EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 9 February 2009

at the request of the Latvian Ministry of Finance
on a draft regulation on fair compensation granted to a bank or its shareholders

(CON/2009/11)

Introduction and legal basis

On 5 February 2009 the European Central Bank (ECB) received a request from the Latvian Ministry of Finance for an opinion on a draft regulation establishing procedures for determining the amount, offer and payment of fair compensation granted to a bank or its shareholders (hereinafter the 'draft regulation').

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

The main objective of the draft regulation is to lay down procedures according to which the Latvian Cabinet of Ministers calculates the amount of compensation to be paid to banks that are being taken over by the State or to those banks' shareholders. The draft regulation also provides for procedures for offering and paying compensation.

2. General observations

2.1 The legal basis for the adoption of the draft regulation is the Law on bank takeovers of 18 December 2008[2] on which the ECB was consulted, albeit after its adoption. As a consequence, the ECB's views could not be duly taken into account in the Latvian legislative process.

1 OJ L 189, 3.7.1998, p. 42.

2 Published in *Latvijas Vēstnesis*, 202 (3986) on 30 December 2008.

2.2 In this context, the ECB notes that the recapitalisation measures considered in Member States are aimed at strengthening the capital position of fundamentally sound financial institutions, in order to improve the functioning and stability of the banking system and to ensure the proper financing of the economy.

In line with the 'Declaration on a concerted European action plan of the euro area countries' issued by the Heads of State of the euro area on 12 October 2008 (hereinafter the 'Declaration')[3], the ECB has highlighted in its opinions that close coordination at the EU level of Government measures intended to alleviate tensions in the financial markets is of crucial importance[4]. This coordinated approach includes initiatives aimed at ensuring appropriate liquidity, facilitating the funding of banks by various means, providing additional capital resources to financial institutions and recapitalising distressed banks.

In line with the Declaration, the ECB emphasises that the support measures brought in by Member States should be temporary in nature and that the duration of such measures should be harmonised throughout the EU.

Furthermore, and in line with previous ECB opinions[5], it should be ensured that such measures are in accordance with the requirements of Community competition law, in particular State aid rules, and that the State's role as shareholder is limited in time[6].

2.3 In the absence of further details, the ECB has no observations on the specific provisions of the draft regulation. It notes, however, that pricing conditions for compensation granted should be risk-based and market-oriented, as they should not lead to differences in the treatment of financial institutions.

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3 The Declaration is available on the French Presidency's website at www.ue2008.fr.

4 See the Recommendations of the Governing Council of the European Central Bank on the pricing of recapitalisations issued on 20 November 2008, available on the ECB's website at www.ecb.europa.eu. See also ECB Opinion CON/2008/79 of 27 November 2008 at the request of the Greek Ministry of Economy and Finance on a draft law on enhancing liquidity of the economy to address the impact of the international financial crisis and on a draft decision on its implementation, as well as ECB Opinion CON/2009/3 of 8 January 2009 at the request of the Slovenian Ministry of Finance on a draft decree laying down criteria and conditions for the implementation of State capital investments and for the conversion of State claims into capital shares under Article 81.a of the Law on public finance.

5 See e.g. paragraph 3.8 of ECB Opinion CON/2008/68 of 13 November 2008 at the request of the Finnish Ministry of Finance on a draft government proposal for laws amending the Law on the Government Guarantee Fund and the Law on credit institutions.

6 See 'Communication from the Commission – The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis' (OJ C 208 of 25.10.2008, p. 8). Also 'Communication from the Commission – The recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition', available on the Commission's website at www.ec.europa.eu.

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

Done at Frankfurt am Main, 11 February 2009.

[signed]

The President of the ECB

Jean-Claude TRICHET