



OPINION OF THE EUROPEAN CENTRAL BANK
of 3 August 2012
on recapitalisation of the Banca Monte dei Paschi di Siena
(CON/2012/64)

Introduction and legal basis

On 26 June 2012, the Italian Government adopted Decree-Law No 87¹ (hereinafter the ‘Decree-Law’), which entered into force on 27 June 2012. On 27 July 2012 the European Central Bank (ECB) received a request from the Ministry of Economic Affairs and Finance for an opinion on the Decree-Law. Articles 5 to 12 of the Decree-Law regard recapitalisation of the Banca Monte dei Paschi di Siena (MPS).

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 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 provisions², as the Decree-Law relates to the Banca d’Italia and the 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 Decree-Law

1.1 To achieve the recapitalisation objectives in line with the European Banking Authority Recommendation of 8 December 2011 (hereinafter the ‘EBA Recommendation’), the Ministry is empowered to recapitalise MPS, at the latter’s request subject to certain conditions. On request, the Ministry will subscribe to up to EUR 2 billion in new financial instruments issued by MPS, qualifying as regulatory capital (Core Tier 1) under the EBA Recommendation (hereinafter the ‘New Financial Instruments’). This operation will be conditional on a swap, consisting in the redemption of the outstanding bonds issued by MPS and subscribed by the Ministry under Decree-Law No 185 of 29 November 2008³, for the nominal amount of EUR 1.9 billion, while the Ministry will subscribe to an equal amount of further New Financial Instruments issued by MPS⁴. Another condition for the activation of the scheme, which will be in place until December 2012, will be the

¹ Decree-Law No 87 of 26 June 2012, *Gazzetta Ufficiale della Repubblica Italiana* No 148, 27.6.2012, p. 3.

² OJ L 189, 3.7.1998, p. 42.

³ See ECB Opinions CON/2008/58 and CON/2008/65. All ECB Opinions and documents are available on the ECB’s website at www.ecb.europa.eu.

⁴ The total amount of New Financial Instruments issued by MPS would be up to EUR 3.9 billion.

adoption by the European Commission of a decision confirming that the Decree-Law is compatible with the Union framework for State aid measures.

- 1.2 Under the scheme, MPS will send a request with a restructuring plan, to the Ministry and the Banca d'Italia at least 30 days prior to the planned date for the subscription. If Banca d'Italia gives a positive assessment within 15 days from receipt of the request, the Government will carry out the recapitalisation on the basis of an ad hoc decree.
- 1.3 The New Financial Instruments issued by MPS will not carry voting rights and may be converted into ordinary shares at its request. MPS will have the right to repayment or redemption, subject to authorisation by the Banca d'Italia, having regard to the financial position and solvency of the issuer and banking group. Payment of interest on the New Financial Instruments will depend on the availability of distributable profits: if interest is not paid, due to the absence or inadequacy of distributable profits, the issuer will allocate newly issued ordinary shares to the Ministry for a share of net equity corresponding to the amount of the unpaid coupon.
- 1.4 The Decree-Law also envisages the following as possible resources to fund the recapitalisation: (a) linear reduction in the budget allocations; (b) reduction of individual legislative expenditure authorisations; (c) temporary use of cash in special accounts with a corresponding reduction in the respective expenditure authorisations; (d) issuance of Government bonds.
- 1.5 The Ministry, after consulting the Banca d'Italia, will issue a decree implementing the Decree-Law and adopting a prospectus for the New Financial Instruments. The prospectus will govern interest payments, redemption, repayment and conversion, as well as any other element needed to manage the phases following subscription to the New Financial Instruments.

2. The appropriate time to consult the ECB

In the Italian legal system, the adoption of a decree-law is part of a two-phase urgent legislative procedure. In the first phase, the Government adopts the decree-law which immediately enters into force and takes effect, for a limited period of 60 days, on publication in the *Gazzetta Ufficiale*. In the second phase, the Government submits the Decree-Law to the Parliament, on the same day of its adoption, for conversion into a law within the 60-day period. Paragraph 2 of Opinion CON/2012/20 already noted that decree-laws enter into force on adoption by the Government, and that therefore consultation should take place before adoption. Consulting the ECB after the submission of a decree-law to Parliament is not sufficient to comply with the consultation obligation and the ECB draws the Ministry's attention to the proper procedure for consultation⁵.

⁵ See Title IV, Section I of the *Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions*. See also paragraphs 2.2 and 2.3 of ECB Opinion CON/2012/48.

3. Recapitalisation of MPS

The recapitalisation needs of MPS, the third-largest Italian banking group, are primarily triggered by the higher capital threshold required by the European Banking Authority (EBA), which was to be implemented by the end of June 2012. The size of the Government's new capital injection of up to EUR 2 billion is sufficient to comply retroactively with EBA's capital threshold, including a certain safety margin for potential future losses. The New Financial Instruments used for the recapitalisation are an appropriate instrument as they are classified as Core Tier 1 capital by the EBA. Thus, from a financial stability perspective the planned recapitalisation of MPS is welcome as it increases the stability of this systemically relevant bank and contributes to maintaining investors' confidence in the Italian banking sector.

4. Use of government bonds to recapitalise MPS

The Italian Government may issue government bonds to fund MPS' recapitalisation. The ECB understands that these bonds would be sold on the market, and the proceeds would be used to subscribe to the New Financial Instruments issued by MPS. This would not give rise to any concern from a monetary financing perspective. The ECB however notes that, where a State recapitalisation of a credit institution to restore its solvency takes place by way of direct placement of the government-issued debt instruments, the subsequent use of such debt instruments as collateral in central bank liquidity operations would raise monetary financing concerns in the absence of any alternative market-based funding sources.

5. Involvement of the Banca d'Italia

The ECB considers that the wording of the Decree-Law complies with the principle of central bank independence. The implementing Regulation, to be adopted by the Ministry after consulting the Banca d'Italia under Article 11 of the Decree-Law, will also need to comply with the principle of central bank independence⁶.

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

Done at Frankfurt am Main, 3 August 2012.

[signed]

The Vice-President of the ECB

Vítor CONSTÂNCIO

⁶ Any involvement of an NCB in the application of measures to strengthen financial stability must be compatible with the Treaty, i.e. NCBs' functions must be performed in a manner that is fully compatible with their functional, institutional and financial independence so as to safeguard the proper performance of their tasks under the Treaty and the Statute. To the extent that national legislation provides for a role of an NCB that goes beyond advisory functions and requires it to assume additional tasks, it must be ensured that these tasks will not affect the NCB's ability to carry out its ESCB-related tasks from an operational and financial point of view. See the ECB Convergence Report 2012, p. 23.