



OPINION OF THE EUROPEAN CENTRAL BANK

of 26 May 2014

on the remuneration of staff and members of decision-making bodies of the Banca d'Italia and
taxation of its revalued shares

(CON/2014/38)

Introduction and legal basis

On 7 May 2014, the European Central Bank (ECB) received a request from the Ministry of Economy and Finance for an opinion on Articles 4(12) and 13(5) of Decree-Law No 66 of 24 April 2014 on urgent measures for competitiveness and social justice (hereinafter the 'Decree-Law')¹.

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 indent of Article 2(1) of Council Decision 98/415/EC², as the 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 Decree-Law

- 1.1 Under Italian law, the level of remuneration of the First President of the Supreme Court of Cassation represents a ceiling on the remuneration of managers of publicly-owned companies, as well as on individuals receiving salaries and other types of compensation from public authorities. Article 13(1) of the Decree-Law caps such remuneration at EUR 240 000 and pursuant to Article 13(5) of the Decree-Law, the Banca d'Italia is expected to adapt its institutional set-up to this principle.
- 1.2 Decree-Law No 133 of 30 November 2013³, converted with amendments into Law No 5 of 29 January 2014⁴, provided for an increase in the Banca d'Italia's capital. The level of capital, which had been set by the Banking Law of 1936 at EUR 156 000, was raised to EUR 7.5 billion and the shares held by shareholders were revalued accordingly⁵. The Decree-Law provides that the higher values recorded in the financial statements for the financial year ending 31 December 2013 are subject to a substitute tax, rather than income tax, any regional tax on productive activities, as

¹ *Gazzetta Ufficiale della Repubblica Italiana* No 95, 24.4.2014.

² Council Decision 98/415/EC of 29 June 1998 on the Consultation of the European Union by national authorities regarding draft legislative provisions (OJ L189, 3.7.1998, p. 2).

³ *Gazzetta Ufficiale della Repubblica Italiana* No 281, 30.11.2013.

⁴ *Gazzetta ufficiale della Repubblica Italiana* No 23, 29.1.2014.

⁵ The ECB was consulted on the capital increase and the envisaged amendments to the Statute of the Banca d'Italia and delivered Opinions CON/2014/39 and CON/2013/96. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

well as any surcharges. The substitute tax is 26 per cent of the nominal value of shares at that date and it must be paid in full in a single instalment by the date for final settlement of income tax for the tax period including 31 December 2013.

2. The appropriate time to consult the ECB

- 2.1 The ECB must be consulted at an appropriate stage in the legislative process, i.e. at a time that enables the ECB to adopt its opinion in all required language versions and that enables the authority initiating the legislative provision to take the ECB's opinion into account before it decides on the substance⁶.
- 2.2 In the Italian legal system, a decree-law, adopted by the Government, enters into force on publication in the *Gazzetta Ufficiale* and must be submitted on the same day to Parliament for conversion into law on the date of its adoption. If not converted within 60 days of publication, the decree-law is rendered invalid with retroactive application. In the light of the above, the ECB should be consulted before adoption of a decree-law⁷.
- 2.3 In this case, the Decree-Law was adopted on 24 April 2014 and published in the *Gazzetta Ufficiale* on the same date. However, the consultation request was made well after the entry into force of the Decree-Law. In its request, the Ministry of Economy and Finance maintains that the Decree-Law was adopted as a matter of urgency, but no specific reasons for such urgency were provided. A request for an opinion made after submission of the Decree-Law to Parliament for conversion is not in compliance with the obligation to consult the ECB, and the ECB would like to draw the Ministry's attention to the proper procedure for consultation.

3. General observations

- 3.1 Article 13 of the Decree-Law, which concerns the remuneration paid to individuals from public finances, is found under Title II 'Savings and efficiency of public spending', Chapter II 'Conservative administration'. Accordingly, the ECB understands that Article 13(1) of the Decree-Law aims to regulate the remuneration of civil servants and public managers as well as the remuneration of anyone receiving any kind of remuneration from public authorities, irrespective of their employment status.
- 3.2 The ECB also notes that Article 4(12) of the Decree-Law materially amends the tax regime applicable to the revalued shares of the Banca d'Italia, as previously laid down by Article 1(148) of Law No 147 of 27 December 2013. It is for the European Commission's task to assess whether the share revaluation and the amendments made to the tax regime comply with Union law.

⁶ See Title IV, Section I of the Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions.

⁷ See Opinions CON/2012/64, CON/2012/61 and CON/2012/20.

4. Specific observations

4.1 *Financial independence*

4.1.1 The ECB has a well-established doctrine that autonomy in staff matters is an integral aspect of the principle of financial independence of national central banks (NCBs). According to this principle, Member States may not impair an NCB's ability to recruit and retain the qualified staff necessary for the NCB to perform independently the tasks conferred on it by the Treaty and the Statute of the European System of Central Banks and of the European Central Bank⁸. Additionally, an NCB may not be put into a position where it has limited control or no control over its staff, or where the government of a Member State can influence its policy on staff matters. Furthermore, any amendment to the legislative provisions on the remuneration of members of an NCB's decision-making bodies and its employees should be decided in close and effective cooperation with the NCB to ensure the ongoing ability of the NCB to independently carry out its tasks.

4.1.2 The ECB notes that the ceiling of EUR 240 000 on remuneration is expressly described as a principle⁹ or a guideline¹⁰, rather than a rule requiring strict compliance. In the light of the above, the ECB understands that the Decree-Law requires the Banca d'Italia to: (a) assess whether the Decree-Law's principle can be implemented without prejudice to the Banca d'Italia's autonomy in staff matters; and (b) take measures in accordance with this principle only if and to the extent compatible with its ability to independently carry out its tasks. The ECB also understands that the annual ordinary meeting of shareholders retains its competence with regard to the compensation of members of the Board of Auditors, the regents of the main offices and the councillors of the local branches, and that the Board of Directors is responsible for, inter alia, general administration, management supervision and internal control of the bank, determining the compensation of the members of the Governing Board, approval of the Banca d'Italia's internal regulations, determining staffing levels, recruitment and dismissal of employees, and approval of agreements negotiated with trade unions¹¹. Based on these understandings, the Decree-Law can be considered compatible with the principle of financial independence¹².

4.2 *Use of funds resulting from a possible reduction in remuneration of staff and members of decision-making bodies in the Banca d'Italia.*

4.2.1 The ECB notes that pursuant to Article 1(474) and (475) of Law No 147 of 27 December 2013, and Article 23(4) ter of Decree-Law No 95 of 6 July 2012, converted with amendments into Law No 135 of 7 August 2012, savings resulting from the implementation of Article 23 ter thereof must

⁸ See Opinions CON/2008/9, CON/2008/10, CON/2009/45, CON/2009/47, CON/2010/42, CON/2010/51, CON/2013/92, CON/2014/12.

⁹ Article 13(5) of the Decree-Law.

¹⁰ See reference to the Technical Report attached to the Decree-Law submitted to the Parliament, found in the Italian Senate's 'Nota di lettura' on A.S. 1465 'Conversione in legge del decreto-legge 24 aprile 2014, n. 66, recante misure urgenti per la competitività e la giustizia sociale' (Reading note on A.S. 1465 Conversion into law of the Decree-Law No 66 of 24 April 2014 on urgent measures for competitiveness and social justice), available on the Italian Senate's website at www.senato.it.

¹¹ See Articles 7 and 19 of the Statute of the Banca d'Italia.

¹² See Opinions CON/2010/58 and CON/2013/92.

be paid into the ‘Fund for amortisation of government securities’, which are then transferred to the Italian State. It is unclear whether such a rule is intended to apply to savings stemming from the reduction of the remuneration of the staff of the Banca d’Italia and the members of its decision-making bodies¹³.

4.2.2 If such a rule applies to the Banca d’Italia, from an accounting perspective, a decrease in remuneration of staff and members of its decision-making bodies will *de facto* decrease the operational costs of the Banca d’Italia, hence potentially increasing its reported profits. An interim distribution of increased profits from the Banca d’Italia to the State, without the Banca d’Italia having the opportunity to use the related resources independently for the fulfilment of its tasks, could be equated with monetary financing, which is clearly prohibited under Article 123 of the Treaty¹⁴. By contrast, a decrease in the Banca d’Italia’s operational costs with a view to increasing its own financial resources to strengthen the performance of its mandate would be acceptable¹⁵. In addition, the principle of central bank financial independence guarantees that the Banca d’Italia can independently use its financial resources as it sees fit to fulfil its mandate. The ECB notes that the Banca d’Italia must be fully independent in deciding how to use the funds resulting from any reduction in salaries that it pays¹⁶. In conclusion, the application of the rule that savings resulting from the implementation of Article 23 bis thereof are paid into the Fund for amortisation of government securities if applied to the Banca d’Italia, is not compatible with the principle of financial independence and could be equated with monetary financing, which is clearly prohibited under Article 123 of the Treaty.

4.3 *Personal independence of the members of the Banca d’Italia’s decision making-bodies*

4.3.1 Article 130 of the Treaty prohibits, inter alia, national governments from influencing the members of NCBs’ decision-making bodies in the performance of their tasks. In this case, the ceiling in respect of remuneration is not specifically addressed to the staff and members of decision-making bodies of the Banca d’Italia. In fact, it forms part of a broader legislative reform that seeks to reduce remuneration of officials, employees and managers of public administrations and publicly-owned companies.

13 See the Italian Senate’s ‘Nota di lettura’ on A.S. 1465 ‘Conversione in legge del decreto-legge 24 aprile 2014, n. 66, recante misure urgenti per la competitività e la giustizia sociale’ (‘Reading note’ on A.S. 1465 ‘Conversion into law of Decree-Law No 66 of 24 April 2014 on urgent measures for competitiveness and social justice’).

14 This provision prohibits overdraft facilities or any other type of credit facility with the ECB or NCBs in favour of Union institutions, bodies, offices or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States, and the purchase directly from these public sector entities by the ECB or NCBs of debt instruments. With a view to preserving the integrity of the NCB’s balance sheet, the monetary financing prohibition is of key importance in ensuring the primary monetary policy objective of price stability, which must not be impeded. Even if Article 123(1) of the Treaty refers literally to ‘credit facilities’, i.e. with an obligation to repay such credit, the prohibition also applies *a fortiori* to other forms of funding, i.e. without an obligation to repay, since it has the overall aim of public finance discipline and of prohibiting NCBs from financing the public sector.

15 See Opinions CON/2010/51, CON/2010/69 and CON/2010/80.

16 See Opinion CON/2010/80.

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4.3.2 However, as underlined by the ECB in several opinions and in the ECB Convergence Reports¹⁷, Member States may not seek to influence the members of the NCB's decision-making bodies by amending national legislation affecting their remuneration, which, as a matter of principle, should not affect the terms under which they have been appointed. Consequently, Article 13(5) of the Decree-Law should specifically refer not only to the institutional and financial independence of the Banca d'Italia, but also to the personal independence of the members of the Banca d'Italia's decision-making bodies¹⁸.

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

Done at Frankfurt am Main, 26 May 2014.

[signed]

The President of the ECB

Mario DRAGHI

¹⁷ See Opinion CON/2014/12.

¹⁸ See the ECB's Convergence Report, 2013, p. 23 and Opinions CON/2011/104, CON/2011/106, CON/2008/10, CON/2010/42 and CON/2014/12.