EUROPEAN CENTRAL BANK

EUROSYSTEM

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OPINION OF THE EUROPEAN CENTRAL BANK

of 22 February 2017

on Italy's participation in a number of International Monetary Fund programmes: the extension of the New Arrangements to Borrow, the contribution to the Poverty Reduction and Growth Trust, and a new bilateral loan agreement

(CON/2017/4)

Introduction and legal basis

On 20 February 2017, the European Central Bank (ECB) received a request from the Italian Ministry of Economic Affairs and Finance for an opinion on amendments (hereinafter the 'draft amendments')[1] to a decree law on the extension of deadlines[2] (hereinafter the 'Decree Law'). The relevant amendments concern Italy's participation in a number of International Monetary Fund (IMF), or IMF-related, programmes. The Decree Law must be converted into law within 60 days of publication (i.e., by 28 February 2017), failing which the Decree Law will be invalid with retroactive application.

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[3], as the draft amendments to the Decree Law relate to a national central bank (NCB). 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 amendments to the Decree Law

1.1 Extension of the Banca d'Italia's participation in the New Arrangements to Borrow

The draft amendments to the Decree Law authorise the Banca d'Italia (BdI) to extend the IMF's New Arrangements to Borrow (NAB) scheme until 16 November 2022 and to make available a credit line of up to 6 898.52 million special drawing rights (SDR) (currently equivalent to approximately EUR 8.7 billion). This facility will be funded from the BdI's resources. The State budget will guarantee the reimbursement of principal and interest and will cover any exchange rate risk on the facility provided by the BdI under the Decree Law.

The NAB was created in 1998 to enhance the IMF's lending capacity. Italy was among the first participating States. When it entered into the scheme the Italian State did not provide the BdI with any guarantees. On 4 November 2016, the IMF's Executive Board adopted a decision on the

1 Amendments to Draft Law n. 2630 of 5 January 2017.

2 Decree law No 244 of 30 December 2016, *Gazzetta Ufficiale della Repubblica Italiana*, *Serie generale* No 304, 30.12.2016.

3 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).

renewal of the NAB scheme for an additional five years[4]. The renewal decision does not require the participating States to confirm their renewed participation in the scheme. Continued participation is assumed if the concerned State fails to communicate its withdrawal at least six months before the entry into force of the renewal decision, i.e. by April 2017[5].

*1.2 New contribution to the P*overty Reduction and Growth Trust

1.2.1 The draft amendments to the Decree Law also authorise the BdI to provide additional loans at market rates of up to SDR 400 million to the IMF's Poverty Reduction and Growth Trust (PRGT). The loan will be funded from the BdI's resources and the State budget will guarantee the reimbursement of principal and interest[6].

1.2.2 On 23 July 2009, the IMF's Executive Board approved wide-ranging modifications to upgrade its concessional financial facilities for low-income countries[7]. The decision adopted by the IMF's Executive Board established the PRGT, which replaced and expanded the former Poverty Reduction and Growth Facility-Exogenous Shocks Facility. The PRGT includes new financially improved credit lines that are considered to be more adapted to low-income countries' needs. In view of the growing number of requests from low-income countries, additional contributions are being requested from donor countries.

1.3 Authorisation for the BdI to grant bilateral loans to the IMF on behalf of Italy

The draft amendments to the Decree Law also authorise the BdI to conclude a new bilateral loan agreement with the IMF to implement Italy's commitment to contribute to strengthening the tools available to the IMF to deal with the financial crisis. As the bilateral loan agreement concluded between Italy and the IMF expired in October 2016, the draft amendments to the Decree Law authorise the BdI to conclude a new bilateral loan agreement with the IMF denominated in SDR and up to a maximum amount equivalent to EUR 23 480 million[8]. The bilateral loan agreement is intended to expire on 31 December 2019, unless it is extended to 31 December 2020. The State budget will guarantee the reimbursement of principal and interest and will cover any exchange rate risk on the loans provided by the BdI under the Decree Law[9].

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4 See the IMF's press release No. 16/502 https://www.imf.org/en/News/Articles/2016/11/11/PR16502-IMF-Executive-Board-Approves-Renewal-of-New-Arrangements-to-Borrow.

5 Currently, the relations between Italy and the IMF are regulated by Article 2(13) and (15) of the Decree Law on the extension of deadlines and on urgent measures in the field of taxation, of 29 December 2010, n. 225, later converted by Law of 26 February 2011, n. 10. According to the Decree Law, (i) Italy's contribution to the NAB amounted to EUR 13.58 billion, which was funded from the Banca d'Italia's resources though a loan expiring on 17 November 2017; and (ii) the Banca d'Italia was authorised to conclude an interim bilateral loan to the IMF up to EUR 8.11 billion on Italy's behalf. See ECB Opinion CON/2011/10, all ECB opinions are available on the ECB's website at www.ecb.europa.eu .

6 Currently, Italy's participation in the PRGT is regulated by Article 2(14) and (15) of the Decree Law on the extension of deadlines and on urgent measures in the field of taxation, of 29 December 2010, n. 225, later converted by Law of 26 February 2011, n. 10. According to the decree law, the Banca d'Italia is authorised to provide loans at market rates of up to SDR 800 million. See ECB Opinion CON/2011/10.

7 See the IMF's Public Information Notice No. 09/94 https://www.imf.org/en/News/Articles/2015/09/28/04/53/pn0994.

8 As defined in paragraph 1(a) of the draft loan agreement annexed to the draft amendments.

9 Article 25(2) of the Decree Law of 29 December 2011, n. 216, converted into Law of 24 February 2012, n. 14, establishes a legal basis for the BdI to negotiate a bilateral loan agreement with the IMF. See ECB Opinion CON/2012/20.

2. General observation

The ECB supports an adequately resourced IMF at the centre of the international monetary system, where it makes an important contribution to global economic and financial stability. With the backing of Union Member States, the IMF has, in response to the financial crisis, considerably increased its resources – both in terms of quotas and borrowed resources, such as the NAB and bilateral loans.

3. Monetary financing prohibition

3.1 The draft amendments to the Decree Law must comply with the prohibition of monetary financing under Article 123 of the Treaty, which is subject to certain exemptions contained in Article 123(2) of the Treaty, Article 21.2 of the Statute of the European System of Central Banks and of the European Central Bank and Council Regulation (EC) No 3603/93[10]. 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. Recital 14 of Regulation (EC) No 3603/93 clarifies the rationale behind this exemption, stating that it is appropriate to authorise the financing by the NCBs of obligations falling upon the public sector vis-à-vis the IMF because such financing 'results in foreign claims which have all the characteristics of reserve assets'. Therefore, the exemption in Article 7 of Regulation (EC) No 3603/93 must be interpreted in line with this rationale[11].

3.2 Reserve assets have been defined as those external assets that are readily available to and controlled by monetary authorities for meeting balance of payments financing needs, for interventions in exchange markets to affect the currency exchange rate, and for other related purposes, such as maintaining confidence in the currency and the economy, and serving as a basis for foreign borrowing. Under this definition reserve assets must be foreign currency assets and, other than gold bullion, must be claims on non-residents[12]. The BdI's transfer of Italy's contribution to the IMF's PRGT, its granting of loans under the NAB and its bilateral agreements with the IMF on behalf of Italy, as set out in the draft amendments to the Decree Law, fall within the exemption of Article 7 of Regulation (EC) No 3603/93 because this financing results in foreign currency (SDR)-denominated claims of the BdI against non-resident persons (the IMF and an IMF-administered trust) that have all the characteristics of reserve assets[13].

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10 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 (OJ L 332, 31.12.1993, p. 1).

11 Consistent with this interpretation, see Opinions CON/2005/29 and CON/2013/16. With regard to the issue of NCBs' financing of IMF quota increases, see Opinions CON/2012/65 and CON/2011/97.

12 See International Monetary Fund, Balance of Payments and International Investment Position Manual (Sixth ed., 2009), pages 111-18.

13 Annex IV, Asset 2.1 of Guideline (EU) 2016/2249 of the European Central Bank of 3 November 2016 on the legal framework for accounting and financial reporting in the European System of Central Banks (ECB/2016/34) (OJ L 347, 20.12.2016, p. 37) lists 'general arrangements to borrow, loans under special borrowing arrangements, deposits made to trusts under the management of the IMF' as 'Receivables from the IMF'. This includes the BdI's transfer of Italy's contribution to the IMF's PRGT, as the latter is described by the IMF as a 'financing package [seeking] new loan resources from members of SDR 10.8 billion (including SDR 1.8 billion for a voluntary encashment regime under which the participating lenders may ask for a ready repayment of loans in case of balance of payments needs)'. See http://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/04/Financing-the-IMFs-Concessional-Lending-to-Low-Income-Countries.

3.3 Based on the foregoing, the ECB considers that the BdI's transfer of Italy's contribution to the IMF's PRGT and grant of loans under the NAB and bilateral agreements with the IMF on behalf of Italy should not be regarded as a form of monetary financing prohibited under the Treaty[14].

4. Financial independence

4.1 From the perspective of the financial independence required of an NCB in the European System of Central Banks under Article 130 of the Treaty, pursuant to which Member States may not put their NCBs in a position where they have insufficient financial resources to carry out their ESCB or Eurosystem-related tasks[15], the ECB welcomes the guarantee under the draft amendments to the Decree-Law to be provided by the State with respect to the reimbursement of principal and interest on BdI's loans, which in the case of the extension of participation in the NAB and the new bilateral loan agreement with the IMF will also cover any exchange rate risk on the loans provided by BdI.

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

Done at Frankfurt am Main, 22 February 2017.

[*signed*]

The President of the ECB

Mario DRAGHI

14 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.

15 ECB Convergence Report 2016, p. 25.