EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 16 November 2009

on the realisation of collateral provided to the Banco de España, to other national central banks of the Member States or to the European Central Bank in the performance of their tasks

(CON/2009/96)

Introduction and legal basis

On 23 October 2009 the European Central Bank (ECB) received a request from the Spanish State Secretary for Economic Affairs for an opinion on the second final provision of the draft State budget law for 2010 amending paragraph 2(b) of the sixth additional provision of Law 13/1994 on autonomy of the Banco de España (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 on the third 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 contains provisions relating to the Banco de España. 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 sixth additional provision of Law 13/1994 on autonomy of the Banco de España lays down the rules applicable to collateral provided to the Banco de España, to other national central banks of the Member States (NCBs) or to the ECB in the performance of their tasks. In particular, paragraph 2(b) governs the realisation of such collateral.

The draft law amends point (b) by:

(i) repealing the requirement for a copy of the document constituting the security when realising the collateral. The purpose of this repeal is to facilitate collateral realisation, avoiding problems in interpreting the requirement to submit a copy of the document constituting the security in the context of cross-border use of dematerialised securities as collateral; and

1 OJ L 189, 3.7.1998, p. 42.

(ii) specifically referring to appropriation of collateral as a means of realisation subject to an agreement between the parties on such means of realisation and on valuation of the provided collateral. Realisation through appropriation had already been introduced in Spanish law by Royal Decree-Law 5/2005 of 11 March 2005 on urgent reforms to foster productivity and improve public procurement, which completed the Spanish transposition of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements[2]. The Banco de España had recourse to realisation through appropriation on the basis of Article 4(1) of the Royal Decree-Law, which lays down that the provisions on financial collateral arrangements (including those on appropriation) apply to the Banco de España (as well as to other NCBs or to the ECB). The purpose of this draft amendment is therefore to incorporate a general provision already in force into the Banco de España's special rules on this matter.

2. General observations

The ECB takes note of the proposed amendments, which are consistent with Directive 2002/47/EC, and welcomes them inasmuch as they will facilitate the realisation of collateral provided to the Banco de España, to other NCBs or to the ECB in the performance of their tasks and enhance the transparency and legal certainty of the legal framework for providing such collateral.

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

Done at Frankfurt am Main, 16 November 2009.

[signed]

The President of the ECB

Jean-Claude TRICHET

2 OJ L 168, 27.6.2002, p. 43.