

# **Side Letter**

**to the Memorandum of Understanding of 16 August 1993**

**between**

**the Banca d'Italia**

**and**

**the Bundesanstalt für Finanzdienstleistungsaufsicht ("BaFin"), legal  
successor to the Bundesaufsichtsamt für das Kreditwesen**

**concerning the supervision of the UniCredit Group**

## **Preamble:**

The above mentioned Memorandum of Understanding ("MoU") governs the cooperation of the Banca d'Italia and the BaFin ("the Authorities") in the field of banking supervision, especially the supervision of branches according to the Banking Directives.

Section VII. paragraph 4 of the MoU sets forth that the Authorities undertake to revise the MoU in the light of future developments in national and EC legislation as well as experience gained in the supervision of EC credit institutions.

With the business combination between UniCredit SpA ("UniCredit") and Bayerische Hypo- und Vereinsbank AG ("HVB"), two significant credit institutions of both the Italian and the German financial market form one of the largest European banking groups ("UniCredit Group"). The Authorities acknowledge that the supervision of this internationally acting banking group will pose remarkable challenges as regards an extended information exchange, joint examinations and performing supervisory tasks on the other Authority's behalf. Furthermore, a number of significant legislative proposals that have recently been launched or approved within the EU will also require supervisors to co-operate more closely, either because they explicitly require enhanced co-operation or because they impose new supervisory obligations.

Notwithstanding the MoU as well as the Italian and German law, the Authorities agree as follows:

## **Article 1 – General terms of Cooperation**

1. The Authorities express their willingness to cooperate in the supervision of the UniCredit Group on the basis of mutual trust and understanding.
2. The Authorities will cooperate according to the guidelines set in the CEBS paper “Guidelines for co-operation between consolidating supervisors and host supervisors”.
3. The Authorities recognise that
  - a. the Banca d’Italia has the role of the consolidating supervisor (i.e., it is responsible for coordinating the exchange of information, planning supervisory actions and undertaking overall risk assessment of UniCredit Group);
  - b. the BaFin is responsible for the supervision of the HVB sub-group and will provide the Banca d’Italia with all necessary information and assistance to execute its role as the consolidating supervisor.
4. Exercising its sovereign functions, the BaFin closely cooperates with the Deutsche Bundesbank in carrying out the supervision of banks and investment firms. The BaFin and the Deutsche Bundesbank are hereinafter jointly referred to as “German banking supervisors”.
5. The Authorities acknowledge each other’s capacity to understand and assess local risks due to their knowledge of the local banking landscape and local market conditions.
6. In addition to the provisions regarding professional secrecy contained in the MoU, the Authorities agree that any confidential information shared between each other will be used only for lawful supervisory purposes. The Authorities will, to the extent permitted by law, maintain the confidentiality of all information received through their arrangements from each other and will not disclose any such information other than necessary

to carry out their supervisory responsibilities without first obtaining the prior written consent of the other Authority and then only in accordance with the conditions (if any) attached by the providing Authority. Each Authority will, if it receives any legally enforceable demand for information received from the other Authority or acquired in the course of an on-site examination in the other Authority's jurisdiction pursuant to which it is obliged by law to disclose such information (notwithstanding any other provision of the MoU or this Side Letter), promptly notify the other Authority and will cooperate in seeking to preserve so far as legally possible the confidentiality of such information.

7. The BaFin will pass on the information received from the Banca d'Italia to the Deutsche Bundesbank to the extent that such information is necessary for the performance of the functions of the Deutsche Bundesbank as outlined in Section 7 of the German Banking Act, on the basis that the Deutsche Bundesbank shall only use the information for lawful supervisory purposes and shall not disclose the information to any other person without the prior written consent of the Banca d'Italia.

## **Article 2 – Information Exchange**

1. With respect to their supervisory responsibilities, the Authorities will share information on the respective entity/entities of the UniCredit Group in the way outlined as essential in the aforementioned CEBS-paper such as:
  - significant changes affecting:
    - i. the structure of the UniCredit Group, including all major institutions (including investment firms);
    - ii. investments of entities of the UniCredit Group in non financial entities (e.g. insurance);
    - iii. the financial position of the UniCredit Group such as declining capital ratios, losses, loss of liquidity, increase in funding costs;
    - iv. capital links between entities;
    - v. intra-group transactions;

- vi. qualifying holdings;
- changes in the levels (individual, sub-consolidated, consolidated) at which capital requirements are applied within the UniCredit Group;
  - matters which cast doubt on the viability of the UniCredit Group as a going concern;
  - major sanctions and exceptional measures;
  - changes in organisation or senior management that have a significant impact on internal controls, culture, or risk management as well as changes in strategy.
2. On request, the Authorities will provide each other with information which is deemed to be relevant.

### **Article 3 – Risk assessment and model approval**

1. Based on its own knowledge and on input from the German banking supervisors regarding HVB sub-group, the Banca d'Italia will produce a composite picture of the UniCredit Group (objectives, strategies, policies, and processes of the UniCredit Group as well as significant areas of focus for on-site assessments).
2. Notwithstanding their legal responsibilities, the Authorities will cooperate in approving internal rating systems, market risk models and operational risk measurement systems for regulatory purposes.

### **Article 4 – Planning of supervisory action**

The Banca d'Italia will organise a consultation process with the German banking supervisors with respect to the HVB sub-group to coordinate their respective tasks, that is, identify areas of mutual interest and common tasks (compliance requests, data requests, senior management concerns, audit concerns, quality of earnings concerns, etc.) as well as where joint inspections might be more efficient.

## **Article 5 – Performing supervisory tasks**

The German banking supervisors may perform supervisory tasks on behalf of the Banca d'Italia as the consolidating supervisor of the UniCredit Group, especially on-site examinations and use tests.

## **Article 6 – On-site examinations**

1. The Authorities agree that cooperation is particularly useful in assisting each other in carrying out on-site inspections to identify risks within the UniCredit Group and to execute use tests in connection with the model approval.
2. The Authorities, in their capacity as home supervisors for cross-border establishments (branches or subsidiaries), will notify each other in advance of any inspection, giving details of the names of the examiners, the purpose of the audit and its expected duration.
3. The Authorities intend to allow each other to accompany any such on-site inspection of cross-border establishments carried out either by the Authorities themselves or the auditors/examiners commissioned by the Authorities.
4. In a timely manner, the Authorities will keep each other informed on the results of the inspections by providing a summary report, to the extent reasonable, relevant to the performance of their respective supervisory responsibilities and permitted by law.

## **Article 7 – Technical arrangements**

1. In order to reach the agreed level of cooperation, the Banca d'Italia and the German banking supervisors will
  - initiate meetings on a regular and, if necessary, on an ad-hoc basis;

- initiate telephone or video conferences, especially if quick results shall be found or a personal meeting does not seem necessary;
  - provide each other with existing documents that may be of relevance for their supervisory responsibilities;
  - guarantee that the persons in charge of supervising the entities of the UniCredit Group on a day-to-day basis as well as in charge of international cooperation may contact each other without further preconditions (a list of the respective contact persons is attached and will be regularly updated by the Banca d'Italia and the German banking supervisors).
2. The Banca d'Italia will design a communication strategy concerning the supervision of the UniCredit Group, taking into account the involvement of other competent authorities in the group's supervision; in particular, it may decide whether other supervisors responsible for the supervision of the UniCredit Group's entities should take part in the abovementioned meetings or conferences.

For the Banca d'Italia

signed on:

Antonio Fazio

- Governatore -

For the BaFin

signed on:

Jochen Sanio

- President -

For the Deutsche Bundesbank

signed on:

Prof. Dr. Axel A. Weber

- President -

For the Deutsche Bundesbank

signed on:

Dr. h.c. Edgar Meister

- Member of the Executive Board -