

Notice on the Bank of Italy's procedures for complying with the guidelines and recommendations of the European supervisory authorities

1. Introduction

In recent years the legal framework of reference for supervisory activity has become more complex and comprehensive to ensure the harmonization of the rules and convergence of supervisory practices in the European Union and in the Banking Union.

EU regulations and directives envisage increasing recourse to non-binding acts issued by the European supervisory authorities (ESAs),¹ such as the guidelines and recommendations, in order to clarify regulatory aspects or to communicate their expectations as to the conduct of operators. They accordingly play an important role in ensuring the uniform application of EU law in banking and finance and in establishing standardized, efficient, effective and more predictable supervisory practices for operators.

The guidelines and recommendations can be addressed to the supervised banks, supervisory or resolution authorities, or both.² In this communication the Bank of Italy sets out the procedures it intends to follow, starting with the guidelines and recommendations implemented as of 17 July, when it opts to comply with the guidelines and recommendations addressed in whole or in part to the supervised entities³ and issued by the ESAs. This approach, in line with the one already adopted by other national and European authorities, is aimed at speeding up the adaptation of the legislative and supervisory framework applicable to intermediaries.

2. The adoption of the ESAs' guidelines and recommendations

Technical working groups and standing committees established at one or more than one of the ESAs normally prepare the draft guidelines and recommendations: generally speaking, their members are representatives of the ESAs themselves or of the competent supervisory or resolution authorities, including the Bank of Italy.

The founding regulations of the ESAs⁴ provide that the draft guidelines and recommendations be submitted, if appropriate, to public consultation and to an analysis of costs and benefits for the addressees. The breadth and level of detail of the consultations and of the impact assessments are proportionate to the scope, nature and reach of the guidelines and recommendations. The public consultations constitute a decisive stage in the process, during which the suggestions, views and

¹ The European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA).

² Article 16 of Regulations (EU) No 1093/2010, No 1094/2010 and No 1095/2010 of the European Parliament and of the Council of 24 November 2010.

³ The procedures described do not concern, therefore, the guidelines and recommendations aimed exclusively at the supervisory authorities, which define the methodologies to be employed for their activities.

⁴ Article 16 of Regulations (EU) No 1093/2010, No 1094/2010 and No 1095/2010 of the European Parliament and of the Council of 24 November 2010.

requests of all stakeholders are examined. The Bank of Italy accordingly hopes that there will be broad participation by all those concerned and by employers' associations.⁵

The responses to the consultation are analysed by the competent ESA (or ESAs in the case of regulations to be adopted jointly), also within the technical working groups and committees; the findings and relative assessments are notified in a report published on the ESA's website. The acts are then formally adopted and published on the website of the ESA in all the official languages of the European Union, indicating the date of first application. The competent authorities notify the ESA that issued them whether or not they intend to comply with (or are already compliant), in whole or in part, with the guidelines or recommendations; when they do not intend to comply, the competent authorities inform the ESA, explaining their decision (the 'comply or explain' procedure).

Following the entry into force of the Single Supervisory Mechanism, the European Central Bank was entrusted with tasks in the area of prudential supervision of banks, with special reference to those identified as significant institutions (SIs); the national authorities remain competent for the direct supervision of the less significant institutions (LSIs). The ECB and national authorities, each within their own sphere of competence, inform the ESA that issued the guidelines and recommendations of whether or not they intend to comply through the 'comply or explain' procedure. Comparable powers are attributed within the Single Resolution Mechanism to the Single Resolution Board.

Against this background, for the application in Italy of the guidelines and recommendations that concern aspects outside the remit of the ECB or Single Resolution Board, the Bank of Italy is responsible for the 'comply or explain' procedure (aspects such as the prudential profiles of the LSIs or SIMs, consumer protection and anti-money laundering). The Bank of Italy is further responsible for the 'comply or explain' procedure relative to the guidelines and recommendations of the ESAs, when their content is translated into regulations (see Section 3).

3. The Bank of Italy's procedures for complying with the guidelines and recommendations of the ESAs

The Bank of Italy shall adopt the procedures described below when it decides to comply with the guidelines and recommendations of the ESAs addressed (in whole or in part) to the intermediaries. These shall apply when the notification to the ESAs, under the 'comply or explain' procedure (described in Section 2) has been made by the Bank of Italy (or by another authority, such as Consob, if the content of the guidelines and recommendations falls within the sphere of competence of the Bank of Italy).

3.1. The Bank of Italy can comply, in whole or in part, with the guidelines and recommendations of the ESAs as follows:

- A) **by issuing regulations:** in this case, the Bank of Italy's measures are added to or amended; the measures thus adopted are binding for the addressees. Typically, this procedure is followed when the effective application of the guidelines and recommendations necessarily implies, on the part of the addressees, the fulfilment of a certain number of requirements that must accordingly be

⁵ For more information on the documents being consulted, see: https://www.eba.europa.eu/news-press/calendar?p_p_id=8&tabs1=events&_8_eventTypes=consultation,discussion; <https://www.esma.europa.eu/press-news/consultations>; <https://eiopa.europa.eu/press-room/2018/consultations>.

considered as mandatory (such as notification requirements) or requires coordination with other legal acts;

- B) **supervisory guidance:** in this case, the guidelines and recommendations are transposed through non-binding indications, providing addressees with advice on compliance with the law or with European and national regulations. If the intermediaries decide to follow alternative procedures to the ones indicated, they must be able to demonstrate to the Bank of Italy, if the latter so requests, that they have in any event fulfilled the legal or regulatory requirements.

The two approaches (regulation or supervisory guidance) can also be followed jointly to implement parts of a single guideline or recommendation in different ways, depending on their content.

In both hypotheses *sub A)* and *sub B)*, the content of the ESAs' guidelines and recommendations is normally indicated by including a reference to it (or part of it) in the legislation or note with which the supervisory guidance is adopted (see Section 3.2). When it is necessary to coordinate specific provisions with the existing legislation, the content of the guidelines and recommendations can be reprised in full in the regulation or supervisory guidance.

The procedures described also apply when expanding the application of the guidelines and recommendations to additional intermediaries with respect to those indicated in the European legislation - for example, when applying the guidelines on banks' capital requirements to the financial intermediaries included in the special register provided for by Article 106 of the Consolidated Law on Banking, in accordance with the principle of so-called equivalent supervision.

3.2. For each guideline or recommendation, the application procedure in Italy is published on the Bank of Italy's website in the page titled 'Guidelines and Recommendations of the ESAs'. The page contains the following information, depending on the ESA that issued the guideline or recommendation:

- name;
- title;
- the notification sent to the ESA by the Bank of Italy as part of the 'comply or explain' procedure or the name of which authority is responsible for the notification on behalf of Italy;⁶
- the date of application in Italy;
- the intermediaries to which the guidelines and recommendations apply;
- depending on the procedures followed to comply with the guidelines and recommendations:
 - a) references or links to the regulation (or, before it is issued, the link to any public consultation), or
 - b) the link to the note that publishes the supervisory guidance, which illustrates:
 - i. the subject of the guideline or recommendation;
 - ii. the European and national measures covered by the guideline or recommendation;
 - iii. the date of first application;

⁶ Or, if there has been a notification to the ESA of the intention to not comply with the recommendations and guidelines, which will not be applicable in Italy, this will be mentioned here.

- iv. the exercise of any options or discretions envisaged by the guideline or recommendation;
- v. the addressees of the guideline or recommendation and any further additional addressees identified by the Bank of Italy;
- vi. any clarifications on application or further indications from the Bank of Italy.

3.3. Compliance with the guidelines and recommendations of the ESAs by the intermediaries is assessed by the Bank of Italy as part of the exercise of its functions. In particular, attention is called to the following:

- the intermediaries are bound to apply the regulations adopted to implement the guidelines and recommendations (Procedure A). Practices that differ with respect to these provisions can be the subject of measures, including sanctions, by the Bank of Italy (or the European Central Bank) in accordance with the provisions of law or with directly applicable EU legislation;
- the supervisory guidance issued by the Bank of Italy to comply with the guidelines and recommendations (Procedure B) constitute expectations concerning the ways in which intermediaries should fulfil the obligations provided for in legislative measures (contained, for example, in an EU regulation, national law or other regulations of the Bank of Italy). Different approaches are assessed to verify whether the intermediaries can, in any event, adequately meet the requirements of the relevant legislation. When the outcome of this analysis shows that the practices diverge from the regulatory requirements, the Bank of Italy can adopt the supervisory measures envisaged by law and, in the case of violations of legislative provisions, also apply sanctions.