

## **Legislative Decree no. 112 of 25 June 2008**

### **Urgent provisions for economic development, simplification, competitiveness, stabilization of public finance, and tax equalization.**

**Article 62.** *Containment of regions' and local authorities' use of derivatives and borrowing* <sup>(1)</sup>

**In force as of 1 January 2014**

1. The provisions of this article constitute fundamental principles for the coordination of public finance and aim to ensure the protection of the economic unity of the Republic under articles: 117, second paragraph, letter e), and third paragraph; 119, second paragraph; and 120, of the Constitution. The provisions of this article are also necessary application norms.

2. Regions, the autonomous provinces of Trento and Bolzano and the local authorities mentioned in article 2 of the consolidated act, Legislative Decree no. 267 of 18 August 2000, are prohibited from issuing bonds or other liabilities that entail the reimbursement of capital in a lump sum at maturity, as well as securities or other liabilities in foreign currency. For these entities, the duration of a single debt transaction, even if it is a renegotiation of an existing liability, cannot be greater than 30 nor less than 5 years. <sup>(2) (9)</sup>

3. Except for what is foreseen in the following paragraphs, the entities mentioned in paragraph 2 are prohibited from:

- a) entering into contracts concerning derivatives provided for by article 1, paragraph 3, of the Consolidated Act of provisions in matters of financial intermediation, referred to in Legislative Decree no. 58 of 24 February 1998;
- b) renegotiating derivative contracts existing at the date of entry into force of the present provision;
- c) entering into funding contracts that include a derivative component. <sup>(3)</sup>

3-ii. The following are excluded from the prohibition mentioned in paragraph 3:

- a) advanced total extinction of contracts concerning derivatives;
- b) reassignment of the same contracts to counterparties different from the original ones, in the form of subjective novation, without the modification of the financial terms and conditions of the reassigned contracts;
- c) the possibility of restructuring the derivative contract following a change in the liability to which the contract refers, exclusively in the form of operations without optional components and aimed at changing from fixed to floating rate or vice-versa, with the intent of maintaining correspondence between the renegotiated liability and the connected hedge;
- d) the conclusion of funding contracts that include the purchase of caps by the entity. <sup>(4)</sup>

3-iii. The prohibition mentioned in paragraph 3 does not include the option for the entities mentioned in paragraph 2 to remove, from existing derivative contracts, any advance cancellation clauses, by cash payment of the relevant balance during the reference financial year. <sup>(4)</sup>

3-iv. The prohibition mentioned in paragraph 3 does not include the option for the entities mentioned in paragraph 2 to remove, from existing derivative contracts, any optional components other than the cap which the entities purchased, by cash payment of the relevant balance during the reference financial year. <sup>(4)</sup>

4. In the cases provided for by paragraphs 3-ii, 3-iii and 3-iv, the entity charged to sign the contract on behalf of the public entity must certify in writing to know the risks and characteristics of the same contract, and also the changes that occurred in the hedge of the underlying debt. <sup>(5)</sup>

5. The contract concerning derivatives or the funding contract that includes the purchase of a cap by the entity, entered into in violation of the dispositions of the present article or lacking the certificate referred to in paragraph 4, is null and void. Nullity may be invoked only by the entity. <sup>(6)</sup>

[6. Entities referred to in paragraph 2 are prohibited from entering into, until the date of entry into force of the regulation referred to in paragraph 3, and anyhow for the minimum period of one year from the date of entry into force of this decree, contracts concerning derivative financial instruments. The possibility remains of restructuring the derivative contract following a change in the liability to which the same derivative contract is connected, for the purpose of maintaining the correspondence between the renegotiated liability and the associated hedge. <sup>(7)</sup> ]

7. Being understood that the provisions in terms of communication pursuant to and by the effects of article 41, paragraphs 2-ii and 2-iii, of Law no. 448 of 28 December 2001, the Ministry of Economy and Finance will also send the Court of Auditors, every month, a copy of the documentation received in relation to signed contracts referred to in paragraph 3.

8. The entities referred to in paragraph 2 enclose with both the forecast and final budget a note highlighting the financial burdens and commitments, respectively estimated and incurred, arising from contracts concerning derivatives or funding contracts that include a derivative component.

9. In article 3, paragraph 17, second sentence, of Law no. 350 of 24 December 2003, after the words "assignment of receivables due from other public entities" the following is inserted: "and, based on criteria defined in the Statistical Office of the European Communities (EUROSTAT), any premiums received at the conclusion of derivative transactions".

10. The following are repealed: article 41, paragraph 2, first sentence, of Law no. 448 of 28 December 2001; and article 1, paragraphs 381, 382, 383 and 384 of Law no. 244 of 24 December 2007. The provisions relating to the use of derivatives by local authorities issued pursuant to article 41, paragraph 1, last sentence, of Law no. 448 of 28 December 2001, are repealed from the date of entry into force of the 2014 stability law. <sup>(8)</sup>

11. All the provisions concerning borrowing of regions, of the autonomous provinces of Trento and Bolzano, and of local authorities, that do not conflict with the provisions of this article are not affected.

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(1) Article ratified by conversion law no. 133 of 6 August 2008, and afterwards thus replaced by article 3, paragraph 1, law no. 203 of 22 December 2008, with effect from 1 January 2009.

(2) Paragraph thus amended by article 1, paragraph 572, letter a), Law no. 147 of 27 December 2013, with effect from 1 January 2014.

(3) Paragraph thus replaced by article 1, paragraph 572, letter b), Law no. 147 of 27 December 2013, with effect from 1 January 2014.

(4) Paragraph inserted by article 1, paragraph 572, letter c), Law no. 147 of 27 December 2013, with effect from 1 January 2014.

(5) Paragraph thus replaced by article 1, paragraph 572, letter d), Law no. 147 of 27 December 2013, with effect from 1 January 2014.

(6) Paragraph thus replaced by article 1, paragraph 572, letter e), Law no. 147 of 27 December 2013, with effect from 1 January 2014.

(7) Paragraph repealed by article 1, paragraph 572, letter f), Law no. 147 of 27 December 2013, with effect from 1 January 2014.

(8) Paragraph thus amended by article 1, paragraph 572, letter g), Law no. 147 of 27 December 2013, with effect from 1 January 2014.

(9) In breach of what is provided for by the present comma, see article 4, paragraph 8, Legislative Decree no. 39 of 28 April 2009.