EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 27 October 2008

at the request of the Spanish State Secretary for Economic Affairs

on a draft Order implementing Royal Decree-Law 6/2008 creating the Fund for the acquisition of financial assets and on a draft Basic Agreement of the Fund's Executive Council

(CON/2008/60)

Introduction and legal basis

On 23 October 2008 the European Central Bank (ECB) received a request from the Spanish State Secretary for Economic Affairs for an opinion on a draft Order implementing Royal Decree-Law 6/2008 of 10 October creating the Fund for the acquisition of financial assets (hereinafter the 'draft Order') and on a draft Basic Agreement of the Fund's Executive Council (hereinafter the 'draft Basic Agreement) (hereinafter collectively the 'draft provisions').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and on the third 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[1], as the draft provisions relate to the Banco de España and to rules applicable to financial institutions that 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 provisions

The draft provisions will implement Royal Decree-Law 6/2008 by determining the composition of the Fund's Executive Committee, creating a technical committee to assist the Executive Committee and specifying the eligible assets, the auction procedures, the Banco de España's role and the validity period of these measures.

2. General observations

2.1 The ECB has issued an opinion on the Royal Decree-Law creating the Fund (CON/2008/52 of 17 October 2008) and is now called upon to comment on the implementing legislation to be adopted under such Royal Decree-Law.

1 OJ L 189, 3.7.1998, p. 42.

2.2 In line with its views stated in paragraphs 2.3 and 2.4 of CON/2008/52, the ECB welcomes that the Fund operations will be subject to an expiry date, namely 31 December 2012, and that auctions will be open to all credit institutions registered with the Banco de España and thus also to branches of foreign credit institutions in Spain[2].

2.3 Moreover, in line with paragraph 3.2 of CON/2008/52, the ECB welcomes that the Banco de España's role will be limited to acting as government agent and deposit bank and to providing its expertise as part of the Technical Committee assisting the Executive Committee. The draft Order lays down detailed rules in this respect[3], whereby nothing in such rules exceeds the scope defined above of the Banco de España's participation in the Fund. The ECB expects that the practical operation of the Fund under the draft Order will not interfere with the Banco de España's institutional and financial independence, as well as its capacity to perform its tasks under the Treaty and the Statute of the European System of Central Banks and of the European Central Bank. Further, noting that the public character of the Fund is confirmed by the draft Basic Agreement's provisions related, in particular, to the composition of the Fund's Executive Committee[4], the ECB reiterates its earlier position[5] that the Fund may not benefit from overdraft facilities or any type of credit facility with the Banco de España, in accordance with Article 101 of the Treaty and Regulation (EC) No 3603/93[6].

3. Specific comments

3.1 *Collateral*

The ECB notes that, according to Section 2 of the draft Basic Agreement, for repurchase agreement operations conducted by the Fund, the eligibility of the assets for the operations with the Fund will be based on the list of the assets eligible as collateral for the Eurosystem's refinancing operations. In this respect, the ECB recommends putting in place a mechanism to exchange information in order to avoid a risk of double mobilisation of collateral.

In the same vein, Section 2 also provides that the margins and haircuts applied to the assets provided as collateral for the repurchase agreement operations will follow the guidelines adopted in the context of the Eurosystem's operational framework. The ECB notes that the Fund should follow the standard of daily margin calls to ensure that the market value of collateral after haircut remains adequate to collateralise the loan, in line with the Eurosystem. The prices used to value the collateral should also be the same as the prices used by the Eurosystem.

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2 See Article 5(3) of the draft Order, as well as its Sole Final Provision.

3 See Article 7 of the draft Order.

4 See Section 2 of the draft Basic Agreement.

5 See paragraph 3.3 of Opinion CON/2008/52.

6 Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty (OJ L 332, 31.12.1993, p. 1).

3.2 *Pricing of the operations conducted by the Fund*

The recent ECB Opinion CON/2008/52 notes that, in line with the declaration on a concerted European action plan of the euro area countries[7], Member States have to act in a coordinated manner to avoid significant differences in national implementation from having a counter-productive effect, creating distortions in global banking markets. The euro area Heads of State also acknowledged the need to work in cooperation with the ECB to ensure consistency with the management of liquidity by the Eurosystem and compatibility with the Eurosystem's operational framework. As a result, the ECB points out that uncoordinated decisions among Member States should be avoided as they may involve a fragmentation of the euro area money market.

Against this background, it is of utmost importance that the operations conducted by the Fund do not interfere by any means with the signalling of the single monetary policy and/or with the Eurosystem's refinancing operations. In this context, a number of observations can be made.

Regarding the repurchase agreement operations conducted by the Fund, the ECB notes the loans granted against collateral will be based on an auction procedure where the minimum rate for bids should not be below the cost of State funding for the corresponding maturity. First, such operations should not be conducted below the three-month maturity in order to ensure consistency with the Eurosystem's management of liquidity. In this respect, the ECB welcomes Section 2 of the draft Basic Agreement, which provides that the refinancing operations conducted by the Fund will be above 12-month maturity. Second, the Fund's operations must be based on a genuine market-oriented auction procedure in order to avoid collusive agreement between counterparts.

Regarding the Fund's acquisition of assets, the ECB recommends further clarification of the price determination of the assets that could be acquired by the Fund. In this respect, the ECB notes that the prices at which banks' assets could be acquired by the Fund should be based on market prices. The ECB therefore suggests stating in the draft provisions that the price of the acquisitions by the Fund must not interfere with the transmission of the Eurosystem's monetary policy and should avoid any distortions in asset prices across euro area countries.

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

Done at Frankfurt am Main, 27 October 2008.

[signed]

The Vice-President of the ECB

Lucas D. PAPADEMOS

7 Available on the website of the French Presidency at www.eu2008.fr.