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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 19 March 2008

at the request of the Belgian Ministry of Finance
on a draft royal decree amending the Royal Decree of 10 December 2008 on the guarantee for certain risks assumed by financial institutions

(CON/2009/25)

Introduction and legal basis

On 11 March 2009 the European Central Bank (ECB) received a request from the Nationale Bank van België/Banque Nationale de Belgique (NBB), acting on behalf of the Belgian Ministry of Finance, for an opinion on a draft royal decree amending the Royal Decree of 10 December 2008 on the guarantee for certain risks assumed by financial institutions (hereinafter the 'draft royal decree'). Given the current turbulence in the financial markets and the need for firm intervention by the authorities involved, the consulting authority has requested the ECB to provide its opinion as a matter of extreme urgency to allow the swift adoption of the draft royal decree.

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and on 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 royal decree 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 royal decree

1.1 The draft royal decree extends the scope of the Royal Decree of 10 December 2008, on which the ECB previously opined[2]. The Royal Decree of 10 December 2008 completes the system for granting the guarantee of the Belgian State for liabilities entered into by financial institutions[3] by

1 OJ L 189, 3.7.1998, p. 42.

2 See ECB Opinion CON/2008/74 of 21 November 2008 at the request of the Belgian Ministry of Finance on a draft royal decree on the guarantee for certain risks assumed by financial institutions. All ECB opinions are available on the ECB website at www.ecb.europa.eu.

3 This system was established by the Royal Decree of 16 October 2008 (see ECB Opinion CON/2008/50 of 17 October 2008 at the request of the Belgian Ministry of Finance on a draft royal decree adopted under Article 117*bis* of the Law of 2 August 2002 on the supervision of the financial sector and on financial services), which is based on Articles 117*bis* and 117*ter* of the Law of 2 August 2002 on the supervision of the financial sector and on financial services (see

establishing a State guarantee aimed at avoiding that the entity whose commitments are guaranteed, or a subsidiary thereof, will be exposed to a serious need for additional liquidity, due *inter alia* to a downgrading of their rating[4].

1.2 Overall, the draft royal decree does not substantially alter the scheme set up under the Royal Decree of 10 December 2008[5]. Instead, it is limited to extending the scope of the scheme so that not only commitments to cover losses or a risk of losses on financial assets held by a guaranteed entity's subsidiaries may be guaranteed[6], but also in certain circumstances an undertaking by the guaranteed entity to buy financial assets held by its subsidiaries[7]. The report to the King explains that considering that an entity's liquidity position is, in addition to the risk of default on its portfolio, another element taken into account in determining its rating, it might be necessary for a parent company to undertake to buy its subsidiary's assets in certain circumstances (i.e. to grant the subsidiary a put option over the assets) in order to generate sufficient liquidity for the subsidiary and therefore uphold the latter's rating, which in turn will avoid liquidity outflows.

2. General observations

The ECB has already opined on several elements of the general rescue package put in place by the Belgian authorities in response to the current turbulence in the financial markets[8]. The ECB underlines that all the comments and recommendations made in its Opinions CON/2008/74 and CON/2008/50 apply equally to the draft royal decree.

In particular, the ECB wishes to stress that it is important for national authorities to seek to coordinate their responses to the current financial situation with their European Union partners. This is in line with the Declaration of 12 October 2008 made at the summit of the euro area Member States in Paris, which

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on these provisions ECB Opinion CON/2008/46 of 8 October 2008 at the request of the Belgian Ministry of Finance on a preliminary draft law on measures promoting financial stability and in particular establishing a State guarantee for the provision of credit in the context of financial stability; paragraph 2.1 of ECB Opinion CON/2008/50 and paragraph 1.1 of ECB Opinion CON/2008/61 of 28 October 2008 at the request of the Belgian Minister for Finance on a draft royal decree implementing the Law of 15 October 2008 on measures promoting financial stability and in particular establishing a State guarantee for the provision of credit in the context of financial stability, in relation to the protection of deposits and life insurance and amending the Law of 2 August 2002 on the supervision of the financial sector and on financial services). The draft royal decree is also based on Article 117*bis* of the Law of 2 August 2002.

4 Concerning the reasons behind the adoption of the Royal Decree of 10 December 2008, see ECB Opinion CON/2008/74, in particular paragraph 1.2.

5 The draft royal decree does not modify: (i) the list of entities whose commitments can be guaranteed, i.e. credit institutions, financial holding companies (*financiële holdings/compagnies financières*) or mixed financial holding companies (*gemengde financiële holdings/compagnies financières mixtes)*, hereinafter together the 'guaranteed entities'; (ii) the condition that these entities must take measures aimed at supporting their financial situation, solvency and liquidity, or commit to taking such measure; (iii) the requirement that the guaranteed commitments or the guarantee itself can contribute to avoiding the guaranteed entity or its subsidiaries from being exposed to a serious need for additional liquidity, due *inter alia* to a downgrading of their rating; and (iv) the requirement that the granting of the guarantee is justified in the interests of the Belgian economy and by the need to protect all depositors. The power granted to the Belgian Minister for Finance to determine the other detailed rules and conditions of the guarantee, including its ceiling and its price, also remain unaffected by the draft royal decree. See further ECB Opinion CON/2008/74, paragraph 1.3.

6 Article 2 of the Royal Decree of 10 December 2008; see ECB Opinion CON/2008/74, paragraph 1.3.

7 Article 1 of the draft royal decree, amending Article 2 of the Royal Decree of 10 December 2008.

8 The ECB has been consulted by the Belgian authorities on five other draft legislative provisions adopted in this context: (i) ECB Opinion CON/2008/46; (ii) ECB Opinion CON/2008/50; (iii) ECB Opinion CON/2008/61; (iv) ECB Opinion CON/2008/74; and (v) ECB Opinion CON/2008/91.

stressed the need for the Member States to 'act in a united manner and avoid that national measures adversely affect the functioning of the single market and the other member States'[9].

The ECB also reminds the consulting authority of the importance of ensuring the harmonisation of the price determination of such a guarantee within the euro area and the EU, and that the price of such guarantee should be risk-based and market-oriented, i.e. determined on the basis of the cost of obtaining a corresponding guarantee in the market. In this respect, the ECB recommends to apply, *mutatis mutandis*, the practice set out in its Recommendations on government guarantees for bank debt[10]. Hence, the extension of the scope of the State guarantee under the draft royal decree must be appropriately reflected in the price determination of the State guarantee.

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

Done at Frankfurt am Main, 19 March 2009.

[signed]

The President of the ECB

Jean-Claude TRICHET

9 See the Declaration of 12 October 2008, available on the website of the French Presidency, www.ue2008.fr.

10 See the Recommendations of the Governing Council of the European Central Bank on government guarantees for bank debt, issued on 20 October 2008, available on the ECB's website at www.ecb.europa.eu.