EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 7 November 2011

on the extension of the Irish State guarantee of eligible liabilities of credit institutions

(CON/2011/88)

Introduction and legal basis

On 7 October 2011, the European Central Bank (ECB) received a request from the Irish Minister for Finance for an opinion on a draft Credit Institutions (Eligible Liabilities Guarantee) (Amendment) Scheme 2011 (hereinafter the 'draft scheme') amending the Credit Institutions (Eligible Liabilities Guarantee) Scheme 2009 (hereinafter the 'ELG Scheme').

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 scheme 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 revised draft scheme

1.1 The ELG Scheme was signed into law on 9 December 2009. The ECB was consulted on the ELG Scheme at the draft stage and adopted its Opinion CON/2009/56[2]. Subsequently, the ECB adopted Opinions CON/2009/92, CON/2010/71 and CON/2010/75 on proposed amendments to the ELG Scheme.

1.2 The Irish Government now proposes a further prolongation of the validity of the ELG Scheme by 12 months, i.e. that eligible liabilities may be issued until 31 December 2012.

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.

2. The appropriate time to consult the ECB

The ECB notes that the Minister has requested the ECB to provide its opinion as soon as possible in order to ensure that Union State aid approval for the draft scheme can be obtained quickly and the draft scheme presented for parliamentary approval. The ECB reiterates its position as expressed in previous opinions[3] that the consultation should take place at a point in the legislative process which affords the ECB sufficient time to examine the draft legislative provisions and to adopt its opinion in all required language versions, and which also enables the relevant national authorities to take the ECB's opinion into consideration before the provisions are adopted. Article 3(4) of Decision 98/415/EC also obliges Member States to suspend the adoption process for draft legislative provisions, pending receipt of the ECB's opinion. The ECB would appreciate the Department of Finance giving due consideration to honouring their obligation to consult the ECB in the future, in accordance with Decision 98/415/EC.

3. The draft scheme

3.1 The purpose of the draft scheme is the extension of the issuance period under the ELG Scheme from 31 December 2011 to 31 December 2012. The Minister in his request for an opinion advises that a positive assessment by the ECB on financial stability grounds of the requirement for a prolongation of the guarantee of short term and interbank liabilities is considered essential by the European Commission to the Commission's approval process as regards such state aid.

3.2 The ECB reiterates the views expressed in its previous opinions on the subject of the ELG Scheme and the Irish legislation on financial support to credit institutions[4]. In particular, it recalls that coordination of the duration of national financial support schemes across the Union is of crucial importance in order to ensure a level playing field[5]. The ECB also notes that it is the European Commission's practice to approve Member States' guarantee schemes for no longer than six months in advance[6].

3.3 Taking into account financial stability considerations, a further extension of the ELG Scheme would be beneficial. Moreover, the ECB understands that the extension of the ELG Scheme is safeguarded by the timely compliance of the Irish government with the ongoing European Union and International Monetary Fund (IMF) Programme for financial assistance to Ireland.

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3 See Opinion CON 2010/75, CON/2010/71, paragraph 2, CON/2010/50, paragraph 2 and CON/2010/36, paragraph 2.1.

4 See Opinions CON/2010/75, CON/2010/71, CON/2010/29 and CON/2008/44.

5 See Opinions CON/2009/24, paragraph 3.1, CON/2009/54, paragraph 2.5.2 and CON/2009/73, paragraph 3.2.

6 See the Directorate General Competition staff working document of 30 April 2010, 'The application of State aid rules to government guarantee schemes covering bank debt to be issued after 30 June 2011', available on the European Commission's website at www.ec.europa.eu.

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

Done at Frankfurt am Main, 7 November 2011.

[signed]

The President of the ECB

Mario DRAGHI