EUROPEAN CENTRAL BANK

EUROSYSTEM

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OPINION OF THE EUROPEAN CENTRAL BANK

of 11 September 2018

on amendments to the reform of popolari banks and cooperative banks

(CON/2018/42)

Introduction and legal basis

On 3 August 2018 the European Central Bank (ECB) received a request from the Ministry of Economic Affairs and Finance for an opinion on Article 11 of Decree-Law No 91 of 25 July 2018 on the extension of deadlines for popolari banks and cooperative banking groups (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 sixth indent of Article 2(1) of Council Decision 98/415/EC[1], as the Decree-Law relates to rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets. 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 Decree-Law introduces amendments to Decree-Law No 3 of 24 January 2015 on the reform of popolari banks[2] (hereinafter 'Decree-Law 3/2015') and to Decree-Law No 18 of 14 February 2016 on the reform of cooperative banks[3] (hereinafter 'Decree-Law 18/2016'), in order to extend the deadlines provided for in those laws. In addition, it introduces amendments to Legislative Decree No 385 of 1 September 1993[4] (hereinafter the 'Consolidated Law on Banking') that seek to (a) increase cooperative banks' holdings in the capital of their parent companies; (b) enhance the local character and decentralised features of cooperative banking groups; (c) set a mandatory proportion of the board of directors to be appointed by cooperative banks (half plus two of the overall number of directors); and (d) provide cooperative banks that have a lower risk profile with greater autonomy.

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1 Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

2 Decreto Legge 24 gennaio 2015, no. 3 "Misure urgenti per il sistema bancario e gli investimenti" (GU Serie Generale no 19 of 24-01-2015), converted into law by Legge 24 marzo 2015, no. 33 "Conversione in legge, con modificazioni, del decreto-legge 24 gennaio 2015, n. 3, recante misure urgenti per il sistema bancario e gli investimenti" (GU Serie Generale no 70 of 25-03-2015 – Suppl. Ordinario no 15).

3 Decreto Legge 14 febbraio 2016, no. 18 "Misure urgenti concernenti la riforma delle banche di credito cooperativo, la garanzia sulla cartolarizzazione delle sofferenze, il regime fiscale relativo alle procedure di crisi e la gestione collettiva del risparmio" (GU Serie Generale n.37 of 15-2-2016), converted into law by Legge 8 aprile 2016 n. 49 "Conversione in legge, con modificazioni, del decreto-legge 14 febbraio 2016, n. 18, recante misure urgenti concernenti la riforma delle banche di credito cooperativo, la garanzia sulla cartolarizzazione delle sofferenze, il regime fiscale relativo alle procedure di crisi e la gestione collettiva del risparmio" (GU Serie Generale no 87 of 14-04-2016).

4 Decreto Legislativo 1 settembre 1993, n. 385 "Testo unico delle leggi in materia bancaria e creditizia" (GU Serie Generale n.230 of 30-9-1993 - Suppl. Ordinario n. 92).

1.1 *Extension of deadlines for popolari banks and cooperative banking groups*

1.1.1 Pursuant to Article 2(1) of Decree-Law 3/2015, popolari banks with assets of more than EUR 8 billion are obliged either to convert to joint-stock companies, wind up, or reduce their assets below that threshold within 18 months from the entry into force of the Banca d'Italia implementing measures adopted pursuant to Article 29 of the Consolidated Law on Banking. The Decree-Law postpones this deadline to 31 December 2018.

1.1.2 Pursuant to Article 2(1) and (2) of Decree-Law 18/2016, a cohesion contract is to be concluded among cooperative banks and the parent company within 90 days from the date on which authorisation is received from the competent authority allowing the creation of a cooperative banking group. Subsequently, within 90 days from entering the cooperative banking group in the Italian company register, additional individual cooperative banks may request to sign the cohesion contract on the same conditions as the initial signatories. The Decree-Law extends both deadlines to 180 days.

1.2 *Governance issues*

The Decree-Law amends Article 37-bis of the Consolidated Law on Banking, with reference to the regime applicable to cooperative banking groups. In particular, it provides for the minimum shareholding in a cooperative parent company held by cooperative banks to be increased to 60 %. In addition, it provides that cooperative banks are to be represented on the board of directors of the parent company of the cooperative banking group being assigned half of the total number of seats available, plus an additional two seats (on the basis of the 'half plus two' rule).

1.3 *Enhancement of the decentralised features of the cooperative banking group*

The Decree-Law introduces a new paragraph 3-bis into Article 37-bis of the Consolidated Law on Banking. In particular, it increases the participation of individual cooperative banks in the formulation of the group's strategic and operational plan by means of compulsory consultations to take place at 'territorial meetings', which are held at local level. In addition, it allows cooperative banks with a lower risk profile (a) to autonomously define their strategic and operational plans, in line with objectives and methodologies set by the parent company; and (b) to autonomously nominate members of their boards of directors and, in the event that the parent company disagrees with these nominations, to present a list of three alternative candidates from which the parent company may choose one.

2. The appropriate time to consult the ECB

2.1 The ECB must be consulted at an appropriate stage in the legislative process. This should be a time that enables the ECB to adopt its opinion in all required language versions and that enables the authority initiating the legislative provision to take the ECB's opinion into account before it decides on the substance[5].

2.2 In the Italian legal system, a decree-law, adopted by the Government, enters into force following publication in the *Gazzetta Ufficiale* and must be submitted on the same day to Parliament for

5 See European Central Bank, Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions (October 2015), pp. 21-22, available on the ECB's website at www.ecb.europa.eu.

conversion into law. If not converted within 60 days of publication, the decree-law is rendered invalid with retroactive application. In the light of the above, the ECB should be consulted before the adoption of a decree-law[6].

3. Observations

3.1 With reference to the extension of the deadline set under Article 2(1) of Decree-Law 3/2015 for the transformation of popolari banks into joint-stock companies, the ECB understands that the need for this extension is based on the constitutional review of Decree-Law 3/2015, which has now been concluded. In particular, the original deadline was suspended by the Italian Council of State, pending a decision of the Italian Constitutional Court. As a result of the constitutionality of Decree-Law 3/2015 having been upheld by the Italian Constitutional Court in Decision No 99 of 21 March 2018 (Decision 99/2018)[7], and following an upcoming assessment by the Council of State, time will start running again in relation to the deadline. At that point, popolari banks will have less than two weeks to call an extraordinary general meeting and vote on their transformation into joint-stock companies.

3.2 Against this background, the postponement of the deadline to 31 December 2018 seems reasonable, as this will allow popolari banks that have not yet complied with Article 2(1) of Decree-Law 18/2016 to do so within a feasible timeframe. Nonetheless, it is noted that Decision 99/2018 upheld the constitutionality of Decree-Law 3/2015 in allowing cooperative banks to limit, even in full, the right of shareholders to have their shares redeemed in case of withdrawal from the company when this limitation is necessary to meet the own funds requirements. For this reason, from a prudential perspective, the extension of this deadline should not be construed as allowing the postponement of the adoption by popolari banks of any measures necessary for their transformation into joint-stock companies.

3.3 With reference to the extension of the deadlines set under Article 2(1) of Decree-Law 18/2016 for the conclusion and signature of the cohesion contract, the ECB would like to underscore that the swift adaptation of individual cooperative banks and their integration within cooperative banking groups as one of the foremost objectives of the reform should be preserved. The ECB notes that the establishment of each group has already been authorised by the competent authorities, triggering the start of the 180-day period within which the cooperative banks would be required to sign the cohesion contract.

3.4 With reference to the mandatory proportion of directors on the boards of parent companies that are appointed by individual cooperative banks of the group and the increase in the shareholdings in the parent companies owned by those individual cooperative banks, the ECB understands that these amendments strengthen the position of individual cooperative banks within cooperative banking groups in line with article 45 of the Italian Constitution.

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6 See paragraph 2 of Opinion CON/2012/64. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

7 Sentenza 99/2018 (ECLI:IT:COST:2018:99).

3.5 As previously noted by the ECB[8], the reform of Italian cooperative banks and the consolidation of individual cooperative banks within banking groups are important to address the vulnerabilities of the Italian cooperative banking sector, in particular its capacity to absorb negative shocks and to provide opportunities for enhanced efficiency and diversification of investments. For this reason, it should be ensured that the fundamental objectives of the reform of the cooperative banking sector, namely modernising and improving the business model utilised in the cooperative sector and enabling parent companies to gain access to capital markets, are not affected.

3.6 Moreover, with regard to the increase to 60 % of the minimum shareholding in cooperative parent companies that must at least be held by cooperative banks, the ECB understands that the power entrusted to the Italian Prime Minister to lower this threshold for the interest of financial stability will be effectively used in case of need.

3.7 As previously noted by the ECB[9], a parent company's powers to manage affiliated institutions and coordinate the cooperative banking group is key to the success of the reform. In this regard, it should be ensured that the obligation for parent companies to consult individual cooperative banks on the definition of the group strategic and operational plan does not have an impact on the exercise by the parent companies of the powers of direction and coordination.

3.8 Overall, the ECB is of the opinion that the amendments to the current legislation introduced by the Decree-Law should be consistent with the objectives of the reform of the cooperative banking sector as introduced by Decree-Law 18/2016.

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

Done at Frankfurt am Main, 11 September 2018.

[signed]

The President of the ECB

Mario DRAGHI

8 See paragraph 3.1.3 of Opinion CON/2016/17.

9 See paragraph 3.1.5 of Opinion CON/2016/17.