



OPINION OF THE EUROPEAN CENTRAL BANK

of 3 April 2009

**at the request of the Italian Ministry of Economy and Finance on a draft law on the increase of Italy's quota with the International Monetary Fund
(CON/2009/33)**

Introduction and legal basis

On 13 March 2009, the European Central Bank (ECB) received a request from the Italian Ministry of Economy and Finance (MEF) for an opinion on a draft law on the increase of Italy's quota with the International Monetary Fund (hereinafter the 'draft law').

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 provisions¹, as the draft 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 draft law

- 1.1 On 28 April 2008 the Board of Governors of the International Monetary Fund (IMF) adopted Resolution No 63-2 on the 'Reform of Quota and Voice' and on 5 May 2008 it adopted Resolution No 63-3 amending the Articles of Agreement of the IMF to expand its investment authority. When the first of the proposed amendments becomes effective (i.e. when it has been accepted by three fifths of the members of the IMF having 85 % of the total voting power), there could be an increase in the IMF quota for up to 54 countries, including Italy, provided that, within 30 days of the entry into effect of the amendment, each of those countries both consents to the increase and pays the amount of their increased quota to the IMF. As stated in the explanatory report on the draft law, it is expected that, as in the case of previous amendments of the IMF's Articles of Agreement, Italy's declaration of acceptance will be signed by the President of the Republic.
- 1.2 Following the increase of 11.5 % of the total quotas decided by the IMF's Board of Governors in April 2008, the objective of the draft law – as regards the part of it which refers to the Banca d'Italia and is therefore the subject of this opinion – is to authorise the MEF to pay, by having recourse to the Banca d'Italia, for the proposed increase in Italy's IMF quota from 7 055.5 million

¹ OJ L 189, 3.7.1998, p. 42.

special drawing rights (SDRs) to 7 882.3 million SDRs. As stated in the explanatory report on the draft law, 'it is envisaged that the necessary funds will be obtained from the Banca d'Italia'.

2. General observations

- 2.1 Article 4 of the draft law provides that the MEF is authorised to make the payments, having recourse to the Banca d'Italia, and has the right to grant the Banca d'Italia the necessary guarantees to cover any risk connected with the payment made by it or made 'using their liquidity' in the name of and on behalf of the State. In this respect, the ECB notes that it is not clear which subject the word 'their' refers to. For the sake of linguistic accuracy and legal clarity, it would be advisable to draft the provision in Article 4 of the draft law more precisely.
- 2.2 The ECB also notes that, according to the explanatory report on the draft law, such payments do not entail negative effects for the Treasury or for Italy's balance sheet as they will constitute (i) in part a credit with the IMF that could only affect Italy's balance sheet for the purpose of reimbursing the Banca d'Italia in the event of the liquidation of the IMF and losses related to such liquidation, and (ii) in part serve to constitute a line of credit in favour of the IMF in a current account specially opened with the Banca d'Italia.
- 2.3 As recently expressed in a very similar case², the ECB reminds the MEF that the tasks performed by the Banca d'Italia must comply with the monetary financing prohibition under Article 101 of the Treaty and Council Regulation (EC) No 3603/93 of 13 December 1993 specifying the definitions for the application of the prohibitions referred to in Articles 104 [now 101] and 104b(1) [now Article 103(1)] of the Treaty³. Pursuant to Article 7 of Regulation (EC) No 3603/93, the financing by national central banks of obligations falling upon the public sector vis-à-vis the IMF is not regarded as a credit facility within the meaning of Article 101 of the Treaty. Therefore, the ECB notes that any possible payment by the Banca d'Italia of the proposed increase in Italy's IMF quota complies with Article 7 of Regulation (EC) No 3603/93 and does not infringe the monetary financing prohibition.

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

Done at Frankfurt am Main, 3 April 2009.

[signed]

The President of the ECB
Jean-Claude TRICHET

² See ECB Opinion CON/2009/5 of 22 January 2009 at the request of the Austrian Ministry of Finance on a draft Federal law on the increase of Austria's quota with the International Monetary Fund.

³ OJ L 332, 31.12.1993, p. 1.