



EUROPEAN CENTRAL BANK

EUROSYSTEM

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OPINION OF THE EUROPEAN CENTRAL BANK

of 24 June 2019

on the ownership structure of Banca d'Italia and the ownership of gold reserves

(CON/2019/23)

Introduction and legal basis

On 2 May 2019 the European Central Bank (ECB) received a request from the President of the lower chamber of the Italian Parliament (*Camera dei Deputati*) for an opinion on a draft law on the transfer of the ownership of the Banca d'Italia to the Ministry for Economy and Finance (hereinafter the 'draft law on Banca d'Italia's ownership structure'). By the same letter the President of the lower chamber transmitted another draft law concerning an authentic interpretation of Article 4 of the Italian Consolidated law on foreign exchange on the management of official reserves (hereinafter the 'draft law on the ownership of gold reserves', together with the 'draft law on Banca d'Italia's ownership structure', the 'draft laws').

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 (TFEU) and the third indent of Article 2(1) of Council Decision 98/415/EC¹, as the draft laws relate to Banca d'Italia's governance and the basic task to be carried out through the European System of Central Banks (ESCB) to hold and manage the official foreign reserves of the Member States pursuant to the third indent of Article 127(2) of the Treaty. 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 laws

- 1.1 The draft law on Banca d'Italia's ownership structure provides that the capital shares of Banca d'Italia currently held by private sector entities shall be purchased by the Ministry of Economy and Finance at a nominal value of 1000 lire as set by specified provisions of Italian law dating from the 1930s². The draft law further provides that, after such transfer, the Ministry of Economy and Finance may transfer its shareholding, or part of it, only to public sector entities. A governmental delegated regulation to be enacted within three months from the entry into force of the draft law will regulate the procedures for transferring the shares.
- 1.2 The draft law on Banca d'Italia's ownership structure repeals certain existing provisions of Italian

¹ Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

² This nominal price is set by Article 20 of the Royal Decree 375/1936 as converted into law by Law 141/1938.

legislation concerning the ownership and governance of Banca d'Italia³. In particular, the draft law repeals, *inter alia*, articles providing that: (1) the Banca d'Italia, a public-law institution, is the central bank of the Italian Republic, is an integral part of the ESCB and is the competent national authority in the single supervisory mechanism (SSM) referred to in Article 6 of Council Regulation (EU) No 1024/2013; (2) the Banca d'Italia is independent in the exercise of its powers and in the management of its finances; (3) the Banca d'Italia is authorised to increase its capital through the use of statutory reserves to the sum of €7.500.000.000; (4) Banca d'Italia shareholders may receive annual dividends up to an amount not exceeding 6% of the capital; (5) shares in the capital of Banca d'Italia may only be held by banks, insurance and reinsurance companies with registered and head offices in Italy, foundations⁴, social security and insurance bodies with registered offices in Italy, and pension funds⁵; (6) each shareholder in Banca d'Italia may not own, directly or indirectly, a share of the capital exceeding 3%, and voting rights may not be exercised with respect to excess shares, and the relevant dividends are allocated to reserves of the Banca d'Italia; (7) the Banca d'Italia may temporarily acquire its own shares under certain conditions; (8) the Banca d'Italia may dematerialise the shareholdings in its own capital; (9) the Banca d'Italia shareholders' meeting and board of directors shall not interfere in matters pertaining to the exercise of the public functions entrusted by the Treaty, the Statute of the ESCB and of the ECB, by European law and by law to the Banca d'Italia or to the Governor for the pursuit of the Banca d'Italia's institutional purposes; (10) the Banca d'Italia board of directors is composed of the Governor and 13 directors appointed by local shareholders' general meetings in the manner prescribed by the Statute of Banca d'Italia among candidates designated by a specific internal committee within the board of directors; and (11) the Minister of Economy and Finance does not have the power (formerly provided for under a law dating from 1910) to suspend and annul the resolutions of the Banca d'Italia board of directors when the Minister deems such resolutions to be contrary to laws, regulations and statutes.⁶ The draft law also repeals a number of technical legal provisions ensuring the consistency of the legal framework governing the Banca d'Italia and establishing a specific timeframe for the adaptation of the Statute of the Banca d'Italia to relevant provisions of Italian law.⁷

- 1.3 The explanatory note prepared by the proponents of the draft law on Banca d'Italia's ownership structure states that the draft law is designed to transfer the capital of the Banca d'Italia to exclusive public ownership, also by restoring previous provisions of Italian law⁸ that were never implemented and were subsequently repealed⁹. The explanatory note states that the Banca d'Italia should be a publicly owned company par excellence, given that the activities of regulation,

³ Article 2 of the draft law repeals Articles 4, 5 and 6 of the Law Decree 133/2013 as converted into law with modifications by Law 5/2014 (hereinafter the "Law Decree 133/2013").

⁴ As referred to in Article 27 of Legislative Decree 153/1999.

⁵ As established in accordance with the provisions of Article 4.1 of Legislative Decree 252/2005.

⁶ See Article 114 of Royal Decree 204/1910.

⁷ Adapting the Statute of the Banca d'Italia to Law Decree 133/2013.

⁸ See Article 19.10 of Law 262/2005.

⁹ See Law Decree 133/2013.

supervision and monetary policy require the central bank to have maximum independence in relation to regulated entities.

- 1.4 The draft law on the ownership of gold reserves provides an authentic interpretation of Article 4.2 of the Italian Presidential Decree 31 March 1988 no.148 concerning the management of reserves, which provides that Banca d'Italia manages the official reserves within the framework established by Article 31 of the Statute of the ESCB¹⁰. In particular, the draft law provides that this article shall be construed as meaning that the Banca d'Italia manages the official gold reserves exclusively as a depositary, without prejudice to the property of such gold reserves of the Italian State, including reserves held abroad.
- 1.5 The explanatory note prepared by the proponents of the draft law on the ownership of gold reserves notes that Article 127(2) of the Treaty establishes that the tasks to be carried out through the ESCB include holding and managing the official foreign reserves of the Member States, and that Article 31 of the Statute of the ESCB refers to the foreign reserve assets remaining with the national central banks (NCBs) after the transfers to the ECB. The explanatory note states that, without prejudice to compliance with international obligations deriving from the Treaties, spelling out explicitly that the ownership of the gold reserves remains with the Italian State seems necessary in light of the hybrid nature acquired by Banca d'Italia over time due to several legislative interventions. The reference to the hybrid nature of Banca d'Italia seems to refer to the Banca d'Italia's nature as a public law institution predominantly owned by private sector entities.

2. Observations regarding the draft law on Banca d'Italia's ownership structure

- 2.1 The ECB recalls that it has issued two opinions on a similar Italian draft legislative proposal¹¹ which was subsequently enacted into law in 2005¹², but which never entered into operation¹³ and was subsequently repealed¹⁴.

Central bank independence

- 2.2 The Treaty is silent on the ownership structure of NCBs in the ESCB, which is therefore left to each Member State's autonomous determination, insofar as this structure fully respects, and poses no risks to, the principle of central bank independence established in Article 130 of the Treaty and the other Treaty provisions governing the ESCB or Eurosystem-related tasks¹⁵.
- 2.3 The principle of institutional independence referred to in Article 130 of the Treaty and Article 7 of the Statute of the ESCB and of the ECB (the 'Statute of the ESCB') prohibits the NCBs and members of their decision-making bodies, when exercising their ESCB-related tasks, from seeking or taking instructions from EU institutions or bodies, from any government of a Member State or

¹⁰ See Article 4.2 of the Italian Presidential Decree 31 March 1988 no.148 concerning the management of reserves, introduced by article 7 of Legislative Decree 43/1998.

¹¹ See Opinions CON/2005/34 and CON/2005/58. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

¹² See Law 262/2005.

¹³ See Article 19.10 of Law 262/2005, mentioned in paragraph 1.3 above.

¹⁴ See Law Decree 133/2013.

¹⁵ See paragraph 6 of Opinion CON/2005/34.

from any other body. In addition, EU institutions, bodies, offices or agencies, and the governments of the Member States are prohibited from seeking to influence those members of the NCBs' decision-making bodies whose decisions may affect the fulfilment of the NCBs' ESCB-related tasks. Whether an NCB is organised as a state-owned body, a special public law body or simply a public limited company, there is a risk that influence may be exerted by the owner on its decision-making in relation to ESCB-related tasks by virtue of such ownership. Such influence, whether exercised through shareholders' rights or otherwise, may affect an NCB's independence and should therefore be limited by law¹⁶. This entails the absence both of shareholders' influence on decision-making in these fields and of a conflict of interest¹⁷.

- 2.4 The draft law on Banca d'Italia's ownership structure¹⁸ would repeal Article 5.1 of Law Decree 133/2013, which prevents the Banca d'Italia shareholders' meeting and board of directors from interfering in the exercise of the ESCB-related functions of the Banca d'Italia or its Governor. Moreover the draft law would also repeal Article 5.2 of Law Decree 133/2013, according to which the Banca d'Italia board of directors is composed of the Governor and 13 directors appointed in the manner prescribed by the Statute of Banca d'Italia, among candidates who meet the requirements of independence, integrity and professional experience laid down therein and are designated by a specific internal committee within the board of directors. These provisions being repealed are also mirrored in the Statute of the Banca d'Italia¹⁹. The ECB notes that it is legally unclear whether, as a result of the draft law, a previously repealed provision of Italian law²⁰ would be reinstated. According to such provision the Banca d'Italia board of directors is prevented from interfering with the institutional tasks, which the ECB understands include the ESCB-related tasks, of the Banca d'Italia. In this respect, the ECB notes that even if the first provision is deemed to be reinstated it would, however, not apply to prevent such interference by the shareholders' meeting.
- 2.5 The principle of institutional independence refers to the decision-making bodies exercising the ESCB-related tasks. In the case of Banca d'Italia, it is the governing board which is responsible for the performance of the Banca d'Italia's ESCB-related tasks²¹ and therefore qualifies as a decision-making body within the meaning of Article 130 of the Treaty. In contrast, the Banca d'Italia's shareholders' meeting and board of directors do not intervene in the performance of ESCB-related tasks nor in the decisions concerning those tasks, and they therefore cannot be considered as decision-making bodies within the meaning of Article 130 of the Treaty. Based on this internal structure of Banca d'Italia, the shareholders' meeting and the board of directors are prohibited from seeking to influence the governing board as the Banca d'Italia's decision-making body responsible for the performance of the Banca d'Italia's ESCB tasks²². Therefore, the ECB considers it important that Articles 5.1 and 5.2 of Law Decree 133/2013 are not repealed.

16 See ECB Convergence Report (May 2018), p. 21.

17 See paragraph 9 of Opinion CON/2005/34.

18 Article 2 of the draft law on Banca d'Italia's ownership structure.

19 See Articles 6.2 and 19.2 of the Statute of the Banca d'Italia.

20 See Article 5.1 of Legislative Decree of the Temporary Head of Italian State 691/1947, which was repealed by Law Decree 133/2013.

21 See Article 22 of the Statute of the Banca d'Italia.

22 See paragraph 2.3 of Opinion CON/2019/12.

- 2.6 The draft law on Banca d'Italia's ownership structure would also repeal a provision that the Minister of Economy and Finance does not have the power (formerly provided for under a law dating from 1910) to suspend and annul the resolutions of the Banca d'Italia board of directors when the Minister deems such resolutions to be contrary to laws, regulations and statutes²³. The ECB requests that the repeal of this provision be clarified. As a general observation, the ECB calls on the Italian authorities to carefully consider the possible unintended direct or indirect effects of the draft law on Banca d'Italia's ownership structure on the independence of the Banca d'Italia, as established in Article 130 of the Treaty.
- 2.7 The draft law would also repeal Article 4.1 of Law Decree 133/2013, according to which the Banca d'Italia is independent in the management of its finances. The ECB understands that the repeal of this provision was unintended, having regard to the relevance of financial independence as part of the principle of central bank independence under Article 130 of the Treaty. It is therefore recommended that Article 4.1 be reinstated.

Legal uncertainties

- 2.8 The ECB highlights a number of legal uncertainties which stem from the draft law as a result of the repeal of existing provisions of Italian law affecting the Banca d'Italia and the unclear interaction between the draft law and the Statute of the Banca d'Italia, as further elaborated in paragraphs 2.10-2.13 below.
- 2.9 The ECB understands that a number of the existing provisions of Italian law that are repealed by the draft law on Banca d'Italia's ownership structure are mirrored in other provisions of Italian legislation, and that these corresponding provisions in other provisions of Italian law continue to apply and are not affected by the draft law. This is the case, for example, with respect to the repealed articles providing that (1) the Banca d'Italia, a public-law institution, is the central bank of the Italian Republic and is an integral part of the ESCB; and (2) the Banca d'Italia is independent in the exercise of its powers²⁴.
- 2.10 As noted in paragraph 2.7 above, the draft law would also repeal Article 4.1 of Law Decree 133/2013, according to which the Banca d'Italia is the national competent authority in the SSM. The ECB understands that the repeal of this provision was unintended, in the absence of any proposal of reform of the national supervisory authorities²⁵. For the sake of legal certainty, it is suggested that Article 4.1 be reinstated.
- 2.11 A number of existing provisions of Italian law that are repealed by the draft law on Banca d'Italia's ownership structure are mirrored in the Statute of the Banca d'Italia. Some of the corresponding provisions in the Statute of the Banca d'Italia are directly and potentially conflicting with the provisions of the draft law. In particular, the Statute of the Banca d'Italia provides, *inter alia*, that (1) shares may only be held by banks, insurance and reinsurance companies with registered and head

²³ See Article 114 of Royal Decree 204/1910.

²⁴ See Article 19 of Law 262/2005 and Article 2 of Legislative Decree 43/1998.

²⁵ The role of the Banca d'Italia as national supervisory authority in the SSM is also presupposed by the relevant provisions of the Italian Banking Law, the Legislative Decree 1 September 1993, n. 385 (see Articles 6, paragraph 3, and 6-bis).

offices in Italy, foundations social security and insurance bodies with registered offices in Italy, and pension funds²⁶; (2) no shareholder may hold, directly or indirectly, a share of the capital exceeding 3%, and voting rights may not be exercised with respect to excess shares²⁷; and (3) the Banca d'Italia may temporarily acquire its own shares under certain conditions²⁸. However, it would seem that the provisions of the draft law relating to the purchase by the Ministry of Economy and Finance of the capital shares of Banca d'Italia currently held by private sector entities and providing that, after such transfer, the Ministry may transfer its shareholding, or part of it, only to public sector entities, would directly conflict with the provision of the Statute of the Banca d'Italia under point (1) above, and would potentially also contradict the provisions of the Statute of the Banca d'Italia under points (2) and (3) above. The draft law is silent on the possible criteria to solve this conflict, which should be contemplated in the draft law. The Italian authorities are invited to address these direct and potential conflicts for the sake of legal certainty, in order to prevent negative impacts on the smooth functioning of the Banca d'Italia.

- 2.12 Since certain existing provisions of Italian law that are repealed by the draft law on Banca d'Italia's ownership structure set out general criteria to be mirrored in a more extensive manner in the Statute of the Banca d'Italia, it would seem that the relevant provisions of the Statute of the Banca d'Italia would continue to apply. For example, the Statute of the Banca d'Italia provides, *inter alia*, that the net profit of Banca d'Italia shall be distributed to the ordinary reserves, up to a maximum of 20% of net profit, and after that to shareholders up to a maximum of 6% of the capital, and that the ordinary reserve, if reduced to offset losses, must be reconstituted entirely before proceeding to any profit distributions. The ECB understands that this particular provision of the Statute of the Banca d'Italia is not affected by the draft law. On a general note, the Statute of the Banca d'Italia needs to contain provisions to ensure that irrespective of discretionary decisions of the board of directors and of the shareholders' meeting, a sufficient amount of ordinary reserves and, if needed, extraordinary reserves, can be constituted to ensure that the Banca d'Italia has the financial means to perform its statutory tasks²⁹. In the same vein, it is understood that Article 39 paragraph 2 of the Statute on provisions for general risks would continue to apply notwithstanding the draft law repeals Article 6.5 lett. a) of Law Decree 133/2013 which requires the Statute to adopt financial buffers adequate to the riskiness consistent with the ESCB guidelines.
- 2.13 It would need to be clarified whether certain existing provisions of Italian law that are repealed by the draft law on Banca d'Italia's ownership structure, but which are mirrored in the Statute of the Banca d'Italia, would continue to apply. In particular, the Statute of the Banca d'Italia provides, *inter alia*, that the capital of the Banca d'Italia shall be €7.500.000.000 and shall be divided into 300,000 registered shares the nominal value of which shall be €25.000 each³⁰, and that the shares of Banca d'Italia shall be dematerialised and entered into the central depository system provided for by Legislative Decree 58/1998. In this respect, the ECB understands that the Banca d'Italia's

²⁶ Article 3(3) of the Statute of the Banca d'Italia, reflecting Article 4.4 of Law Decree 133/2013.

²⁷ Article 3(4) of the Statute of the Banca d'Italia, reflecting Article 4.5 of Law Decree 133/2013.

²⁸ Article 3(6) of the Statute of the Banca d'Italia, reflecting Article 4.6 of Law Decree 133/2013.

²⁹ See paragraph 10 of Opinion CON/2005/34.

³⁰ Article 3(1) of the Statute of the Banca d'Italia.

capital has already been called up. The draft law would also repeal Article 6 of Law Decree 133/2013 that reordered and repealed, for the sake of clarity, a number of provisions of Italian legislation dealing with the ownership structure and governance of the Banca d'Italia. It is legally unclear whether the repeal of Article 6 would reinstate all the formerly repealed provisions, to the extent not expressly incompatible with the draft law. The Italian authorities are invited to address these uncertainties.

- 2.14 At present the governmental delegated regulation mentioned in the draft law on Banca d'Italia's ownership structure would only deal with the modalities for the transfer of the shareholdings in the capital of the Banca d'Italia. No provision is envisaged to be enacted in relation to the compatibility between the current governance of the Banca d'Italia and the proposed changes in its ownership structure. Finally, by way of general observation, former Italian laws dealing with the ownership and the governance of the Banca d'Italia contained provisions to ensure, for legal certainty purposes, that the Statute of the Banca d'Italia was adapted to the new provisions in accordance with a defined timeline. The draft law contains no rule in this respect, which constitutes an element of legal uncertainty that could be usefully addressed in the draft law.

Further consultation of the ECB

- 2.15 The ECB expects to be consulted pursuant to Articles 127(4) and 282(5) of the Treaty on any further draft legislative, regulatory or statutory amendments to the Banca d'Italia's ownership and governance structure, including, but not limited to, the governmental delegated regulation provided for in the draft law on Banca d'Italia's ownership structure as well as any amendment of the governance structure and the Statute of Banca d'Italia that might result from the change in the ownership structure.

Impact on ECB supervised credit institutions; right to property

- 2.16 From a financial perspective, the ECB understands that, under the draft law on Banca d'Italia's ownership structure, each share of Banca d'Italia currently held by private sector entities would be purchased by the Ministry of Economy and Finance at a nominal value of 1000 lire, equal to 51.64 euro cents³¹, in lieu of the nominal value of €25.000 specified under the Statute of the Banca d'Italia. As a result, credit institutions may be affected to different degrees to the extent that they own shares of Banca d'Italia for a nominal amount equal to the nominal value currently indicated in the Statute of the Banca d'Italia. Therefore, the implementation of the draft law is expected to have a negative impact on the capitalisation of the Italian banking sector, which, in principle, may deserve some attention.
- 2.17 It is for the Italian authorities to assess whether the draft law complies with Italian legal and constitutional principles³². However, the ECB notes that the abovementioned purchase price of the shares of Banca d'Italia may deserve attention by the Italian authorities from the point of view of the right to property.

³¹ See Council Regulation (EC) No 2866/98 of 31 December 1998 on the conversion rates between the euro and the currencies of the Member States adopting the euro (OJ L 359, 31.12.1998, p.1).

³² See, e.g., paragraph 3.2.2 of Opinion CON/2015/32.

3. Observations regarding draft law on the ownership of gold reserves

- 3.1 The question of the legal ownership and the competences of the ESCB with regard to the gold reserves of Member States ultimately relate to the competences of the ESCB under the Treaty. The basic points of reference are Articles 127(2) and 130 of the Treaty. Article 127(2) of the Treaty, which is contained in Chapter 2 (Monetary Policy) of Title VIII of the Treaty, sets out the basic tasks to be carried out through the ESCB. In this respect, it is noted that under Article 3(1)(c) of the Treaty, the Union has exclusive competence in the area of monetary policy for the Member States whose currency is the euro. Article 127(2), third indent, of the Treaty provides, in particular, that one of the basic tasks to be carried out through the ESCB is to hold and manage the official foreign reserves of the Member States. Article 130 of the Treaty guarantees the independence of the NCBs, including the Banca d'Italia, and the ECB in performing their ESCB tasks.
- 3.2 The Treaty does not determine ESCB and ECB competences with respect to official reserves by using the concept of ownership. Rather, the Treaty only deals with the dimension of exclusive holding and management of the reserves.
- 3.3 On the basis of Article 31 of the Statute of the ESCB, operations in foreign reserve assets remaining with the NCBs, including the Banca d'Italia, after the transfers to the ECB referred to in Article 30³³, and Member States' transactions with their foreign exchange working balances, are, above a certain limit established within the framework of guidelines issued by the ECB with a view to facilitating such operations, subject to approval by the ECB in order to ensure consistency with the exchange rate and monetary policies of the Union.
- 3.4 In accordance with Article 130 of the Treaty, when carrying out the task of holding and managing gold reserves, neither the ECB, nor an NCB, including the Banca d'Italia, nor any member of their decision-making bodies, shall seek or take instructions from, inter alia, any government of a Member State. The governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the ECB or the NCBs, including the Banca d'Italia, in the performance of their tasks.
- 3.5 In view of these provisions, the ESCB task of holding and managing foreign reserves includes all actions necessary for its effective performance of the Eurosystem's mandate. For instance, for reserve assets to accomplish their function in foreign reserve management operations, the aspect of full effective control by the central bank is essential. This implies the ability of NCBs to take

³³ Article 30 requires all NCBs, including the Banca d'Italia, to transfer a defined amount of foreign reserves, including gold, to the ECB, in proportion to their share in the capital of the ECB. For the purpose of regulating the transfer of foreign reserve assets by NCBs to the ECB pursuant to Article 30 of the Statute of the ESCB, the ECB adopted Guideline ECB/2000/15, which included gold among the foreign reserves which had to be transferred by the NCBs, including the Banca d'Italia, to the ECB upon the start of Stage 3 of the European Monetary Union (EMU) and subsequently upon joining the euro. The ECB may effect further calls of foreign reserve assets, including gold, from the NCBs, including the Banca d'Italia, in case of need for such foreign reserve assets. See Guideline of the European Central Bank of 3 November 1998 as amended by the Guideline of 16 November 2000 on the composition, valuation and modalities for the initial transfer of foreign-reserve assets, and the denomination and remuneration of equivalent claims (ECB/2000/15) (OJ L 336, 30.12.2000, p. 114); Article 30.4 of the Statute of the ESCB; and Articles 1 and 2(1) of Council Regulation (EC) No 1010/2000 of 8 May 2000 concerning further calls of foreign reserve assets by the European Central Bank (OJ L 283, 31.10.2003, p. 81).

decisions, in complete autonomy, relating to the holding, retention, disposal, negotiation and daily, as well as long-term, management of the foreign reserves.

- 3.6 In this regard, it must be noted that the reference in the draft law to the Banca d'Italia acting “exclusively” as a depositary could be read as limiting (or even excluding) Banca d'Italia's power to independently take decisions related to holding and managing the official reserves that are necessary to accomplish its tasks under the Treaties. Such restriction would be incompatible with Articles 127(2) and 130 of the Treaty, as explained above. The ECB would, therefore, suggest deleting the reference in the draft law to the Banca d'Italia holding and managing the gold reserves in terms of an ‘exclusive title of deposit’. In addition, consistent with the explanatory note accompanying the draft law, an explicit reference in the draft law to the provisions of Articles 127(2) and 130 of the Treaty and, additionally, to Article 31 of the Statute of the ESCB may be useful: it will clarify further the scope of the law, even if these Treaty provisions apply in any case. The independent holding and management of the official foreign reserves (including gold reserves) also specifically means that the official foreign reserves (including the gold reserves) must be recorded on the balance sheets of the NCBs or of the ECB. A transfer of the foreign reserves (including gold reserves) off the balance sheet of Banca d'Italia to the State would circumvent the prohibition of monetary financing under Article 123 of the Treaty, which prohibits central bank financing of the public sector and would be also against the principle of financial independence under Article 130 of the Treaty.
- 3.7 Consistently with the principle of financial independence under Article 130 of the Treaty, any income accruing to the Banca d'Italia as a result of the management of such official foreign reserves can only be distributed to shareholders through the normal process for the distribution of profits as set out in the relevant legislative and statutory provisions, and after a sufficient amount of reserves has been constituted to ensure that Banca d'Italia has the financial means to independently perform its tasks.
- 3.8 The ECB notes that if the Italian authorities consider it necessary to clarify the interpretation of the existing legislation as to the legal ownership of gold reserves, then Banca d'Italia shall be consulted in order to ensure that the Treaty requirements and in particular the independence of Banca d'Italia established in Article 130 of the Treaty will continue to be fully respected.

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

Done at Frankfurt am Main, 24 June 2019.

[signed]

The President of the ECB

Mario DRAGHI