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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 10 August 2009

on strengthening bank resolution techniques

(CON/2009/65)

Introduction and legal basis

On 30 July 2009 the European Central Bank (ECB) received a request from the Latvian Financial and Capital Market Commission (FCMC) for an opinion on draft amendments to the Law on credit institutions (hereinafter the 'draft law').

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 law 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 law

The main objective of the draft law is to strengthen bank resolution techniques in Latvia by: (i) allowing set-off under certain conditions for banks facing difficulties, and (ii) by empowering administrators to terminate contracts that reduce a credit institution's assets and are not concluded to provide financial services. The draft law also amends the definition of set-off bringing it in line with international practice and clarifies the rights of FCMC authorised representatives appointed to banks facing difficulties.

2. General observations

As noted in its previous opinion on amendments to the Law on credit institutions[2], the ECB welcomes the draft law to the extent that it will strengthen the FCMC's powers to intervene when the stability of either individual credit institutions or the financial system as a whole is jeopardised. The ECB also welcomes

1 OJ L 189, 3.7.1998, p. 42.

2 See paragraph 3.2 of Opinion CON/2009/10. All ECB opinions are available on the ECB website at www.ecb.europa.eu.

the clarification of set-off procedures and the strengthening of administrator rights in insolvency proceedings insofar as they do not undermine Latvijas Banka's fulfilment of its tasks.

3. Specific observations

Regarding amendments to Article 117(4)(3) of the Law on credit institutions, the ECB has already commented on the transfer of credit institution's assets and liabilities with the aim of ensuring the payment of guaranteed deposits[3]. To the extent relevant, the observations made in Opinion CON/2009/31 also apply to the amendments proposed by the draft law.

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

Done at Frankfurt am Main, 10 August 2009.

[signed]

The President of the ECB

Jean-Claude TRICHET

3 See paragraphs 3.5 and 3.6 of ECB Opinion CON/2009/31.