



OPINION OF THE EUROPEAN CENTRAL BANK
of 26 July 2010
on the containment of public expenditure, as regards the Banca d'Italia
(CON/2010/58)

Introduction and legal basis

On 15 July 2010 the European Central Bank (ECB) received a request from the Italian Ministry of Economic Affairs and Finance (hereinafter the 'Ministry') for an opinion on Decree-Law No 78 of 31 May 2010 on urgent measures for financial stabilisation and economic competitiveness¹ (hereinafter the 'Decree-Law'), in particular Article 3(3) thereof.

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 and the third indent of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions², as the Decree-Law relates to the Banca d'Italia. 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 Decree-Law

The Italian Government adopted the Decree-Law on 31 May 2010 with the purpose of stabilising the public finances, including by means of reducing public expenditure. The specific provision on which the ECB was consulted regards the role of the Banca d'Italia as a national central bank (NCB). Article 3(3) of the Decree-Law provides that the Banca d'Italia 'shall take account, in relation to its own legal order, of the principles of the containment of expenditure' laid down in Title I³ of the Decree-Law for the three years 2011-2013.

2. General observations

2.1 Compliance with the central bank independence principle

2.1.1 The ECB understands that Article 3(3) of the Decree-Law directly and specifically concerns the Banca d'Italia, thus it prevails over any other provision of Title I of the Decree-Law which might otherwise have been applicable to the Banca d'Italia.

¹ *Gazzetta Ufficiale della Repubblica Italiana* No 125, 31.5.2010; *Supplemento Ordinario* No 114.

² OJ L 189, 3.7.1998, p. 42.

³ Title I of the Decree-Law consists of several provisions the aim of which is to reduce public expenditure.

- 2.1.2 As recalled in the ECB Convergence Reports⁴ and several opinions⁵ on issues concerning autonomy in staff matters, which are an aspect of NCBs' financial independence, Member States may not impair an NCB's ability to employ and retain the qualified staff necessary for the NCB to perform independently the tasks conferred on it by the Treaty and the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB').
- 2.1.3 The ECB understands that Article 3(3) of the Decree-Law does not require the Banca d'Italia to take specific measures but invites it to consider, taking into account its own legal order, whether the purposes enshrined in the Decree-Law can be achieved without prejudicing the Banca d'Italia's performance of its tasks under the Treaty, the Statute of the ESCB and national legislation. The Decree-Law can therefore be considered compatible with the principle of central bank independence. However, the ECB trusts that it will be consulted on any future or revised draft legislative provisions in this matter.

2.2 *Compliance with the consultation obligation*

- 2.2.1 In view of the late stage in the legislative process at which the ECB was consulted on an urgent basis, the ECB would like to draw attention to Article 4 of Decision 98/415/EC, which requires Member States to ensure that the ECB is consulted at an appropriate point in time to allow the consulting authority to take its opinion into consideration before deciding on the substance of the draft legislative provisions⁶. In the present matter, the ECB was consulted more than one month after approval of the Decree-Law by the Italian Government, and fourteen days before the deadline for final conversion of the Decree-Law into a law by the Parliament.
- 2.2.2 As has been stated in other ECB opinions⁷, in cases of particular urgency which do not allow for a normal consultation period, the consulting authority may indicate such urgency in the consultation request and ask for a shorter deadline for adoption of the ECB's opinion. However, the ECB considers that the justification provided by the Ministry cannot be considered as a case of extreme urgency within the meaning of Article 3(2) of Decision 98/415/EC. The ECB understands that, pursuant to Article 77 of the Italian Constitution, the Italian Government may, in the event of

⁴ See, for example, the ECB Convergence Report 2010, p. 23; available on the ECB's website at www.ecb.europa.eu.

⁵ See ECB Opinions CON/2008/9, CON/2008/10, CON/2009/15, CON/2009/45, CON/2009/47, CON/2010/42, CON/2010/51 and CON/2010/56. All ECB opinions are available on the ECB's website.

⁶ On this point see also ECB Opinions CON/2008/10, CON/2010/51 and CON/2010/56.

⁷ See on this point Opinion CON/2010/56, paragraphs 2.2 and 2.3. In particular, the ECB would like to emphasise that even in cases of particular urgency a minimum one-month deadline applies according to Article 3(1) of Decision 98/415/EC. This does not prejudice the consulting authority's duty under Articles 127(4) and 282(5) of the Treaty to consult the ECB on national draft legislative provisions falling within its fields of competence at an appropriate stage in the national legislative process, as provided by the second sentence of Article 4 of Decision 98/415/EC. This means that the consultation should take place at a point in the legislative process which affords the ECB sufficient time to examine the draft legislative provisions and to adopt its opinion in all required language versions, and which also enables the relevant national authorities to take the ECB's opinion into consideration before the provisions are adopted. Article 3(4) of Decision 98/415/EC also obliges Member States to suspend the adoption process for draft legislative provisions, pending receipt of the ECB's opinion. In the event of extreme urgency, the time limit of one month may be reduced but, pursuant to Article 3(2) of Decision 98/415/EC, the consulting authority must state the reasons for the urgency. The ECB reiterates its position that even cases of particular urgency do not relieve national authorities from their duty to consult the ECB and to allow themselves sufficient time to take into account the ECB's views, in accordance with Decision 98/415/EC. On this point see also ECB Opinion CON/2010/51, paragraph 2.

urgency, adopt a Decree-Law. The Decree-Law has to be converted into a law by the Parliament within sixty days from its publication. The Decree-Law enters into force immediately after publication and has the same legal effect as a law. Thus, when a Decree-Law falls within the competence of the ECB, as in this case, the ECB should be consulted in due time prior to the entry into force of the relevant provisions. More generally, internal administrative procedures should be in place to ensure that timely consultation of the ECB is foreseen whenever such consultation is mandatory⁸, and the ECB should be consulted at an appropriate point in time in the event of relevant amendments in the course of the legislative procedure⁹.

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

Done at Frankfurt am Main, 26 July 2010.

[signed]

The President of the ECB

Jean-Claude TRICHET

⁸ See on this point ECB Opinions CON/2008/10, paragraph 2, last sentence and CON/2010/51, paragraph 2, last sentence.

⁹ Any substantive amendments to the draft law must be submitted to the ECB to allow it to adopt its opinion on the most recent text. On this point see ECB Opinion CON/2010/56, paragraph 2.3, last sentence, and ECB Opinion CON/2009/59, paragraph 2.1.