



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 30 October 2015

on amendments to the Statute of the Banca d'Italia

(CON/2015/41)

Introduction and legal basis

On 7 October 2015 the European Central Bank (ECB) received a request from the Banca d'Italia for an opinion on proposed amendments to the Statute of the Banca d'Italia (hereinafter, collectively, the 'draft amendments').

The ECB's competence to deliver an opinion is based on the second indent of Article 127(4) and Article 282(5) of the Treaty on the Functioning of the European Union as the draft amendments relate to the statutes of a national central bank. 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 amendments incorporate into the Statute of the Banca d'Italia provisions laid down in Law No 5 of 29 January 2014¹ which converted (with amendments) Decree Law No 133 of 30 November 2013. A previous ECB opinion issued on 21 February 2014² already took into account the amendments made by the Italian Parliament in the process of conversion.
- 1.2 In particular, the draft amendments specify, in accordance with Law No 5 of 2014: (a) the number and value of the shares of the Banca d'Italia³; (b) the range of eligible shareholders⁴; (c) the maximum amount of shares which can be held by a single shareholder, and the methods used for the assessment of indirect shareholdings by reference to specific regulations applicable to shareholders⁵; and (d) the dematerialisation of shares and their transfer by a book-entry system⁶.
- 1.3 Other amendments have been introduced by the Banca d'Italia on its own initiative. In particular, the minimum period of shareholding required for shareholders to request the Board of Directors to convene the meeting of shareholders, to set its agenda, to exercise voting rights in the meeting and to benefit from the distribution of profits is shortened from three months to 40 days, in partial derogation from the rules laid down in the Consolidated Law on Finance⁷.

¹ Published in the *Gazzetta ufficiale della Repubblica Italiana* No 23, 23.1.2014.

² Opinion CON/2014/19. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

³ Article 3(1) of the Statute of the Banca d'Italia, in relation to Article 4(2) of Law No 5 of 2014.

⁴ Article 3(3) of the Statute of the Banca d'Italia, in relation to Article 4(4) of Law No 5 of 2014.

⁵ Article 3(4) of the Statute of the Banca d'Italia, in relation to Article 4(5) of Law No 5 of 2014.

⁶ Article 4 of the Statute of the Banca d'Italia, in relation to Article 6(6-bis) of Law No 5 of 2014.

⁷ Legislative Decree No 58 of 24 February 1998.

- 1.4 Prohibitions on joint shareholding and the registration of encumbrances on shares other than for guarantee purposes, already provided for in the General Regulation of the Banca d'Italia⁸, have now been included in the Statute of the Banca d'Italia.
- 1.5 Further changes are envisaged as far the functioning of the meeting of shareholders is concerned. Regulations governing the meetings shall be approved by shareholders with the agenda of the meeting announced to shareholders in a notice published in the *Gazzetta Ufficiale della Repubblica Italiana* at least 45 days before the date of the meeting. Moreover, the annual ordinary general meeting of shareholders for approval of the Banca d'Italia's annual accounts and the allocation of the net profits shall be held no later than 31 March (instead of 31 May).
- 1.6 Regarding the holding of shares, the Statute of the Banca d'Italia specifies that the Board of Directors shall also be vested with the power to assess whether the top executives and shareholders of the entities purchasing shares meet the legal and statutory integrity requirements. If such requirements are not met, the Board of Directors may void the transfer of shares⁹.
- 1.7 Other amendments provide for minor changes to the governance of the branches, impose upon the Banca d'Italia additional reporting obligations, repeal provisions on clawback actions and rights or titles guaranteed by liens or pledges over assets, goods and securities.

2. General observations

- 2.1 The draft amendments mainly aim at incorporating into the Statute of the Banca d'Italia the provisions laid down in Law No 5 of 2014 amending Decree Law No 133 of 2013. It is noted that the ECB has already expressed its views on some of the draft amendments, as well as related provisions of the Statute of the Banca d'Italia in previous ECB opinions. Therefore, as regards the value of shares, the cap on shareholding, buy-back operations that may be carried out by the Banca d'Italia in order to enable shareholders to comply with the limit imposed on shareholdings, the nationality requirement for eligible shareholders and financial provisions and buffers, reference is made to the views expressed in those opinions¹⁰.
- 2.2 The ECB understands that the draft amendments regarding the rules governing the meeting of shareholders and the minimum period of shareholding required for shareholders to exercise certain shareholders' rights have been introduced by the Banca d'Italia taking into consideration a higher dispersion of shares and an expected higher turnover of shareholders.
- 2.3 The ECB also understands that the provision excluding clawback actions for advances granted by the Banca d'Italia, which mirrors the wording of Article 67(4) of the Bankruptcy Law¹¹, has been repealed to avoid unnecessary duplication, whereas provisions regarding rights, title or claims guaranteed by pledges or liens have been repealed since they are not generally applicable but only

⁸ See Article 1 of *Regolamento Generale della Banca d'Italia* published on the Banca d'Italia's website at www.bancaditalia.it.

⁹ Article 19(3)(l) in relation to Article 6(5)(d) of Law No 5 of 2014.

¹⁰ See in particular paragraphs 1, 3.1, 3.3, 3.5 and 6 of Opinion CON/2013/96 and paragraphs 3.2, 3.3, 3.4, 4.2 of Opinion CON/2014/19.

¹¹ Article 67(4) *Regio Decreto* No 267 of 16 March 1942.

enforceable by means of specific contractual arrangements.

- 2.4 The ECB welcomes that the annual ordinary general meeting of shareholders for approval of the annual accounts and the allocation of the net profits shall be held no later than 31 March each year with a view to providing information in a more timely manner.

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

Done at Frankfurt am Main, 30 October 2015.

[signed]

The President of the ECB

Mario DRAGHI