, subject to a prior resolution of the Council of Ministers. Amendments to the Statute of the IVARP, adopted by the enlarged Directorate, will have to be approved by the same procedure. Criteria for possible secondment of employees from the Banca d'Italia to the IVARP or from the IVARP to the Banca d'Italia will be laid down in the Statute of the IVARP, and the IVARP will have access to the technical infrastructure of the Banca d'Italia. Within 120 days from the takeover of the functions of the ISVAP and the COVIP, the IVARP Council will draft a regulation on the legal, economic and pension treatment of IVARP staff, and a reorganisation plan aimed at optimizing resources and reducing operating expenses. A regulation to be issued by the Government within two years of the entry into force of the Decree Law will make provision for the establishment of a private institution responsible for keeping a single register of insurance and reinsurance intermediaries and supervision thereof. This institution will be subject to supervision by the IVARP.
- 1.4 Several measures are contained in the Decree Law to ensure an adequate level of independence of the newly-established IVARP. In the first place, the IVARP's accounts will be audited by external auditors in the manner established for the Banca d'Italia by Article 27 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'), without prejudice to the controls already performed by the State Audit Office on the ISVAP and the COVIP, pursuant to the legislation in force<sup>9</sup>. Secondly, several provisions concerning both the influence of the competent ministries on the organisation of the ISVAP and the COVIP, and the regulatory powers of such ministries with reference to the sectors supervised by the ISVAP and the COVIP, are repealed, whereas such regulatory powers are transferred to the IVARP<sup>10</sup>.

## 2. General observations

- 2.1 The ECB understands that in the Italian legal system the adoption of a Decree Law is part of a two-phase urgent legislative procedure. In the first phase the Government adopts a Decree Law which immediately enters into force and takes effect, for a limited period of 60 days, upon publication in the Official Journal. In the second phase, the Government submits the Decree Law to the Parliament, on the same day as its adoption, for conversion into law within the 60-day period. The ECB already noted in paragraph 2 of its Opinion CON/2012/20<sup>11</sup> that decree laws are legal acts that enter into force on adoption by the Government, and that therefore consultation should take place

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<sup>9</sup> See Article 4 of Law No 576 of 12 August 1982, as amended by Article 351(1), of Legislative Decree No 209 of 7 September 2005, and Article 18(4), last sentence, of Legislative Decree No 252 of 5 December 2005.

<sup>10</sup> An exception being the regulatory powers on the integrity and experience requirements for the members of the governing bodies and managers of insurances and supplementary pension schemes, which remain with the Ministry of Labour and the Welfare State.

<sup>11</sup> All ECB opinions are available on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

before adoption. Consulting the ECB after the submission of a decree law to Parliament is not sufficient to comply with the consultation obligation and the ECB would like to draw the Ministry's attention to the proper procedure for its consultations<sup>12</sup>.

- 2.2 With reference to this Decree Law, the ECB understands that the Banca d'Italia is only concerned by Article 13 and is not affected by any other provision contained therein. The ECB notes that Article 13 of the Decree Law will only take effect at a later stage, upon implementation of this Article, in particular when the Statute of the IVARP is adopted. This time lag should enable the relevant national authorities to take the ECB's opinion into consideration before the Article takes effect both during the process of conversion into law, and when drafting and adopting the implementing measures, including the Statute of the IVARP.

### **3. Contribution to the prudential supervision and the stability of the financial system**

- 3.1 Article 127(5) of the Treaty provides that the ESCB has to contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system. In this context, the ECB has constantly stressed the importance of having central banks closely involved in prudential supervision<sup>13</sup>. With respect to the insurance sector in particular, experience has shown that insurance companies are important for systemic financial stability because of their size and their interconnectedness with the financial sector. In view of the systemic relevance of the insurance sector for financial stability, it is subject to macro-prudential oversight by the European Systemic Risk Board. Against this background, the ECB welcomes the Decree Law, which ensures that the Banca d'Italia will be closely involved in the IVARP both through its decision-making bodies and operationally.
- 3.2 The ECB notes that it is of utmost importance to ensure that the IVARP will have full and effective supervisory independence, in compliance with international principles<sup>14</sup>. In this context, the ECB welcomes the safeguards included in the Decree Law as regards the personal independence of the two Councillors, as well as the operational independence of the IVARP and the members of its governing bodies (Article 13(4) and (13)). In this context, it is also of importance that, when sharing supervisory data with the Ministries of Economic Development and of Labour and Social Policies, this is limited to aggregated data. Moreover, the ECB welcomes that any conferral on the IVARP of powers of verification and control over entities subject to the oversight of the Ministry

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<sup>12</sup> See Title IV, Section I of the *Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions*, available on the ECB's website. See also paragraphs 2.2 and 2.3 of Opinion CON/2012/48.

<sup>13</sup> On earlier attempts to confirm the attribution of responsibility for prudential supervision to the Banca d'Italia and to extend the scope of such supervision to all financial intermediaries, see in particular Opinions CON/2007/17, paragraph 2.2, and CON/2004/16, paragraph 5. See also Opinions CON/2011/46, paragraph 2.2, CON/2011/7, paragraph 2.1, CON/2010/48, paragraph 2.2, CON/2010/33, paragraph 2, CON/2010/30, paragraph 2.2, CON/2010/4, paragraph 2, CON/2008/16, paragraph 2.2, CON/2006/39, paragraph 2.3, CON/2005/39, paragraph 5, CON/2005/26, paragraph 4, CON/2004/31, paragraph 9 and CON/2003/23, paragraphs 6 to 8.

<sup>14</sup> Primarily, the standards and guidelines of the International Association of Insurance Supervisors (IAIS), in particular ICP2, available on the IAIS's website at [www.iaisweb.org](http://www.iaisweb.org).

of Labour and Social Policies is subject to special agreements signed by the IVARP and the Ministry.

#### **4. Central bank independence and monetary financing**

- 4.1 Member States must ensure that the national central banks have sufficient financial resources to carry out their ESCB-related tasks. In this respect, the ECB understands that the functions to be performed by the members of the Directorate of the Banca d'Italia in the IVARP will be conducted in a manner that is fully compatible with the functional, institutional and financial independence of the Banca d'Italia and with the personal independence of the members of its Directorate, including the Governor and the Director General, which is designed to safeguard the proper performance of their tasks under the Treaty and the Statute of the ESCB<sup>15</sup>. In this respect, the ECB notes that the envisaged formal separation between the Banca d'Italia and the IVARP, in particular with regard to the IVARP's distinct legal personality, staff, and financial autonomy, would avoid any liability of the Banca d'Italia for the activities or decisions of the IVARP or for obligations entered into by the predecessor authorities. In addition, the ECB notes that the IVARP will be financed via contributions of the supervised institutions and understands that it will not receive financial or human resources, with the exception of the secondments referred to in Article 13(25) of the Decree Law from the Banca d'Italia.
- 4.2 With regard to the separation of the governance bodies of the Banca d'Italia and the IVARP the ECB recommends clarifying in the converting law that the Directorate of the Banca d'Italia in its enlarged composition responsible for the IVARP is a body formally distinct from the Directorate of the Banca d'Italia, that the Banca d'Italia will not take any liability for IVARP's decisions, and that the Directorate of the Banca d'Italia remains the only body exclusively entrusted with supervision of the banking sector, as provided for in the legislation currently in force. The same clarification should be made concerning the function of the IVARP's President and that of the Banca d'Italia's Director General.
- 4.3 The ECB also notes that the contribution of the Banca d'Italia to the IVARP through its Directorate members should not affect the Banca d'Italia's ability to carry out its ESCB-related tasks from an operational and financial point of view. The ECB expects that care will be taken to ensure that the provision of staff of the Banca d'Italia to the IVARP and the use by the IVARP of the technical infrastructures of the Banca d'Italia, which should serve to enhance the Banca d'Italia's contribution to the IVARP's supervisory and stability-related policies, does not affect the Banca d'Italia's ability to carry out its ESCB-related tasks from an operational and financial point of view.
- 4.4 As regards autonomy in staff matters of the Banca d'Italia, which is an aspect of central bank financial independence, the ECB understands that the initial text of the Statute of the IVARP which will, inter alia, govern secondments between the Banca d'Italia and the IVARP, will be adopted by the Directorate of the Banca d'Italia, whereas future amendments will be decided on in the enlarged

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<sup>15</sup> See the ECB's Convergence Report of May 2012, p. 22.

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Directorate of the Banca d'Italia. However, the Statute of a separate authority such as the IVARP cannot provide for the conditions under which Banca d'Italia staff are seconded to that authority unless those conditions are compliant with the relevant rules of the Banca d'Italia applicable to Banca d'Italia staff, including the approval of secondments by the Banca d'Italia as an employer. Therefore, the ECB recommends providing for the necessary explicit clarifications in this sense in the converting law.

- 4.5 The Decree Law also provides for the possibility for the IVARP to use the technical infrastructure of the Banca d'Italia for the performance of its functions, as well as for possible secondment of employees from the Banca d'Italia to the IVARP. In this respect, the ECB notes that the financing by the Banca d'Italia of such resources to be used by the IVARP does not appear to present monetary financing concerns, given that this would in particular facilitate the performance by the Banca d'Italia of its ESCB-related task under Article 127(5) of the Treaty to contribute to the smooth conduct of policies pursued by the IVARP relating to the stability of the financial system. In this respect, it is crucial that the Banca d'Italia is in a position to make a meaningful contribution to the conduct of stability-related policies by the IVARP. The ECB considers that the role envisaged for the Banca d'Italia under the Decree Law, as well as possible staff secondment from the Banca d'Italia to the IVARP, should serve to enhance the Banca d'Italia's contribution to the IVARP's stability-related policies<sup>16</sup>.

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

Done at Frankfurt am Main, 30 July 2012.

[signed]

*The President of the ECB*

Mario DRAGHI

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<sup>16</sup> See also paragraph 3.5 of Opinion CON/2010/4.