EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 13 August 2013

on the provision of collateral to Danmarks Nationalbank through automatic collateralisation

(CON/2013/60)

Introduction and legal basis

On 12 July 2013, the European Central Bank (ECB) received a request from the Danish Financial Supervisory Authority (*Finanstilsynet*) (FSA) for an opinion on a draft law amending the financial legislation (hereinafter the 'draft 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, fifth 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 provisions[2], as the draft law relates to Danmarks Nationalbank, payment and settlement systems and 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 law

1.1 The draft law introduces a number of amendments to the Danish financial legislation, of which the main purpose is to improve private enterprises' access to funding[3]. The following issues covered by the draft law fall within the ECB's competence.

1.2 The draft law amends the rules on automatic collateralisation[4], which is a special procedure for the provision of collateral to Danmarks Nationalbank. Established pursuant to Section 55 of the Law on securities trading, automatic collateralisation is an intraday credit operation in central bank money which the buyer may choose when settling payments or securities transactions. Intraday credit provision is collateralised with securities already held by the debtor (collateral-on-stock), or through the eligible securities that are being purchased (collateral-on-flow).

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1 The draft law amends the Law on financial business, the Law on securities trading, the Criminal Act, the Law on administration of justice, the Law on alternative investment fund managers and other laws and is expected to be submitted to Parliament in the autumn session of 2013.

2 OJ L 189, 3.7.1998, p. 42.

3 This is to be done by establishing an improved framework for developing the corporate bond market.

4 See Section 2(7) of the draft law and part 2.8 of the explanatory memorandum of the draft law.

1.3 Automatic collateralisation cannot currently be used for loans outside the scope of Section 55 of the Law on securities trading, i.e. monetary-policy loans, intraday-credit granted by Danmarks Nationalbank not used for settlement or loans for cash depots. The draft law extends the application of the rules on automatic collateralisation to all intraday-credit granted by Danmarks Nationalbank to participants with a current account at Danmarks Nationalbank. The amendment is motivated by the need to ensure that retail payments and large payments made by consumers and retailers can be settled considerably faster than at present. It is also envisaged that this more flexible settlement model will be needed to facilitate future use of TARGET2-Securities for settlement of financial transactions.

1.4 The draft law also introduces further measures to strengthen the financial sector and ensure efficient enforcement by the FSA:

(a) In order to avoid conflicts of interest and to ensure the independence of the board of directors of a foundation or an association owning a mortgage-credit limited company, the procedure for appointing the members for the board of directors of these foundations or associations is made more transparent[5].

(b) The FSA may publish the orders it has given a financial entity to correct misleading information that the entity has published about itself[6]. This will be done by extending the scope of this rule to financial entities not already covered in the Law on financial business.

(c) The procedures used for appeals to the FSA with regard to decisions taken by operators of regulated markets, multilateral trading facilities, clearing depositories and central securities depositories in accordance with such entities' own rules are amended[7]. Consequently, it will no longer be possible to appeal to the FSA against decisions made in accordance with these entities' own rules, which are of a private law character. Instead, their rules will be interpreted in accordance with standard private law rules of interpretation and disputes arising from those decisions will be decided by the courts. The FSA's competence will continue to cover decisions made by these entities taken in accordance with the law or rules issued pursuant to the law[8].

2. General observations

2.1 The ECB welcomes the proposed amendments to the Danish financial legislation, which provide for the modernisation of the Danish payment and settlement infrastructures, better use of available collateral and enhanced transparency of the financial sector.

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5 See Section 1(55) of the draft law and part 2.4 of the explanatory memorandum.

6 See Sections 2(10), 6(7), 7(5), 10(5), 11(4), 12(1), 13(1), 14(5), 15(3), 16(3), 17(2) and 18(3) of the draft law as well as part 2.14 of the explanatory memorandum.

7 See Section 2(11) and (12) of the draft law, which amend Section 88 of the Law on securities trading, and part 2.11 of the explanatory memorandum.

8 See part 2.11 of the explanatory memorandum.

2.2 In line with Opinion CON/2012/104[9], the ECB notes the increased openness regarding the work of the FSA, which aims to bring about greater transparency, as well as efficient enforcement in the financial area. When considering measures aimed to achieve increased openness and information-sharing, it is however necessary to ensure that confidential information is adequately protected[10].

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

Done at Frankfurt am Main, 13 August 2013.

[signed]

The Vice-President of the ECB

Vítor CONSTÂNCIO

9 See paragraph 3.2 of Opinion CON/2012/104. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

10 See paragraph 3.10 of Opinion CON/2011/5.