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**The Recent ECB Intervention in Italy:**

**An Assessment**

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*Introduction*

The financial crisis triggered by the collapse of *Lehman Brothers* (2008) had a significant impact on the stability and solvency of Italian banks. In Italy, the banking crisis emerged at a later stage than in other European countries. This is primarily due to the nature of the investments carried out by Italian banks. To generate profits, Italian banks have traditionally been dependent on loans for commercial activities and state obligations. They have been less reliant than other Anglo-American and European entities on subprime loans. It was only with the economic crisis (and the consequential rise of non-performing loans) and the fall of interest rates by the European Central Bank (‘ECB’) that the stability of the Italian banking system was detrimentally affected.

*Distress in the Italian Banking Sector*

The deceitful and apparent solidity of Italian banks was signalled by the lack of significant cases of distress until 2012, when the *Cassa di Risparmio di Teramo* (also known as ‘*Banca Tercas*’) eventually filed for extraordinary administration, an insolvency procedure under Italian law. This savings bank was later sold to the *Banca Popolare di Bari* (November 2013). The purchase was possible thanks to deposit guarantee funds granted by the *Fondo Interbancario di Tutela dei Depositi* (‘FITD’). However, in December 2015 the European Commission (‘EC’) ruled that the bail-out of *Banca Tercas* by FITD was a state aid, requesting the bank to return the aid to the deposit guarantee fund.[[1]](#footnote-1)

Since 2013, several Italian banks went into liquidation or entered rescue procedures. These include four saving banks in 2015 (*Cassa di Risparmio di Ferrara*, *Cassa di Risparmio di Chieti*, *Banca delle Marche* and *Banca Popolare dell’Etruria e del Lazio*) and three more savings banks in 2017 (*Cassa di Risparmio di Rimini*, *Cassa di Risparmio di Cesena* and *Cassa di Risparmio di San Miniato*). While the first four financial institutions were forced to liquidate and sell their good assets to other banks, the last three banks had to undergo significant reorganisation procedures.

Other notable cases in recent years include the crisis of two banks in Veneto (*Banca Popolare di Vicenza* and *Veneto Banca*), which were forced to cease trading in 2016. Unlike the four banks in 2015, the two Veneto banks did not undergo the resolution procedure, as they were placed under extraordinary administration and then sold to an assignee bank, *Banca Intesa*. Finally, the *Monte dei Paschi di Siena*, the oldest bank in Italy, entered a rescue and reorganisation procedure in the summer of 2017, as a result of the EUR 5.4bn State support from the Italian government (which, as a result, now owns 70% of the bank).

The latest bank to suffer from the downturn of the Italian economy and the consequences of the financial crisis is *Banca Carige*, whose case is analysed in this short article. The case of *Banca Carige* and the case of the two Veneto banks had been characterised by the active intervention of the ECB, whose surveillance and managerial powers have been significantly expanded by recent reforms on the European Banking Union. This article explores how the ECB intervention had contributed to make the European banking system more stable and resilient overall.

*The European Banking Union*

The unprecedented levels of state support pushed into the banking system in the form of taxpayers’ money, as well as the shortcomings in the existing tools available to national authorities to prevent or tackle bank failures, pushed the European Member States to create a banking union. The banking union is based on a common set of rules called the Single Rule Book. It mainly consists of two initiatives, the Single Supervisory mechanism (‘SSM’) – which entered into force on 4 November 2014 – and the Single Resolution Mechanism (‘SRM’) – which entered into force on 1 January 2016 – along with the harmonisation of national deposit guarantee schemes. This system is complemented by the EU Bank Recovery and Resolution Directive (‘BRRD’).[[2]](#footnote-2)

The SRM is an essential complement to the European Central Bank-led SSM for a more integrated oversight of banks and crisis management in the banking union. The BRRD provides uniform rules for the whole EU single market and the SRM sets out the institutional and funding architecture to apply these rules to Member States participating in the banking union.

*Recovery or Resolution?*

Under the BRRD, banks are required to draft recovery plans to prepare for possible financial difficulties and restore their viability in a timely manner during periods of financial distress. Where recovery is not possible, the BRRD expressly provides for more draconian measures, i.e. resolution plans. In contrast to recovery plans, resolution plans are not drawn up by the banks but are prepared and regularly updated by the Single Resolution Board (‘SRB’) and national resolution authorities.

A resolution plan comprises a comprehensive description of credible and feasible resolution actions which may be implemented under the SRM if a bank meets all the conditions for resolution:

1. The bank is declared as failed or likely to fail,
2. There are no supervisory or private sector measures that can restore the bank to viability within a short time frame (for example, by taking actions set out in its recovery plan); and
3. A resolution is necessary and in the public interest.

*The Case of the Two Veneto Banks*

European resolution mechanisms were implemented for the first time in Italy in the case of the two Veneto banks. ECB has closely monitored the two banks (*Banca Popolare di Vicenza* and *Veneto Banca*) since capital shortfalls were identified by the comprehensive assessment in 2014. Since then, the two banks have struggled to overcome high levels of non-performing loans and underlying challenges to their business models, which resulted in further deterioration of their financial position. In 2016, the *Atlante* fund invested approximately EUR 3.5bn in *Veneto Banca* and *Banca Popolare di Vicenza*. However, the financial position of the two banks deteriorated further in 2017. The ECB had therefore asked the banks to provide a capital plan to ensure compliance with capital requirements. Both banks presented business plans which were deemed not to be credible by the ECB.

On 23 June 2017, the ECB determined that these two banks had failed or were likely to fail as they repeatedly breached supervisory capital requirements. The determination was made in accordance with Articles 18(1a) and 18(4a) of the SRM Regulation.[[3]](#footnote-3) Nevertheless, the SRB decided not to intervene in the resolution of these banks, thus allowing their winding up to take place under national proceedings launched by Italian authorities. The SRB concluded that resolution actions were not warranted for these two banks as there was no public interest need. In fact, neither of these banks provided critical functions, and their failure was not expected to have a significant adverse impact on financial stability.

Accordingly, two days later, the EC approved Italian measures to facilitate the liquidation of these banks under national insolvency law, signed off under EU rules. These measures involved the sale of the two banks' best assets to *Banca Intesa*. As a result, the joint intervention of the ECB and the EC facilitated the orderly liquidation of these two banks and the protection of their account holders.

*The Banca Carige Case (so far)*

The recent appointment (2 January 2019) by the ECB of three temporary administrators and surveillance committee to replace the Board of Directors and take charge of *Banca Carige* represents the first implementation of the ECB supervisory powers in Italy.[[4]](#footnote-4)

The decision to impose temporary administration is an early intervention measure aimed at ensuring continuity and pursuing the objectives of a strategic plan. The appointment of the temporary administration resulted in the removal of *Banca Carige*’s management and control bodies. This choice was made necessary after the resignation of the majority of the board in order to stabilise the governance of the bank and implement those measures that are needed to ensure compliance with EU banking rules.

This decision marked the first attempt to ensure consistent supervisory practices by EU Member States and to break the dangerous nexus between bank and government debt. In particular, the appointment of temporary administrators overcame the *impasse* created by the refusal of the main shareholder (the Malacalza family, who owned 27.5% of *Banca Carige*) to approve a crucial cash call that was essential for the implementation of a rescue plan. By avoiding the potential liquidation of a major Italian bank, the ECB intervention strengthened the positive track-record that the SSM has built in the first few years of its operation and contributed to make the European banking system more stable and resilient overall.

*Conclusion*

While it is still early to say what the eventual outcome will be in the case, the significance of the developments in the *Banca Carige* case is the new willingness of the ECB to invoke its supervisory powers. Whether this will continue as a feature in subsequent cases, in Italy or elsewhere, will be of interest.

1. Commission Decision (EU) 2016/1208 of 23 December 2015 on State Aid granted by Italy to the bank Tercas (Case SA.39451 (2015/C) (ex 2015/NN) [2016] O.J. L 203/1 [↑](#footnote-ref-1)
2. Directive 2014/59/EU of the European Parliament and the Council of 15 May 20114 establishing a framework for the recovery and resolution of credit institutions and investment firms [2014] O.J. L 173/190. [↑](#footnote-ref-2)
3. Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund [2014] O.J. L 225/1. [↑](#footnote-ref-3)
4. Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions [2013] O.J. L 287/63. [↑](#footnote-ref-4)