EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK
of 17 December 2012
on the creation of capital buffers for the Banca Monte dei Paschi di Siena
(CON/2012/109)

Introduction and legal basis

On 6 December 2012, the European Central Bank (ECB) received a request from the Italian Ministry of Economic Affairs and Finance (hereinafter 'the Ministry') for an opinion on Article 8 of Decree Law No 216 of 11 December 2012 (hereinafter the 'draft amendment'), amending Decree-Law No 95 of 6 July 2012 (hereinafter the 'amended legislation'), on the creation of capital buffers for the Banca Monte dei Paschi di Siena (MPS) through the issuance by the MPS of hybrid instruments to be subscribed by the Ministry.

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 sixth 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 amendment relates 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 amendment

1.1 Decree-Law No 87 of 27 June 2012, on which the ECB adopted Opinion CON/2012/64[2], was adopted by the Italian Government in order to create a temporary capital buffer for the MPS in line with the Recommendation of the European Banking Authority on the creation and supervisory oversight of temporary capital buffers to restore market confidence[3]. The provisions contained in that Decree-Law were later included in Decree-Law No 95 of 6 July 2012, which was converted into law by Law No 135 of 7 August 2012. The amended legislation established a form of government support by authorising the Ministry to subscribe certain hybrid instruments (new financial instruments, NFIs) to be issued by the MPS, up to an amount of EUR 3.9 billion, of which EUR 1.9 billion would replace an equal outstanding amount of hybrid instruments previously issued by the MPS and subscribed by the Ministry.

1 OJ L 189, 3.7.1998, p. 42.
2 All ECB opinions are published on the ECB's website at www.ecb.europa.eu.
3 EBA/REC/2011/1 of 8 December 2011, available on the European Banking Authority's website at www.eba.europa.eu.

1.2 The draft amendment introduces several changes in the recapitalisation scheme currently in force for the MPS. In particular, the NFIs' coupon is to be paid in cash up to the operating result from the MPS's most recent financial statement, net of the provisions for obligatory reserves. If the MPS is not able to pay the coupon or any part of it in cash, for that amount the MPS could either allocate to the Ministry an equivalent nominal amount of new ordinary shares, issued at market price, or newly issued additional NFIs. The draft amendment also extends the deadline for the activation of the scheme to 31 January 2013.

2. General observations

2.1 The Ministry informed the ECB on an informal basis about the content of its draft amendment, before submitting it to the Italian Parliament. However, the consultation request should have been submitted so as to allow both the Ministry and the Parliament to take into consideration the ECB's opinion before taking a decision on the substance of the draft amendment, in accordance with Article 4 of Decision 98/415/EC.

2.2 The ECB notes that, subsequent to the adoption of Opinion CON/2012/64, the Italian Parliament introduced in the amended legislation a new provision changing the way remuneration is determined for the members of the Board of Directors and certain executives to ensure that their remuneration is linked to the business performance of the bank, the risks to which the bank is exposed and the need to maintain adequate capital levels. The ECB welcomes the ongoing work on remuneration policies and schemes for financial institutions receiving public support in accordance with the Commission recommendation[4].

2.3 The ECB recommends specifying in more detail in the implementing legislation the features of the NFIs, in particular as regards subordination, interest payments on the coupon, conversion features and other terms and conditions of issue.

2.4 In the ECB's view, the option granted to the MPS to pay the NFIs' coupon, by issuing new shares to the Ministry, should be preferred to that of issuing additional NFIs. This second option, especially if repeated over time due to the absence or inadequacy of distributable profits, would add to the bank's interest servicing burden on the NFIs in an already difficult operating environment. This could pose further challenges to the bank's performance in the near term and impair its capacity to redeem the NFIs in a timely manner.

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4 Commission Recommendation of 30 April 2009 on remuneration policies in the financial services sector (OJ L 120, 15.5.2009, p. 22). See also ECB Opinions CON/2010/63 and CON/2011/42, paragraph 6.3.

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

Done at Frankfurt am Main, 17 December 2012.

[signed]

The President of the ECB

Mario DRAGHI