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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 14 February 2011

on Italy's participation in International Monetary Fund programmes in response to the financial crisis

(CON/2011/10)

Introduction and legal basis

On 20 January 2011, 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 and on urgent measures in the field of taxation and in support of enterprises and families[1], 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 provisions[2], 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 2(13) to (16) of the Decree-Law[3] regulates the relations between Italy and the IMF with regard to the implementation of the commitments made by the Italian State to the IMF in response to the financial crisis[4].

1.2 The Decree-Law refers to the expansion of the IMF's New Arrangements to Borrow (NAB). The increase in the NAB, as approved by the IMF's Executive Board on 12 April 2010[5], includes credit

1 Decree Law No 225 of 29 December 2010, *Gazzetta Ufficiale della Repubblica Italiana*, *Serie generale* No 303, 29.12.2010, p. 1.

2 OJ L 189, 3.7.1998, p. 42.

3 The Decree-Law was adopted by the Italian Government on 29 December 2010 and entered into force on the same day. Under the Italian Constitution, the Decree-Law needs to be converted into a law by the Italian Parliament within 60 days from adoption by the Government.

4 As also provided in Article 2(13) of the Decree-Law, the initiatives were decided at the G20 Summit of the Heads of State and Government held in London on 2 April 2009, later reaffirmed at the G20 Summit held in Seoul in November 2010, and supported by the European Council. See also the Presidency Conclusions of the European Council held in Brussels on 18 and 19 June 2009.

lines from new NAB participant countries and additional credit lines from existing NAB participants, such as Italy. Under the expanded and more flexible NAB, credit of up to SDR 367,5 billion (equivalent to about EUR 429,6 billion) will be available. Member States have agreed to contribute EUR 125 billion to the expanded NAB[6]. According to the Decree-Law, Italy's contribution will amount to EUR 13,58 billion[7], to be funded from the Banca d'Italia's resources[8].

1.3 In view of the uncertain economic situation[9], a number of IMF member countries have agreed to make bilateral agreements with the IMF in the interim. The Decree-Law implements such an agreement to provide an interim bilateral loan, authorising the Banca d'Italia to grant the IMF a loan of up to EUR 8,11 billion[10] on Italy's behalf. The IMF's Executive Board approved a draft borrowing agreement with the Banca d'Italia on 27 October 2009 that became effective on entry into force of the Decree-Law. The bilateral agreement with the IMF addressed in the Decree-Law may be terminated once the new NAB agreement has entered into force[11].

1.4 The Decree-Law also refers to Italy's participation in the Extended Credit Facility (ECF) of the Poverty Reduction and Growth Trust (PRGT)[12]. The Decree-Law authorises the Banca d'Italia to provide loans at market rates of up to SDR 800 million, whereas the Italian Ministry of Economic Affairs and Finance will provide a SDR 22,1 million subsidy[13].

1.5 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-Law.

2. General observations

2.1 It is necessary to assess whether the decree law complies with the prohibition of monetary financing under Article 123(1) of the Treaty, which prohibits overdraft facilities or any other type of credit

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5 The IMF's Executive Board adopted a 'Proposed decision to modify the New Arrangements to Borrow' on 12 April 2010. It is available on the IMF's website at www.imf.org.

6 Italy's agreed share of this contribution was SDR 13 578 million.

7 Until now Italy has participated in the NAB with a credit line provided by the Banca d'Italia currently amounting to SDR 1 753 billion (equivalent to about EUR 2 billion).

8 According to the explanatory memorandum, the Italian contribution will be charged to the Banca d'Italia and will not affect the Italian State budget.

9 The process of consents and adherences to the proposed expansion of the NAB has not yet been completed.

10 Where additional financial resources are needed, the Banca d'Italia may contribute up to a cumulative total of EUR 13,53 billion. See Article 2(13)(b) of the Decree-Law.

11 The bilateral loan will be offset against Italy's extended provision of credit arrangements under the NAB of EUR 13,53 billion.

12 On 23 July 2009, the IMF's Executive Board approved wide ranging modifications to upgrade its concessional financial facilities for low-income countries. The decision adopted by the IMF's Executive Board establishes the PRGT, replacing and expanding the former Poverty Reduction and Growth Facility-Exogenous Shocks Facility. The PRGT includes new financially improved credit lines, such as the ECF, that are considered to be more adapted to low-income countries' needs.

13 According to the explanatory memorandum, this amount represents remaining contributions that have already been provided but which will be considered as new resources.

facility with national central banks (NCBs) in favour of central governments. This prohibition is subject to certain exceptions contained in Article 123(2) of the Treaty and in 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 Treaty[14]. In particular, Article 7 of Regulation (EC) No 3603/93 provides that 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[15].

It is also necessary to ensure that the possible euro liquidity injections resulting from the Banca d'Italia's funding of Italy's participation in the NAB, from the disbursements by the Banca d'Italia under the bilateral loan agreement between the Banca d'Italia and the IMF and from the loans granted by the Banca d'Italia under the ECF of the PRGT, do not interfere with the implementation of the single monetary policy. Under paragraph 23 of the IMF's Proposed Decision to Modify the New Arrangements to Borrow, there is a presumption that the IMF will notify the respective central bank at least five business days prior to drawing. Likewise, under paragraph 2(a) of the Borrowing Agreement between the Banca d'Italia and the IMF, the IMF will give the Banca d'Italia at least five business days' notice of its intention to draw. Also with regard to the loans under the ECF of the PRGT, the Banca d'Italia should be given sufficient notice of a loan. This will allow for possible euro liquidity injections under these facilities to be taken into account when implementing single monetary policy

Increase of the credit limits under the expanded IMF's NAB

2.2 Opinion CON/1997/16 considered a draft law authorising the Oesterreichische Nationalbank (hereinafter the 'OeNB') to grant, in Austria's name, a loan to the IMF, and Opinion CON/2010/74[16] considered a draft law authorising the OeNB to increase on Austria's behalf the credit limits for the NAB with the IMF. In both Opinions, the ECB concluded that the operations covered were not a credit facility within the meaning of Article 123(1), but fell within the exception in Article 7 of Regulation (EC) No 3603/93. Similarly, the Banca d'Italia's authorisation, under the Decree-Law, to increase the credit limits for the NAB should be considered as falling 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 by the Treaty.

Bilateral loan with the IMF

2.3 The Banca d'Italia's authorisation under the Decree-Law to grant a bilateral loan to the IMF should also be considered as falling 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 by the Treaty. Opinion

14 OJ L 332, 31.12.1993, p. 1.

15 The 14th recital of Regulation (EC) No 3603/93 reads as follows: 'Whereas the financing by the central banks of obligations falling upon the public sector vis-à-vis the International Monetary Fund or resulting from the implementation of the medium-term financial assistance facility set up within the Community results in foreign claims which have all the characteristics of reserve assets; whereas it is, therefore, appropriate to authorise them'.

16 All Opinions are available on the ECB's website at www.ecb.europa.eu.

CON/2009/100 considered a draft law authorising Banka Slovenije to provide payments to the IMF on the basis of a bilateral agreement between Slovenia and the IMF, while Opinion CON/2010/40 considered a draft law authorising the OeNB to provide payments to the IMF on the basis of a bilateral agreement between the OeNB and the IMF. In both cases, the ECB came to the same conclusion.

Contribution to the IMF's ECF of the PRGT

2.4 Opinion CON/2010/22 considered more closely an NCB's involvement in financing the IMF's facility for low-income countries. Similarly, Opinion CON/2008/41[17] considered a draft law on the OeNB's involvement in financing the IMF's PRGF and PRGF-HIPC Trusts for Liberia's debt relief, and Opinion CON/2005/29 considered a draft law on the OeNB's authorisation to pay, in Austria's name, a contribution to the trust fund administered by the IMF for low income developing countries affected by natural disasters. In all the abovementioned Opinions, the ECB took the view that an NCB's financing of an IMF-administered initiative fell within the exemption in Article 7 of Council Regulation (EC) No 3603/93. Also in view of the above, the provision by the Banca d'Italia of loans under the ECF of the PRGT should be considered as falling within the exemption in Article 7 of Regulation (EC) No 3603/93 and therefore should not be regarded as a form of monetary financing prohibited by the Treaty.

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

Done at Frankfurt am Main, 14 February 2011.

[signed]

The President of the ECB

Jean-Claude TRICHET

17 This Opinion considered that an NCB's involvement in financing such an IMF initiative reduces what is in principle government expenditure on development aid, and that the NCB effects this reduction by immediately transferring funds in lieu of the Government.