



EUROPEAN MONETARY INSTITUTE

OPINION OF THE EUROPEAN MONETARY INSTITUTE

at the request of the Italian Ministry of the Treasury under Article 109f (6) of the Treaty establishing the European Community (the “Treaty”), Article 5.3 of the Statute of the EMI and Council Decision 93/717/EC of 22 November 1993, concerning a draft bill “Codified Law on Finance” (the “Draft Bill”)

(CON/98/3)

1. On 19 January 1998, the EMI received a request for an opinion on the Draft Bill from the General Director of the Italian Treasury. This opinion is based on an unofficial English translation of the Italian draft submitted to the EMI by the consulting authority.
2. The EMI’s competence to deliver an opinion is based on Article 1.1, second, fourth and fifth indents, of the Council Decision (93/717/EC) of 22 November 1993 on the consultation of the EMI by the authorities of the Member States on draft legislative provisions, as the Draft Legislative Decree contains (a) provisions dealing with the status and powers of the national central bank, (b) provisions concerning clearing and payment systems and (c) provisions which affect the stability of financial institutions and markets.
3. Concerning the **first part** (“Disciplina degli intermediari” - Articles 1 - 82), the EMI understands that it aims at replacing current provisions which are spread over several pieces of legislation with a view to obtaining a consistent and comprehensive legislative framework covering the whole range of intermediaries operating in securities markets. At the same time, it is recognised that the draft bill also introduces some innovations with particular regard to the undertakings for collective investment (UCIs), whereas with respect to investment firms it mainly confirms the current provisions which transpose Directive 93/22/EEC on investment services in the securities field. In this respect, the EMI notes that one of the main objectives is to reduce the differences between the regulatory and supervisory frameworks for UCIs and investment firms. The EMI welcomes in general this approach which reduces the scope for segmentation of the markets and acknowledges that residual differences are inevitable in relation to the different operational features of the two categories of institutions. In this context, it is noted that the share of supervisory competences between Banca d’Italia and the supervisory authority responsible for securities markets (Commissione Nazionale per le Società e la Borsa - “CONSOB”), according to which the former is responsible for the reduction of risks and the stability of intermediaries

and the latter for transparency and correctness of their behaviour, is now applied in a uniform way to both categories of institutions. The EMI hopes that this share of competences between the two authorities will be conducive, from an overall perspective, to effective supervision without imposing an excessive burden on the supervised entities.

4. The EMI takes note of the main innovations related to the field of UCIs. The first (Article 34) covers the introduction of a new category of management company (“Società di gestione del risparmio”) which will be allowed to undertake, in addition to the management of UCIs and pension funds, also portfolio management on behalf of individual customers (which currently can be carried out only by credit institutions, investment firms and fiduciary companies). The new intermediary will be therefore able to offer a whole range of closely related services in the area of investment management. The EMI welcomes this provision which reduces possible segmentation in the field of asset management and enables operators to develop professionalism and to achieve economies of scale. The second (Article 38) refers to the new regulatory approach applying to the different categories of UCIs. Whereas, according to the current legislation, each category of fund (open-ended, closed-ended, real estate, etc.) is codified in a specific legislation, the draft bill leaves to the secondary legislation and, thus, to the administrative authorities the specification of the type of fund. The EMI takes note that this approach allows for a certain degree of flexibility by the public authorities in devising the regulatory framework for new forms of UCIs.
5. Professional secrecy and exchange of information between Banca d’Italia and the CONSOB on the one hand and the competent authorities of the European Union on the other are dealt with in Article 17, second paragraph, of the Draft Bill. It should be ensured that the notion of EU competent authorities as used in the Italian legislation covers also the European Central Bank, which might need information on these intermediaries as counterparties for monetary policy or as participants in payment and securities settlement systems. Similarly, “EU competent authorities” in Article 231 should include the ECB.
6. The EMI also welcomes the rule laid down in Article 22 of the Draft Bill on separation of assets for the provision of investment services. In particular, such a rule is clearly beneficial from the perspective of securities settlement systems.
7. The **second part** (“Disciplina dei mercati e della gestione accentrata di strumenti finanziari”) deals with the organisation and supervision of financial markets as well as with central securities depositories. Although several provisions of this piece of legislation had already been introduced with the Legislative Decree 415/96 (which inter alia implemented the Investment Services Directive), this part contains nevertheless important innovations.

8. The first innovation contained in the second part of the draft bill is the clear assignment to the Banca d'Italia of the oversight function over the "mercato telematico dei titoli di Stato" (Article 98) and over interbank fund transactions (Article 112). The EMI welcomes the attribution of this function to Banca d'Italia, given to the importance of these segments of the financial market for monetary policy purposes.
9. In the second place, the EMI takes note of the introduction of a framework, dealt with by the combination of Articles 87, 90 and 91 of the Draft Bill, replacing the previous fragmented rules, which has the objective of guaranteeing the successful outcome of transactions.
10. A very important provision which is introduced by the draft bill is the one contained in Article 93, providing for the finality of the clearance and settlement of derivative and non-derivative financial instruments transactions. This provision eliminates from the Italian securities settlement systems the zero-hour rule and transposes in the Italian legal system, ahead of time, the rule contained in the soon-to-be-adopted EC settlement and finality directive. The EMI warmly welcomes the introduction of this provision which ensures legal certainty and the compliance with Standard 1 of the report on "Standards for the use of EU securities settlements systems in ESCB credit operations", published in January 1998.
11. The new provision introduced at Article 100 makes clear that Article 76 of the Italian Bankruptcy Law applies to certain financial instruments, with the consequence that exposures are calculated at their value on the day on which bankruptcy is declared and eventually set off due to the application of Article 56 of the bankruptcy law. The EMI warmly welcomes this provision, which enhances legal certainty in respect of important monetary policy instruments, such as repo and swaps, and avoids "cherry picking".
12. The EMI warmly welcomes Articles 103 to 105 and 107 which ensure the compliance of the Italian Central Securities Depository with Standard 4 of the report on "Standards for the use of EU securities settlements systems in ESCB credit operations". The EMI notices, however, that in these articles the distinction of the roles of the Banca d'Italia and the CONSOB is not always clear-cut. Also, the EMI takes note of the liberalisation in the field of central securities depositories. Whereas the activity of central depository for securities other than government bonds is at present carried out exclusively by one firm (MONTETITOLI), this will no longer be the case.
13. The **third part** ("Disciplina delle società quotate") contains several provisions which range from the solicitation of public savings to company law. The provisions concerning soliciting savings (Articles 113-121), notably any public offer aiming at the sale or underwriting of financial products, are intended to protect unsophisticated investors by requiring to the issuer the

disclosure of relevant information through a prospectus. The EMI would like to stress that the protection of investors through disclosure of information is important in promoting trust in the financial system. Also, the EMI notes that the financial instruments issued by the ECB and NCBs are excluded by Article 120 e) from the applicability of the prospectus.

14. The EMI also welcomes the new provisions on insider trading (Articles 192-207), which substantially improve the effectiveness of existing law. The EMI wishes to underline the positive value that an effective regulation of the insider trading has on the smooth functioning of financial markets.

The EMI confirms that it has no objection to this opinion being made public by the competent Italian authorities at their discretion.

26 February 1998