



OPINION OF THE EUROPEAN CENTRAL BANK

of 12 November 2008

at the request of the Banca d'Italia on behalf of the Italian Ministry for Economic Affairs and Finance on a draft ministerial decree containing provisions to implement Decree-Law No 157/2008 on further urgent measures to guarantee the stability of the credit system (CON/2008/65)

Introduction and legal basis

On 7 November 2008 the European Central Bank (ECB) received a request from the Banca d'Italia on behalf of the Italian Ministry for Economic Affairs and Finance (hereinafter the 'MEF') for an opinion on a draft ministerial decree containing provisions to implement Decree-Law No 157 of 13 October 2008 on further urgent measures to guarantee the stability of the credit system (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 and sixth indents 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 provisions¹, as the draft decree relates to the Banca d'Italia and 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 draft decree

The draft decree contains provisions implementing Decree-Law No 157/2008 on further urgent measures to guarantee the stability of the credit system of 13 October 2008², on which the ECB commented in its earlier Opinion CON/2008/58³. In particular, the draft decree specifies procedures and conditions for the application of the following types of measures in support of Italian banks which were introduced under Decree-Law No 157/2008⁴: (i) provision of State guarantees for bank liabilities with maturities of up to five years, and issued after the entry into force of Decree-Law No 157/2008⁵; (ii) swap arrangements

¹ OJ L 189, 3.7.1998, p. 42.

² Decree-Law No 157/2008 was presented to the Parliament on the same day of its adoption, in accordance with the procedure for conversion into law, which is currently underway. Article 2(1) of Decree-Law No 157/2008 contains a delegation for the adoption of the draft decree.

³ ECB Opinion CON/2008/58 of 23 October 2008 at the request of the Banca d'Italia on behalf of the Italian Ministry for Economic Affairs and Finance on two Decree-Laws containing urgent measures to guarantee the stability of the banking system and the continuity of the provision of credit; the opinion is available on the ECB's website at www.ecb.europa.eu.

⁴ Banks having their registered office in Italy (see Article 1(2) of the draft decree).

⁵ See Article 1(1) of Decree-Law No 157/2008, as specifically implemented by Articles 1(1)(a) and 2 of the draft decree.

involving the provision of Treasury bills in exchange for financial instruments held by banks and bank liabilities with maturities of up to five years; and (iii) provision of State guarantees in relation to securities lending transactions entered into by banks in order to obtain securities eligible as collateral in the Eurosystem refinancing operations⁶ (hereinafter, the ‘support measures’). The draft decree further specifies, in particular:

- (i) in relation to the State guarantees: the bank liabilities which may be covered, the scope of the granted State guarantees, as well as procedures for admission of the beneficiary banks and for the utilisation and recovery of the granted State guarantees⁷;
- (ii) in relation to swap transactions: the scope of financial instruments held by banks and bank liabilities, as well as the procedures for admission of the beneficiary banks⁸.

Additionally, the draft decree specifies the amount of charges to be imposed on beneficiary banks in connection with the provision of the State guarantees or the swap transactions⁹.

2. General observations

2.1 In its Opinion CON/2008/58, the ECB made a number of recommendations as regards the implementation of Decree-Law No 157/2008. More specifically, as regards the terms of the State guarantees for banking liabilities, to ensure the effective implementation of the single monetary policy in the euro area¹⁰, the ECB recommended that the extension of the State guarantees to cover interbank deposits should be avoided. The ECB also highlighted that it is crucial to ensure the coordination of the price determination of the State guarantees within the euro area and the EU, given that a level playing field is of essence¹¹. The ECB appreciates the clarification in the draft decree that the government guarantees may be provided under Article 2 only in relation to specified financial debt instruments, hence excluding interbank deposits. The ECB further notes that the economic conditions for granting the State guarantee in Article 6 of the draft decree are in line with the principles contained in the Commission’s guidelines.

2.2 The ECB also considers that the draft decree complies with Article 8 of the ‘Declaration on a concerted European action plan of the euro area countries’ made by the Heads of States of the euro area on 12 October 2008, which states, *inter alia*, that the euro area governments ‘would make available ... a Government guarantee ... of new medium term (up to 5 years) bank senior debt issuance’¹².

2.3 Furthermore, the ECB appreciates that the draft decree is fully in line with the recently adopted Commission’s guidance on compliance of the financial sector support schemes with EU State aid

⁶ See Article 1(3) of Decree-Law No 157/2008, as specifically implemented by Articles 1(1)(c) and 4 of the draft decree.

⁷ See Articles 2 and 4, 5, 7 and 9 of the draft decree.

⁸ See Articles 3 and 8 of the draft decree.

⁹ See Article 6 of the draft decree.

¹⁰ See paragraph 3.2 of ECB Opinion CON/2008/58.

¹¹ See paragraph 3.3 of ECB Opinion CON/2008/58.

¹² See the Declaration of 12 October 2008 available on the French Presidency’s website at www.ue2008.fr.

rules¹³ as it provides that: (i) the scope of the support measures will be limited to what is strictly indispensable to address the current serious economic crisis; (ii) the continuation of the support measures is subject to biannual monitoring by the Italian authorities, who will duly communicate the outcome to the Commission¹⁴; (iii) appropriate mechanisms are put in place to minimise the potential abuse by beneficiary banks of their preferential situation, such as: the prohibition on obtaining undue advantages, e.g. through commercial advertisements targeting the general public¹⁵; (iv) limitations on the size of the balance sheet of the beneficiary institutions.

3. Banca d'Italia's involvement in the support measures

- 3.1 Under the draft decree, the Banca d'Italia will perform certain tasks in order to implement the support measures. First, it will assess the eligibility of the applicant banks' with particular regard to their capital adequacy and ability to discharge the obligations assumed¹⁶. Second, it will support the Finance Minister in ensuring the beneficiary banks' compliance with the general safeguards for the provision of the support measures¹⁷. Further, with respect to securities lending transactions to be guaranteed under the draft decree, the Banca d'Italia will produce the evaluation of such securities, which will be based on their market value¹⁸. In line with its previous opinions¹⁹, the ECB recalls that the functions to be performed by the Banca d'Italia with regard to the support measures need to comply with the monetary financing prohibition as regards the remuneration of the Banca d'Italia for its involvement, which should be conducted in a manner fully compatible with the Banca d'Italia's institutional and financial independence under the Treaty and the Statute of the European System of Central Banks and of the European Central Bank.
- 3.2 Moreover, in the case of payments under the State guarantees, the Banca d'Italia will have the task of distributing the amounts from the funds transferred to it by the Government for this purpose²⁰. In this respect, the ECB understands that the involvement of the Banca d'Italia will not go beyond the traditional task of a fiscal agent and that all the support measures will be financed from the State's budgetary resources. It is therefore expected that the involvement of Banca d'Italia will comply with the prohibition on monetary financing laid down in Article 101 of the Treaty and the

13 See the 'Communication from the Commission – The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis' of 13 October 2008, available on the Commission's website at www.ec.europa.eu.

14 See Article 1(3) of the draft decree.

15 See Article 1(4) to (6) of the draft decree.

16 See Article 7(3) to(4) and 8(3) to(4). In this respect, the Banca d'Italia will benefit from its role as supervisory authority of the banking sector (see Title III and in particular Article 51 of the Legislative Decree 385 of 1 September 1993, published in *Gazzetta Ufficiale della Repubblica Italiana* of 30.9.1993, n. 230 (Consolidated Banking Law)).

17 See Article 1(3)-(5) of the draft decree.

18 See Article 4(2) of the draft decree.

19 See, e.g., paragraph 3.2 of ECB Opinion CON/2008/52 of 17 October 2008 at the request of the Spanish State Secretary for Economic Affairs on a Royal Decree-Law creating a Fund for the acquisition of financial assets and on a Royal Decree-Law adopting urgent financial and economic measures in relation to the concerted European action plan of the euro area countries.

20 See Article 9(2) of the draft decree.

prohibition on central bank financing of public sector obligations vis-à-vis third parties²¹. In particular, the ECB understands that any payouts of amounts by the Banca d'Italia under Article 9(2) of the draft decree will always be made on the basis of the prior transfer by the Government of all the required funds and that no credit or liability to pay out will exist between the Banca d'Italia and the beneficiary banks and, finally, that the payouts will not lead in any case to the provision of overdraft credit facilities with the Banca d'Italia.

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

Done at Frankfurt am Main, 12 November 2008.

[signed]

The Vice-President of the ECB

Lucas D. PAPADEMOS

²¹ 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 and 104b(1) of the Treaty (OJ L 332, 31.12.1993, p. 1).