



**EUROPEAN CENTRAL BANK**

**OPINION OF THE EUROPEAN CENTRAL BANK**

**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 (hereinafter referred to as the “Treaty”), 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 (hereinafter referred to as the “Draft Legislative Decree”)**

**(CON/98/35)**

1. On 10 July 1998 the European Central Bank (hereinafter referred to as the “ECB”) received a request for an opinion from the Italian Ministry of the Treasury, Budget and Economic Planning on the Draft Legislative Decree. An explanatory note was also submitted to the ECB. This opinion is based on the English translation of the Draft Legislative Decree submitted to the ECB by the consulting authority.
2. In accordance with Article 109l (2) of the Treaty, the ECB has taken over the advisory functions of the European Monetary Institute (hereinafter referred to as the “EMI”), which went into liquidation upon the establishment of the ECB on 1 June 1998. The ECB’s competence to deliver an opinion is based on Article 1.1, second indent, 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 provisions concerning the status and powers of the national central bank. In accordance with Articles 12.4 and 47.1, second indent, of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as the “Statute”), this Opinion has been adopted by the Governing Council with the contribution of the General Council.
3. The ECB considers the Draft Legislative Decree to be another step towards ensuring full compliance with the Treaty and the Statute. By cutting the remaining links between the Ufficio Italiano dei Cambi (hereinafter referred to as the “UIC”) and the Italian Ministry of the Treasury, Budget and Economic Planning and by making it clear in its organisational structure that the UIC is an instrumental entity of the Banca d’Italia, the Draft Legislative Decree eliminates from the Italian legal system those provisions which could be seen to jeopardise the independence of the Banca d’Italia when holding and managing the Italian official foreign

reserves, where this independence is required by Article 107 of the Treaty. However, the ECB regrets the fact that the obligation to implement Article 108 in respect of the UIC was not fulfilled by the date of the establishment of the European System of Central Banks (hereinafter referred to as the “ESCB”).

4. With regard to the new organisational structure of the UIC, the ECB welcomes the objective of Article 2.1, which establishes the legal nature of the UIC as an instrumental entity of the Banca d’Italia to which the latter assigns implementation tasks. However, the wording of Article 2.1 and its title in particular give the wrong impression that the UIC has a role and tasks of its own within the ESCB. On the contrary, the general principle is that the tasks assigned to the ESCB by the Treaty and the Statute have to be fulfilled exclusively by the ECB and by the national central banks (hereinafter referred to as the “NCBs”). Even though the UIC is an entity entirely controlled by the Banca d’Italia, it is the Banca d’Italia which is responsible for fulfilling the obligations arising from the Treaty and the Statute or from guidelines and instructions issued by the ECB. Therefore, the Draft Legislative Decree cannot directly assign the task of implementing ECB guidelines and instructions on the management of official foreign reserves to the UIC, since the Treaty assigns this task to the Banca d’Italia. To better reflect this situation, the ECB suggests that the reference to the ESCB in the title of Article 2 be deleted (in addition to the fact that the second and third paragraphs do not refer to ESCB tasks) and that the first paragraph be reworded.
5. The ECB takes note of Article 3 of the Draft Legislative Decree, which gives the Governor of the Banca d’Italia the exclusive power to appoint the Board of Directors of the UIC and which applies to the members of the Board of Directors the same criteria as those which are applicable to the members of the Board of Directors of the Banca d’Italia to protect their independence from external interference. However, the protection they enjoy against revocation, combined with their number, seems to conflict with the principle of instrumentality: in the event of a divergence of views between the Banca d’Italia and the UIC, the former has no means by which to impose its will on its instrumental entity. This outcome would render the assignment of implementing functions for the ESCB to the UIC unacceptable. The number of Board members should therefore be modified in order to grant the Banca d’Italia effective control over its instrumental entity.
6. Moreover, the ECB recognises that it will normally be within the powers of the Banca d’Italia to comply with its obligations to the ECB through its instrumental entity. However, one exception to this general rule relates to the management of the ECB’s own foreign reserves. The ECB currently proposes the appointment of the Banca d’Italia (and all other participating NCBs) to act as its agent for the management of its foreign reserves. If the Banca d’Italia wishes to

request that this agency function be delegated to the UIC, the ECB will at least wish to review the terms of the agreement between the Banca d'Italia and the UIC as mentioned in Article 2.1.

7. Article 2.1 also needs to be reworded from the point of view of the collection of statistical information. In fact, the reference to "gathering data on foreign exchange for fact finding and statistical purposes" might cause difficulty in the euro area. A clear reference to "balance of payments and international investment position statistics" would clarify the concept and comply with the Treaty.
8. The ECB welcomes Article 4, which provides for the treatment of the Balance Sheet of the UIC to be the same as that foreseen for the Balance Sheet of the Banca d'Italia, in accordance with Article 27 of the Statute, and for the Banca d'Italia to be responsible for the profits and losses of the UIC. This financial regime makes it clear that the UIC is in fact operating as an instrumental entity of the Banca d'Italia, which will even provide the Balance Sheet of the UIC as an annex to its Balance Sheet.
9. With regard to the functions that the UIC continues to perform, the ECB notes that such tasks, which concern anti-money laundering measures, the combating of usury, and the transparency and stability of financial intermediaries, are of limited scope in the spirit of Article 14.4. In this respect, the ECB understands that the "highest supervision of the Ministry of the Treasury, Budget and Economic Planning" (Article 2.2) consists only in the right to receive periodic reports by the UIC (Article 2.2, last sentence) and excludes any right of the Ministry of the Treasury, Budget and Economic Planning to interfere in the activities of the UIC. This is confirmed by Article 5.2, last part, of the Draft Legislative Decree.
10. The ECB confirms that it has no objection to this Opinion being made public by the competent Italian authorities at their discretion.

Done at Frankfurt am Main on 31 July 1998.

For the President of the ECB

(signed)

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**Christian Noyer**  
**Vice-President**