EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 27 December 2013

on a capital increase of the Banca d'Italia

(CON/2013/96)

Introduction and legal basis

On 22 November 2013, the European Central Bank (ECB) received a request from the Ministry of Economy and Finance for an opinion on a draft decree-law providing for a capital increase of the Banca d'Italia and laying down principles for amendments to the Statute of the Banca d'Italia. The Decree-Law was adopted on 30 November 2013. This opinion is based on the Decree-Law adopted by the consulting authority[1] (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

The Decree-Law provides for an increase of the Banca d'Italia's share capital by converting statutory reserves into capital. The share capital, set by the Banking Law of 1936 at EUR 156 000, has been estimated to be between EUR 5 billion and EUR 7.5 billion by a High Level Group of Experts established by the Banca d'Italia[3] and is to be updated accordingly. While the draft decree-law envisaged a capital increase in this range, the Decree-Law simply authorises the Banca d'Italia to raise its capital to EUR 7.5 billion.

Furthermore, material changes in profit distribution are envisaged, with annual dividends to shareholders drawn on net profits to be capped at six per cent of the share capital, to the exclusion of any further payouts to shareholders[4].

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1 *Gazzetta Ufficiale della Repubblica Italiana* No 281, 30.11.2013.

2 OJ L 189, 3.7.1998, p. 42.

3 The note released by the High Level Group of Experts was attached to the draft decree law.

4 See Article 6(5)(b) of the Decree-Law, which specifies that the economic rights of shareholders are limited to what is provided for in Article 4(2), i.e. updated value of the shares and Article 4(3), i.e. annual dividends only, out of net profits, for an amount no greater than 6% of the capital of the Decree-Law.

In addition, the authorities aim to foster the Banca d'Italia's independence and the public's perception of that independence by means of a more balanced distribution of the shares among shareholders. The shareholdings of individual shareholders and the attached voting rights are capped at five per cent of the Banca d'Italia's share capital. The range of eligible shareholders is broadened to include pension funds while also specifying the eligibility of all commercial banks, and the Banca d'Italia is authorised to carry out temporary transactions in its own shares.

Pursuant to Article 6(6) of the Decree-Law, the Banca d'Italia's shareholders shall transfer their shares to their trading book 'at the value at which they were stated in the item of origin'. The same provision specifies that, except as provided for above, International Accounting Standards (IAS) (now International Financial Reporting Standards[5] (IFRS)) shall apply.

2. The appropriate time to consult the ECB

The ECB has underlined in several opinions that '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'[6]. Moreover, Article 3(4) of Decision 98/415/EC obliges the Member States to suspend the process of adoption of draft legislative provisions pending the receipt of the ECB's opinion. The ECB received the consultation request on 22 November 2013, and the Decree-Law was adopted on 30 November 2013. Since the adoption of legislative provisions prior to delivery of the opinion or expiry of the set deadline is tantamount to a non-consultation of the ECB, the ECB would like to remind the Ministry of the proper procedure for consultation[7], in particular taking into account the relevance of the legislation for the Banca d'Italia and the Eurosystem.

3. Capital increase and the Banca d'Italia's independence

3.1 The principle of financial independence, which is an aspect of the principle of central bank independence for the members of the European System of Central Banks (ESCB) enshrined in Article 130 of the Treaty, requires a national central bank (NCB) to have sufficient means to not only perform its ESCB-related or Eurosystem-related tasks, but also its national tasks, e.g. financing its administration and own operations[8]. Financial independence also carries an implication that NCBs should always be sufficiently capitalised. In particular, the ECB is of the view that the higher the level of capital, reserves and provisions against financial risks, the higher the safeguards will be against future losses[9]. NCBs must be free to independently create financial

5 Available on the IFRS Foundation's website at www.ifrs.org. The Decree-Law under scrutiny by reference to Legislative Decree No 38/2005 restates that application of international accounting standards is mandatory.

6 See Opinion CON/2012/20; see also Opinions CON/2012/4, CON/2012/9 and CON/2012/13. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

7 See Opinion CON/2012/20.

8 See the ECB's Convergence Report 2013, p. 25.

9 See Opinion CON/2010/88.

provisions and buffers to safeguard the real value of their capital and assets. Additionally, Member States should not impede NCBs in building up their reserve capital to a level that is necessary for a member of the Eurosystem to fulfil its tasks[10].

3.2 The ECB takes note of the authorisation to increase the Banca d'Italia's capital and understands that it has been proposed in close cooperation with the Banca d'Italia, which set up a High Level Group of Experts to assess the current value of its shares. In fact, the ECB considers it important from the perspective of central bank independence that such decisions are initiated and taken in close cooperation with the relevant NCB[11].

3.3 With regard to financial independence, it is pointed out that the Banca d'Italia should always be sufficiently capitalised[12], and that the Banca d'Italia needs to be able to independently create, build up and replenish adequate financial buffers commensurate with the level of risks arising from the nature of its activities, including reserves representing retained profits, in order to preserve an appropriate level of net equity[13].

3.4. The High Level Group of Experts established by Banca d'Italia carried out a valuation exercise according to a 'dividend discount model' based on selected parameters, e.g. the free-risk interest rate, the dividend growth rate, the 'Beta' coefficient of the shares of the Banca d'Italia, the equity premium and the liquidity discount[14]. The ECB understands that such a long-term assessment, where assumptions about future dividends over a period of more than 20 years are being made, requires a certain degree of conjecture regarding the quantification of key parameters. Nevertheless, additional details on the quantitative assumptions underlying the assessment would be important. In any case, the ECB recommends that the Banca d'Italia, having been fully involved in the valuation exercise and being best placed to assess its required level of capital[15], acts prudently and in accordance with principles and objectives of the ESCB when effectuating the capital increase[16].

3.5 Since the existing statutory reserve will be partly incorporated into the Banca d'Italia's share capital in order to carry out the capital increase, the amended rules should ensure, with the aim of safeguarding the Banca d'Italia's financial independence, that such reserve may be gradually replenished over an appropriate period of time and up to the amount deemed necessary to safeguard the value of the Banca d'Italia's capital and assets. In this respect, the ECB welcomes that Article 6(5)(a) of the Decree-Law requires the Statute of the Banca d'Italia to contain

10 See the ECB's Convergence Report 2013, p. 26; see also Opinion CON/2009/26.

11 See Opinion CON/2010/88.

12 See ECB's Convergence Report 2013, p. 25.

13 See Opinion CON/2012/69.

14 Note of the High Level Group of Experts, p. 3.

15 See the ECB's Convergence Report 2013, p. 26; see also paragraph 2.1 of Opinion CON/2010/88.

16 Pursuant to Article 10(2) of Legislative Decree No 43 of 10 March 1998, referred to by Article 3(5) of the Decree-Law, amendments to the Statute of the Banca d'Italia are voted on in the extraordinary meeting of shareholders and transposed in the form of a Presidential Decree on proposal of the President of the Council of Ministers acting together the Ministry of the Treasury, the Budget and Economic Planning.

provisions ensuring that the Banca d'Italia maintains adequate capital safeguards against risk, consistent with ESCB standards. The ECB furthermore considers it important from a financial independence perspective that the current mechanism provided for in Article 39 of the Statute of the Banca d'Italia, which allocates part of the annual net profits to the Banca d'Italia's reserves, is preserved.

4. Amendments to the Statute of the Banca d'Italia

4.1 It is understood that, pursuant to Articles 4(5) and 4(6) in conjunction with Article 6(5) of the Decree-Law, shares representing more than the current maximum five per cent of the Banca d'Italia's share capital, while not bestowing voting rights, shall grant their holders attached rights to dividends from declared profits for a period of no longer than 24 months starting from the completion of the capital increase[17]. At the end of that period, any dividend rights attached to such shares will be allocated to the Banca d'Italia's statutory reserves[18]. The Banca d'Italia may temporarily buy back such shares from the shareholders and enter into contracts to this effect to enable compliance with the five per cent limit imposed on individual shareholdings in the Banca d'Italia[19].

4.2 The Decree-Law establishes certain general principles. The ECB understands that detailed rules on the imposition of limits on shareholdings in the Banca d'Italia and any further clarifications regarding possible buy-back arrangements and the relevant time limit will be enacted by means of amendments to the Statute of the Banca d'Italia. The ECB has been consulted on the proposed amendments to the Statute of the Banca d'Italia.

5. Treatment of the Banca d'Italia's shareholdings

5.1 As a result of the recapitalisation operation authorised by the Decree-Law, the Banca d'Italia shares are to be recorded in the balance sheets of its shareholders as positions in their trading book at their value prior to the operation in order to create a market for the Banca d'Italia's shares.

5.2 In this respect it is important that the recapitalisation fully complies at all times with the existing Union prudential and accounting frameworks, and in particular that the rules on the reclassification of financial instruments as laid down by IAS-IFRS are not infringed[20]. Moreover, consistent application of the IFRS guidance on fair value measurement should be ensured.

17 See Article 6(5)(c) of the Decree-Law.
18 See Article 4(5) of the Decree-Law.
19 See Article 4(6) Decree-Law.
20 See in particular IAS 39(50).

6. The buy-back scheme

As mentioned above, the Decree-Law includes provisions authorising the Banca d'Italia to launch temporary buy-back operations to repurchase its own shares from shareholders holding more than five per cent of the Banca d'Italia's share capital. The ECB understands that the possibility for the Banca d'Italia to enter into such a scheme may entail the transfer of financial resources to shareholders. However, the terms of the scheme are not set out in the Decree-Law and the scheme, while being in place only temporarily, will need to comply with relevant Union laws.

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

Done at Frankfurt am Main, 27 December 2013.

[signed]

The President of the ECB

Mario DRAGHI