EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 17 March 2009

at the request of the Italian Ministry of Economic Affairs and Finance on a draft Ministerial decree on the management of the Treasury availability account held with the Banca d'Italia

(CON/2009/23)

Introduction and legal basis

On 6 February 2009 the European Central Bank (ECB) received a request from the Italian Ministry of Economic Affairs and Finance (MEF) for an opinion on a draft Ministerial decree on the management of the Treasury availability account held with the Banca d'Italia (hereinafter the 'draft decree').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community 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[1], as the draft decree 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 draft decree

1.1 The draft decree contains implementing provisions required by Article 5(5) of the Law on consolidation of legislative provisions and regulations on public debt (hereinafter the '2003 Consolidated Law'), which regulates the Treasury availability account held with the Banca d'Italia[2]. Article 2(39) of the 2008 Budget Law[3] amended Article 5(5) to improve the current remuneration regime, in particular in connection with the liquidity forecasts, thus facilitating the implementation of monetary policy, as also indicated in the explanatory memorandum to the draft decree.

1 OJ L 189, 3.7.1998, p. 42.

2 Presidential Decree No 398 of 30 December 2003 (*Gazzetta Ufficiale della Repubblica italiana* No 57, 9.3.2004, *S.O.).*

3 Law No 244 of 24 December 2007 (*Gazzetta Ufficiale della Repubblica italiana* No 300, 28.12.2007, *S.O.).*

1.2 On entry into force of the 2008 Budget Law, Decree-Law No 248 suspended the application of Article 2(39) on the new remuneration regime[4], pending ECB Opinion CON/2008/10[5]. The opinion analysed whether the proposed changes to Article 5(5) of the 2003 Consolidated Law contravene the objectives of the monetary financing prohibition under Article 101 of the Treaty. It also analysed the implications for monetary policy implementation.

2. General observations

2.1 The draft decree is required to implement the reform improving the remuneration regime and liquidity management. The ECB welcomes the ongoing efforts to improve the management procedures (OPTES) for deposit balances held by the MEF with the Banca d'Italia. The draft decree represents a significant improvement compared to past practices. Its scope is limited to monetary policy implementation. In the light of the stance taken in its Opinion CON/2008/10, the ECB also considers that, pending appropriate amendments to Article 5(5) of the 2003 Consolidated Law also from the point of view of the legislation's compliance with the monetary financing prohibition, in particular with regards to the remuneration of the Treasury account, the issue remains open and the ECB's views in its past opinion remain unchanged[6]. Given the importance of this matter, the ECB expects therefore to be consulted on any further legislative initiatives addressing remuneration, which the ECB understands are under preparation, as also announced in the last paragraph of the explanatory memorandum to the draft decree.

2.2 Article 4 of the draft decree refers to public debt management operations to be performed by the Banca d'Italia in the form of auctions, credit or debit transfers or bilateral negotiations[7]. Taking into account the express recognition in Article 21.2 of the Statute of the European System of Central Banks and of the European Central Bank of the provision of fiscal agency services as a legitimate function traditionally performed by central banks[8], the ECB notes that provision by central banks of fiscal agency services should comply with the monetary financing prohibition, provided that such services remain within the field of the fiscal agency function and do not constitute central bank financing of public sector obligations vis-à-vis third parties[9] or central bank crediting of the public

---

4 See Article 42 of Decree-Law No 248 of 31 December 2007 containing provisions on the extensions of deadlines provided for by law and urgent measures in financial matters, converted into Law No 31 of 28 February 2008 (*Gazzetta Ufficiale della Repubblica italiana* No 51, 29.2.2008, *S.O.).*

5 ECB Opinion CON/2008/10 of 21 February 2008 at the request of the Italian Ministry of Economic Affairs and Finance on some provisions of the Law on the State annual and pluriannual budget (2008 Budget Law).

6 See paragraph 3.4 of ECB Opinion CON/2008/10.

7 See Article 4(1) to (3), together with Article 3(1) and recital 17 of the draft decree.

8 See the ECB's Convergence Report of May 2008, p. 24, stating that 'The purpose of Article 21.2 of the Statute was to enable NCBs, following transfer of the monetary policy competence to the Eurosystem, to continue to conduct the fiscal agent service traditionally provided by central banks to governments and other public entities without automatically breaching the monetary financing prohibition.'

9 I.e. one of the prohibited forms of monetary financing; see Article 1(1)(b)(ii) of Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 [now 101] and 104b(1) [now 103(1)] of the Treaty (OJ L 332, 31.12.1993, p. 1). See the ECB's Convergence Report of May 2008, p. 233, which states with reference to the provision by Česká národní banka of administrative and financial support to the

sector outside the narrowly defined exceptions specified in Regulation (EC) No 3603/93[10]. Against this background, the ECB trusts that the tasks assigned to the Banca d'Italia under the draft decree will be performed in compliance with the prohibition on monetary financing laid down in Article 101 of the Treaty and Regulation (EC) No 3603/93.

3. Specific observations

3.1 *OPTES procedures*

3.1.1 In its Opinion CON/2008/10[11], the ECB, in supporting any attempt to reduce forecasting errors in liquidity management, generally welcomed the draft 2008 Budget Law in so far as it attempted to make the forecasts of government deposits at the Banca d'Italia more reliable, given the particular nature of the management procedures (OPTES) for government deposits in Italy. Therefore, it urged the Italian government to implement the proposed reform as soon as possible[12]. Moreover, the ECB indicated that, without knowing in detail the rules for liquidity management, which would be regulated by a later MEF decree, it was not possible to conclusively assess the future government deposit management procedures[13]. This opinion assesses those detailed rules as laid down in the draft decree.

3.1.2 The ECB expects the resulting OPTES procedures as a relevant step to address the most immediate liquidity management weaknesses in the current OPTES scheme. This includes providing for symmetrical conduct of OPTES operations, both liquidity providing and liquidity absorbing, without the MEF's intervention and a mechanism for steering more precisely the end-of-day balance on the availability account with a view to preventing same day forecasting errors.

3.1.3 The ECB recommends introducing quickly the remaining legal acts, as detailed below, required to define a fully functional OPTES framework. Only at that stage will a comprehensive evaluation of the framework be possible. The ECB also recommends modifying the OPTES scheme, in the medium term so that the banking system rather than the Banca d'Italia holds almost all government deposits at the end of the day. Such a scheme would not only be the most robust solution for reducing forecast errors on government deposits, but would also lead to a reduced size and fluctuations in the banking system's refinancing needs.

Financial Arbitrator, an administrative body entirely independent from the central bank, 'constitutes a form of central bank financing of the public sector's obligations'.

10 See Article 4 (non-extendable intra-day credits), Article 5 (crediting, under specified conditions, the public sector's account with cheques issued by third parties) and Article 6 (holding, within specified limits, coins issued by and credited to the public sector) of Regulation (EC) No 3603/93.

11 See paragraph 3.5.1 of ECB Opinion CON/2008/10.

12 See paragraph 3.5.2 of ECB Opinion CON/2008/10.

13 See paragraph 3.5.3 of ECB Opinion CON/2008/10.

3.2 *Implementation of monetary policy*

3.2.1 The draft decree by itself is not sufficient to enable one to judge whether the measures to be implemented for the management of government deposits will reduce forecasting errors and improve overall the scheme for the management of government deposits as outlined above. The detailed rules will only be further clarified in a subsequent technical decree, as mentioned in the explanatory memorandum[14]. Without knowing the details of this technical decree, it is not possible for the ECB to conclusively assess future government deposit procedures in Italy.

3.2.2 The ECB notes that the current draft decree further supports the changes initiated by the 2008 Budget Law, which the ECB assessed favourably in ECB Opinion CON/2008/10. In particular, the draft decree is more explicit regarding the conduct of lending operations, which once introduced could greatly improve the performance of OPTES with respect to avoiding forecasting errors and biases.

3.2.3 Article 3 of the draft decree does not prevent the MEF from still exercising discretionary influence over the Banca d'Italia's conduct of liquidity operations under OPTES. These operations must follow an automatic procedure, which initiates transactions once the balances are above or below the forecast threshold sent to Banca d'Italia. In particular, as stated in ECB Opinion CON/2008/10, the procedures should in any event leave no scope for the liquidity operations under OPTES to be specified in accordance with interest rates.

3.2.4 The explanatory memorandum mentions that a subsequent ministerial decree, as referred to in Article 6 of the draft decree, will specify the financial assets that can be used as guarantees in the context of lending operations. The ECB urges the MEF to adopt provisions on the financial assets to be used in these operations as soon as possible to implement the changes provided for by the 2008 Budget Law which aim to reduce forecasting errors in the OPTES procedures.

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

Done at Frankfurt am Main, 17 March 2009.

[signed]

The President of the ECB

Jean-Claude TRICHET

14 Such a decree would be similar to Ministerial Decree No 64302 of 16 June 2006, which specifies in detail the current OPTES procedures.