EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 23 September 2009

on an extension of the State guarantee covering liabilities of credit institutions

(CON/2009/73)

Introduction and legal basis

On 14 September 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 for Finance, for an opinion on a draft royal decree amending the Royal Decree of 16 October 2008 implementing Article 117bis of the Law of 2 August 2002 on the supervision of the financial sector and on financial services (hereinafter 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 is motivated by the need to preserve confidence in the Belgian financial system and by the continuation of financial market turbulence. In this context, it aims to extend the scope of the State guarantee scheme laid down in the Royal Decree of 16 October 2008 implementing Article 117bis of the Law of 2 August 2002 on the supervision of the financial sector and on financial services, on which the ECB has already been consulted[2].

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1 OJ L 189, 3.7.1998, p. 42.

2 Currently, the Royal Decree of 16 October 2008 empowers the Belgian Minister for Finance to grant a State guarantee to cover liabilities of credit institutions and/or financial holding companies (*financiële holding/compagnies financières*) as well as their issuance vehicles vis-à-vis other credit institutions and/or professional counterparts belonging to the categories identified by the Minister for Finance provided that such liabilities mature at the latest on 31 October 2011 and that they have been entered into or renewed between 9 October 2008 and 31 October 2009 (Article 2 of the Royal Decree). See ECB Opinion CON/2008/50; all ECB opinions are published on the ECB website at www.ecb.europa.eu.
The legal basis for the Royal Decree of 16 October 2008 is Article 117bis of the Law of 2 August 2002 (see, concerning this provision: ECB Opinion CON/2008/46, in particular paragraphs 1.1, 2.1 and 5; ECB Opinion CON/2008/50, in particular paragraph 2.1; and ECB Opinion CON/2009/29).

First, the draft royal decree would extend the ultimate maturity date of the liabilities that can be covered by the State guarantee under the Royal Decree of 16 October 2008 (i.e. the ultimate maturity date would be 31 October 2014, instead of 31 October 2011 as currently)[3]. *Second*, it would also extend the period during which such liabilities must have been entered into or renewed (i.e. the "issuing window" would be the period between 9 October 2008 and 31 October 2010, instead of the period between 9 October 2008 and 31 October 2009 as currently)[4]. The draft royal decree would not amend the other conditions for granting the State guarantee under the Royal Decree of 16 October 2008[5].

1.2 The Belgian authorities consider that the above extension of the State guarantee scheme is necessary given the continuation of financial market turbulence, and in particular financial institutions' continued refinancing difficulties. They also point out that the extension of the ultimate maturity date would allow the beneficiary institutions to avoid an excessive concentration of maturities for guaranteed obligations with a determined maturity date[6].

2. General observations

2.1 The ECB understands that, although it was asked to issue its opinion within one month of receipt of the consultation letter on 14 September 2009, the Belgian Council of Ministers approved the draft royal decree already on 18 September 2009[7] without any prior notification to the ECB of any acceleration in the adoption process. The ECB would like to point out that, in cases of particular urgency which do not allow for a normal consultation period, the consulting authority may indicate such urgency in the consultation request and ask for a shorter deadline for adoption of the ECB's opinion. This does not affect the national authorities' duty under Article 105(4) of the Treaty to consult the ECB on national draft legislative provisions falling within its fields of competence. It follows from Article 3(4) of Decision 98/415/EC that Member States are obliged to suspend the process of adoption of such draft legislative provisions pending receipt of the ECB's opinion. The adopting national authority should have the opportunity to meaningfully deliberate the ECB's opinion prior to taking its decision on the substance[8].

2.2 The ECB has issued a number of opinions at the request of the competent Member States' authorities on national measures adopted in response to the global financial crisis, and has notably already delivered opinions on several elements of the rescue package put in place by the Belgian

3 Article 1 of the draft royal decree, amending Article 2, first subparagraph of the Royal Decree of 16 October 2008.

4 Article 2 of the draft royal decree, amending Article 2, second subparagraph of the Royal Decree of 16 October 2008.

5 For a summary of the other conditions laid down in the Royal Decree of 16 October 2008, see ECB Opinion CON/2008/50, especially paragraph 1.2.

6 Report to the King preceding the draft royal decree, paragraph 3.

7 See the press release of 18 September 2009 issued by the Communications Office of the Belgian Council of Ministers.

8 See the Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions, Title IV, Section 1.

authorities in response to the current financial market turbulence[9]. The ECB invites the consulting authority to take into account the relevant observations made in its previous opinions on similar draft legislative provisions in other Member States, some of which are repeated below. In particular, all of the comments and recommendations made by the ECB in its Opinion CON/2008/50 apply equally to the draft royal decree.

2.3 The ECB also draws attention to the guidance provided by the Ecofin Council to the Member States in the Conclusions of its meeting of 7 October 2008[10], and to the Declaration issued by the Heads of State of the euro area on 12 October 2008 (hereinafter the 'Declaration')[11]. The principles contained in the Declaration and the Conclusions of the Ecofin Council were endorsed by the European Council of 15 to 16 October 2008[12]. In particular, the ECB stresses that any initiative put in place by the competent national authorities to restore confidence in the national segments of the euro area financial markets should be coordinated and should aim to implement the common principles in question, in a spirit of close cooperation with other Member States and the Community institutions[13] since, as acknowledged in the Declaration, significant differences in national implementation could have a counter-productive effect, creating distortions in global banking markets.

3. Specific observations

3.1 *Interaction of the draft royal decree with the monetary policy of the euro area*

Since the draft royal decree aims at extending the scope of the State guarantee scheme laid down in the Royal Decree of 16 October 2008, on which the ECB has already been consulted, the ECB would like to recall some elements previously mentioned in its Opinion CON/2008/50 which are important from the perspective of monetary policy.

In particular, in the context of the adoption of the Royal Decree of 16 October 2008, the Belgian authorities publicly announced that the concept of 'liabilities' (*verbintenissen/engagements*) eligible to be covered by the State guarantee scheme provided for in that Royal Decree was to be

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9 The related ECB opinions on Belgian draft legislative provisions are: (i) CON/2008/46; (ii) CON/2008/50; (iii) CON/2008/61; (iv) CON/2008/74; (v) CON/2008/91; (vi) CON/2009/25; and (vii) CON/2009/29.

10 See 'Immediate Responses to Financial Turmoil', Ecofin Council Conclusions of 7 October 2008, available on the former French Presidency's website at www.ue2008.fr. The Ecofin Council recommended that: (i) interventions should be timely and the support should in principle be temporary; (ii) the interests of taxpayers should be protected; (iii) existing shareholders should bear the due consequences of the intervention; (iv) the Government should be in a position to bring about a change of management; (v) management should not retain undue benefits; (vi) governments may have, *inter alia*, the power to intervene in remuneration; (vii) legitimate interests of competitors must be protected, in particular through State aid rules; and (viii) negative spill-over effects should be avoided.

11 The text of the Declaration is available on the former French Presidency's website at www.ue2008.fr. The Member States agreed to: (i) ensure appropriate liquidity conditions for financial institutions: (ii) facilitate the funding of banks; (iii) provide financial institutions with additional capital resources to continue to ensure the proper financing of the economy; (iv) allow for an efficient recapitalisation of distressed banks; (v) ensure sufficient flexibility in the implementation of accounting rules; and (vi) enhance cooperation procedures among European countries.

12 See Brussels European Council of 15 to 16 October 2008, paragraph 3 of the Presidency Conclusions.

13 See notably ECB Opinions CON/2009/12, paragraph 2.2 and CON/2009/62, paragraph 2.4.

understood broadly and would encompass all of the financing raised by a beneficiary institution in order to obtain refinancing from credit institutions and institutional counterparties, including notably interbank deposits[14]. The ECB understands that although the draft royal decree amends the Royal Decree of 16 October 2008, it does not further specify what is encompassed by 'liabilities' (*verbintenissen/engagements*) within the meaning of that Royal Decree and, hence, it does not exclude interbank deposits.

In this respect, the ECB wishes to make the following observations. *First*, it would like to remind the consulting authority that the arrangements for the granting of government guarantees on bank debt should, when practically implemented, aim at: (i) addressing the funding problems of liquidity-constrained solvent banks by improving the functioning of the market for bank debt of longer-term maturity; (ii) preserving the level playing field among financial institutions and avoiding market distortions; and (iii) ensuring consistency with the management of Eurosystem liquidity. In line with the Declaration and as stated in its recommendations[15], the ECB restates its view that euro area governments should make available a government guarantee of new medium-term (up to five years) bank senior debt issuance which must be limited in time. In the same vein, government guarantees on short-term bank debt with maturity of three to 12 months may be provided in order to revitalise the short-term bank debt market[16]. *Second*, as stated in the Declaration, it is also stressed that it is of the utmost importance that support operations conducted by national authorities do not in any way affect the conduct and the implementation of monetary policy in the euro area [17]. In this context, the ECB reiterates its view that the extension of the State guarantee to cover interbank deposits should be avoided[18], as this could entail a substantial distortion in the various national segments of the euro area money market by potentially increasing short-term debt issuance activity across Member States and therefore impairing the implementation of the single monetary policy, which is an exclusive competence of the Eurosystem under Article 105(2) of the Treaty[19]. It could also affect the transmission of monetary policy decisions[20] and make it difficult to maintain the necessary level playing field between the financial institutions benefiting from the State guarantee and those not benefiting from it within the euro area.

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14 See ECB Opinion CON/2008/50, paragraph 3.2 and the reference to the press release of 10 October 2008 issued by the Secretariat of the Belgian Deputy Prime Minister and Minister of Finance.

15 Recommendations of the Governing Council of the European Central Bank on government guarantees for bank debt, 20 October 2008, available on the ECB's website.

16 See notably ECB Opinions CON/2009/12, paragraph 3.3.3 and CON/2009/49, paragraph 3.9.

17 See ECB Opinion CON/2009/12, paragraph 2.3.

18 See ECB Opinion CON/2008/50, paragraph 3.2, and more recently ECB Opinions CON/2009/12, paragraph 3.3.2 and CON/2009/49, paragraph 3.9.

19 See also ECB Opinion CON/2008/48, in particular paragraph 3.7, and more recently ECB Opinions CON/2009/12, paragraph 3.3.2 and CON/2009/49, paragraph 3.9.

20 See notably ECB Opinions CON/2009/12, paragraph 3.3.2 and CON/2009/49, paragraph 3.9.

3.2 *Temporary nature of the scheme*

In line with the Conclusions of the Ecofin Council and the Declaration, it is recalled that harmonisation of the measures implemented at the national level is essential to ensure the integration of the financial markets within the EU, and within the euro area in particular. In this regard, the ECB emphasises that coordination regarding the duration of national financial support schemes across the EU is of crucial importance in order to ensure a level playing field[21]. In addition, the ECB recalls the need for national support measures to be temporary in nature[22]. While the current elements of fragility in the national financial sector lie at the basis of the proposed extension of the ultimate maturity date of the new liabilities that can be covered by the State guarantee under the Royal Decree of 16 October 2008 and of the period during which such liabilities must have been entered into or renewed to be covered by such a State guarantee, it is also understood that the temporary nature of this State guarantee scheme is maintained in essence, hence ensuring that the involvement of the Belgian State will be limited in time.

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

Done at Frankfurt am Main, 23 September 2009.

[signed]

The President of the ECB

Jean-Claude TRICHET

21 See notably ECB Opinions CON/2009/24, paragraph 3.1 and CON/2009/54, paragraph 2.5.2.

22 See notably ECB Opinions CON/2009/24, paragraph 2.2 and CON/2009/62, paragraph 3.3.