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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 21 November 2008

at the request of the Belgian Ministry of Finance

on a draft royal decree on the guarantee for certain risks assumed by financial institutions

(CON/2008/74)

Introduction and legal basis

On 17 November 2008 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 of Finance, for an opinion on a draft royal decree on the guarantee for certain risks assumed by financial institutions (hereinafter the 'draft royal decree'). Given the current turbulence in the financial markets and the need for firm intervention by the authorities involved, the consulting authority has requested the ECB to provide its opinion as a matter of extreme urgency to allow the swift adoption of 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 current financial market crisis and by the Belgian authorities' wish to preserve the stability of the Belgian financial system[2]. The draft royal decree aims to complete the system for granting the guarantee of the Belgian State for liabilities entered into by financial institutions, which was established by the Royal Decree of 16 October 2008[3] and has the same legal basis[4].

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1 OJ L 189, 3.7.1998, p. 42.

2 See the first recital of the draft royal decree.

3 See in relation to the Royal Decree of 16 October 2008, ECB Opinion CON/2008/50 of 17 October 2008 at the request of the Belgian Ministry of Finance on a draft royal decree adopted under Article 117*bis* of the Law of 2 August 2002 on the supervision of the financial sector and on financial services. All ECB opinions are available on the ECB website at www.ecb.europa.eu.

4 i.e. Article 117*bis* and 117*ter* of the Law of 2 August 2002 on the supervision of the financial sector and on financial services. On this provision, see paragraph 2.1 of ECB Opinion CON/2008/50 and paragraph 1.1 of ECB Opinion CON/2008/61 of 28 October 2008 at the request of the Belgian Minister for Finance on a draft royal decree implementing the Law of 15 October 2008 on measures promoting financial stability and in particular establishing a State guarantee for

1.2 More specifically, the purpose of the draft royal decree is to avoid liquidity outflows[5]. The need for the draft royal decree was triggered in particular by the commitments taken by certain financial institutions towards third parties under which, in the event the financial institutions or an entity in their group being downgraded, the third parties concerned may demand cash or other collateral or alternatively early repayment[6].

1.3 In this context, the draft royal decree empowers the Belgian Minister of Finance to grant a State guarantee[7] to cover liabilities entered into by credit institutions, financial holding companies (*financiële holdings/compagnies financières*) or mixed financial holding companies (*gemengde financiële holdings/compagnies financières mixtes*; hereinafter together the 'beneficiary entities')[8], provided that: (i) the liabilities covered are commitments aiming at covering losses or a risk of losses on financial assets held by subsidiaries of a beneficiary entity, and (ii) these commitments and the State guarantee can therefore contribute to avoiding the beneficiary entity or its subsidiaries from being exposed to a serious need for additional liquidity, due in particular to a downgrading of their rating[9]. The decision to grant a State guarantee would be subject to the conditions that: (i) the beneficiary takes measures aimed at supporting its financial situation, its solvency and its liquidity, or commits itself to taking such measures; and (ii) the granting of the guarantee is justified in the interests of the Belgian economy and by the need to protect all depositors[10]. Under the draft royal degree the Minister for Finance would be empowered to lay down further detailed rules and conditions for a State guarantee, including setting its ceiling, specifying the remuneration to be paid for granting the guarantee, and any other detailed rule to ensure compliance with the two abovementioned conditions[11]. The State guarantee would not be granted by means of a Ministerial Decree, but would be established by an agreement which would also define its detailed rules and conditions.

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the provision of credit in the context of financial stability, in relation to the protection of deposits and life insurance and amending the Law of 2 August 2002 on the supervision of the financial sector and on financial services.

5 See the Report to the King which precedes the draft royal decree.

6 See the Report to the King which precedes the draft royal decree.

7 See Article 1 of the draft royal decree.

8 The ECB understands that mixed financial holding companies are covered by the draft royal decree in so far as they fall within the concept of financial undertakings belonging to a group over which the *Commissie voor het Bank-, Financie- en Assurantiewezen/Commission bancaire, financière et des assurances* exercises consolidated supervision referred to in Article 117ter of the Law of 2 August 2002.

9 See Article 2 of the draft royal decree. Despite the apparent inconsistency between the recital of the draft royal decree and Article 2 of the draft royal decree, it is understood that the main objective of the draft royal decree is to avoid the guaranteed entity or its subsidiaries from being exposed to a 'serious need for additional liquidity' and not exclusively to avoid 'the risks of downgrading certain financial institutions'.

10 See Article 3 of the draft royal decree. Article 3 of the Royal Decree of 16 October 2008 lays down similar conditions.

11 See Article 4 of the draft royal decree. Article 4 of the Royal Decree of 16 October 2008 contains a similar provision.

2. General observations

The ECB has already opined on several elements of the general rescue package put in place by the Belgian authorities in response to the current turbulence in the financial markets[12]. In this respect, the ECB underlines that all the comments and recommendations made in ECB Opinion CON/2008/50 apply equally to the draft royal decree. In particular, the ECB first reiterates that arrangements which may be seen as providing preferential treatment to specified credit institutions should be avoided, as well as its recommendation to clarify in the draft royal decree or in the report to the King that the State guarantee will be granted to the beneficiary entities in accordance with the requirements of EC competition law and State aid rules. In this context, it should be ensured that the beneficiary institution(s) will not be unfairly advantaged by making undue use of their guaranteed status[13]. Second, the ECB also notes the importance of ensuring the harmonisation of the price determination of such a guarantee within the euro area and the EU, where a level playing field is of essence. While the ECB understands that the conditions and the price of the State guarantee provided for in the draft royal decree will be determined on a case-by-case basis, it is important that the price should be risk-based and market-oriented, i.e. determined on the basis of the cost of obtaining a corresponding guarantee in the market. This point should be clarified in the draft royal decree. Third, the ECB also wishes to stress in this context that since the Minister for Finance's decision to grant the State guarantee is, *inter alia*, subject to the condition that the beneficiary has taken or has committed itself to taking all measures which are useful to support its financial situation, its solvency and its liquidity[14], proper coordination with the supervisory authority will have to be ensured.

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

Done at Frankfurt am Main, 21 November 2008.

[signed]

The Vice-President of the ECB

Lucas D. PAPADEMOS

12 The ECB has already been consulted by the Belgian authorities on three other draft legislative provisions adopted in this context: (i) ECB Opinion CON/2008/46 of 8 October 2008 at the request of the Belgian Ministry of Finance on a preliminary draft law on measures promoting financial stability and in particular establishing a State guarantee for the provision of credit in the context of financial stability; (ii) ECB Opinion CON/2008/50; and (iii) ECB Opinion CON/2008/61 of 28 October 2008 at the request of the Belgian Minister for Finance on a draft royal decree implementing the Law of 15 October 2008 on measures promoting financial stability and in particular establishing a State guarantee for the provision of credit in the context of financial stability, in relation to the protection of deposits and life insurance and amending the Law of 2 August 2002 on the supervision of the financial sector and on financial services.

13 See ECB Opinion CON/2008/50, paragraph 3.1.

14 See Article 3 of the draft royal decree.