



OPINION OF THE EUROPEAN CENTRAL BANK
of 16 March 2012
on Italy's participation in International Monetary Fund programmes
in response to the financial crisis
(CON/2012/20)

Introduction and legal basis

On 15 February 2012, the European Central Bank (ECB) received a request from the Italian Ministry of Economic Affairs and Finance for an opinion on a decree-law on the extension of deadlines set out in legislative provisions¹, concerning also Italy's participation in International Monetary Fund (IMF) programmes in response to the financial crisis (hereinafter the 'Decree-Law').

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

- 1.1 Article 25 of the Decree-Law³ regulates the relations between Italy and the IMF with regard to the implementation of the commitments by the Italian State to contribute to strengthening the tools available to the IMF to deal with the financial crisis.
- 1.2 With the aim of strengthening such stabilisation tools, the Heads of State or Government of the euro area initially agreed at the Summit on 9 December 2011, subject to confirmation within 10 days, to provide additional resources for the IMF of up to EUR 200 billion, in the form of bilateral loans, to ensure that the IMF has adequate resources to deal with the crisis⁴. The EU Finance Ministers confirmed such commitment on 19 December 2011, and in particular agreed that, as part of a broader international effort to improve the adequacy of IMF resources, euro area

¹ Decree-Law No 216 of 29 December 2011, *Gazzetta Ufficiale della Repubblica Italiana*, Serie generale No 302, 29.12.2011, p. 8.

² OJ L 189, 3.7.1998, p. 42.

³ The Decree-Law was adopted by the Italian Government on 29 December 2011 and entered into force on the same day. Under the Italian Constitution, the Decree-Law must be converted into a law by the Italian Parliament within 60 days from adoption by the Government.

⁴ Statement available on the Council's website at www.consilium.europa.eu.

Member States would provide EUR 150 billion of additional resources through bilateral loans to the IMF's General Resources Account. They also agreed to share the burden among euro area Member States on the basis of quota shares resulting from the 2010 quota reform. Since according to such calculations, Italy's quota share, after the entry into force of the 14th General Review of Quotas, amounts to 3,161%, its share in the EUR 150 billion of additional resources comes to 15,66%, i.e. EUR 23,48 billion⁵.

- 1.3 The State budget will guarantee the reimbursement of the capital and interest and will cover any exchange rate risk on the loans provided by the Banca d'Italia under the Decree-Law⁶.

2. General observations

The ECB received the consultation request only on 16 February 2012 although the Decree-Law entered into force on 29 December 2011. As specified in the consultation request, the Decree-Law was presented to Parliament for conversion into law within 60 days. It was definitively approved by the Parliament on 23 February 2012. As underlined in several ECB opinions⁷, even in cases of extreme urgency national authorities are not relieved from their duty to consult the ECB and to allow sufficient time to take the ECB's views into account as laid down in Articles 127(4) and 282(5) of the Treaty. Article 3(4) of Decision 98/415/EC obliges Member States to suspend the process of adoption of draft legislative provisions pending receipt of the ECB's opinion. Article 4 of Decision 98/415/EC provides that the ECB must be consulted 'at an appropriate stage' in the legislative process⁸, 'enabling the authority initiating the draft legislative provision to take into consideration the ECB's opinion before taking its decision on the substance'. Member States must also ensure 'that the opinion received from the ECB is brought to the knowledge of the adopting authority if the latter is an authority other than that which has prepared the legislative provisions concerned'. Decree-Laws are legal acts that enter into force on adoption by the Government⁹. Therefore, consultation should take place before adoption. Consulting the ECB after the submission of the Decree-Law to Parliament for its conversion into law is not sufficient to comply with the abovementioned obligation; rather, this is tantamount to a non-consultation of the ECB¹⁰.

⁵ See the EU Finance Ministers statement on IMF resources of 19 December 2011.

⁶ See Article 25(3) of the Decree-Law.

⁷ See the most recent opinions ECB Opinion CON/2012/4, CON/2012/9 and CON/2012/13.

⁸ This implies that the consultation should take place at a point in the legislative process that affords the ECB sufficient time to examine the draft legislative provisions and to adopt its opinion in all required language versions, and also enables the relevant national authorities to take the ECB's opinion into account before the provisions are adopted.

⁹ Since they enter into force immediately on adoption by the Government, they must later be ratified by Parliament. Decree-Laws are a special type of legislation as the initiating authority is also the adopting authority in the first phase of the legislative procedure.

¹⁰ A failure to properly consult the ECB on draft legislative provisions within the ECB's fields of competence is an infringement of Decision 98/415/EC and could lead to proceedings before the relevant courts, where the validity of a legal act on which the ECB should have been, but was not, consulted may be challenged.

3. Specific observations

- 3.1 The tasks performed by a national central bank (NCB) must comply with the monetary financing prohibition under Article 123 of the Treaty and Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty¹¹. Pursuant to Article 7 of Regulation (EC) No 3603/93, the financing by NCBs of obligations falling upon the public sector vis-à-vis the IMF is not regarded as a credit facility within the meaning of Article 123 of the Treaty. The fourteenth recital of Regulation (EC) No 3603/93 sets out the rationale of this exemption, clarifying that this financing results in foreign claims which have all the characteristics of reserve assets. It is thus essential that the terms of the bilateral loan with the IMF allow for the resulting claims of the Banca d'Italia to have all the characteristics of reserve assets. Provided that this is the case, the ECB considers that the financing by the Banca d'Italia of a bilateral loan under the Decree-Law falls within the scope of Article 7 of Regulation (EC) No 3603/93 and should therefore not be regarded as a form of monetary financing prohibited under the Treaty¹².
- 3.2 The ECB notes that, as mentioned above, the EU Finance Ministers Statement of 19 December 2011 indicates explicitly that the EUR 150 billion additional resources by the euro area Member States will be provided through bilateral loans to the IMF's General Resources Account.
- 3.3 The ECB recommends that when Member States and the NCBs of the European System of Central Banks enter into bilateral loans with the IMF on their behalf or in their own name, the terms of these loans are identical or, if this is not feasible for technical reasons, as uniform as possible. For instance, in the case of the euro area, it should be ensured that any euro liquidity injections resulting from the disbursements under the bilateral loan do not interfere with the implementation of the single monetary policy. The IMF should therefore notify the respective central bank at least five business days prior to drawing, which will allow for euro liquidity injections under these loans to be taken into account.
- 3.4 The ECB notes that it is necessary in this context to comply with the principle of central bank independence enshrined in Article 130 of the Treaty and Article 7 of the Statute of the European System of Central Banks and of the European Central Bank, which includes that an NCB's financial independence is not to be jeopardised.
- 3.5 With respect to Banca d'Italia's payment of a bilateral loan to the IMF under the Decree-Law, the ECB understands that the provision of a State guarantee is meant to cover the reimbursement of the capital and interest and any exchange rate risk on the loans provided by the Banca d'Italia¹³.

¹¹ OJ L 332, 31.12.1993, p. 1.

¹² See also ECB Opinions CON/2009/100, CON/2010/40 and CON/2011/10. All ECB opinions are available on the ECB's website at www.ecb.europa.eu.

¹³ The ECB notes that the wording of Article 25(6) of the Decree-Law differs from the wording used on other similar occasions, such as in Article 2(16) of Decree-Law No 225 of 29 December 2010 (*Gazzetta Ufficiale* No 303, 29.12.2010). In particular, according to paragraph 6 of the Decree-Law, guarantees are to be withdrawn from the funds financing a guarantee scheme for banks established in Italy under Article 8 of Decree-Law No 201 of 6 December 2011 (*Gazzetta Ufficiale* No 284, 6.12.2011). For this purpose, the Decree-Law increases the initial resources of the fund, amounting to EUR 200 million per year for the period 2012-2016, by a further EUR 100 million for the year 2012. The

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

Done at Frankfurt am Main, 16 March 2012.

[signed]

The President of the ECB

Mario DRAGHI

ECB understands that the different wording of Article 25(6) as compared to the wording used on other similar occasions is due to accounting reasons and that, should the available funds be insufficient to cover the State guarantee for the reimbursement of losses incurred by capital, interest and exchange rate risk on the loans provided by the Banca d'Italia, an additional allocation of funds will be approved by the Italian legislator.