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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 16 March 2009

at the request of the Polish Minister for Finance

on a draft law amending the Law on guarantees and endorsements granted by the Treasury and certain legal persons, the Law on Bank Gospodarstwa Krajowego and certain other laws

(CON/2009/22)

Introduction and legal basis

On 18 February 2009 the European Central Bank (ECB) received a request from the Polish Minister for Finance for an opinion on a draft law (hereinafter 'the draft law') amending the Law of 14 March 2003 on Bank Gospodarstwa Krajowego (hereinafter the 'Law on BGK')[1].

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[2], as the draft law contains 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

1.1 Bank Gospodarstwa Krajowego (BGK) is the only Polish credit institution established by legislation as a State bank[3]. Its main activities include supporting the government's socioeconomic programmes, as well as local self-government and regional development projects. Within this scope, BGK provides banking services to public entities and several public funds established for special purposes, including those established to distribute EU funds. As a specific financial

1 Dz. U. of 2003, No 65, item 594.

2 OJ L 189, 3.7.1998, p. 42.

3 See Article 2(1) of the Law on BGK together with Article 1 of the Regulation of the President of Poland of 30 May 1924 merging the State credit institutions into Bank Gospodarstwa Krajowego (*Dziennik Ustaw* (Dz. U.) of 1924 No 46, item 477). See also Article 46(1) of the Law on banking of 13 April 1960 (Dz. U. of 1960 No 20, item 121) together with Article 64(2) of the Law on banking of 12 June 1975 (Dz. U. of 1975 No 20, item 108) and Article 64(2) of the Law on banking of 26 February 1982 (Dz.U. of 1982 No 7, item 56). See also Article 14(1) of the Law on banking of 29 August 1997 (consolidated text: Dz.U. of 2002 No 72, item 665) (hereinafter the 'Law on banking'). See Regulation of the Minister for the Treasury of 27 August 2003 laying down the articles of incorporation for Bank Gospodarstwa Krajowego (Dz. U. of 2003 No 156, item 1526).

institution created for public purposes, BGK is exempted from Directive 2006/48/EC of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast)[4].

1.2 According to the draft law's explanatory memorandum[5], the planned changes are related to 'the need to ensure the transparency of Bank Gospodarstwa Krajowego's operations to better perform its tasks and implement government programmes' and aim to 'create a legal framework within which BGK, as a State-owned bank, will conduct banking operations as part of its own operations, and at the same time support the government's social and economic programmes, as well as local self-government and regional development programmes which are being implemented with the use of public funds'. The draft law streamlines the Law on BGK, extends the legal framework for BGK's implementation of government programmes and winds up some special public funds, transferring their assets to BGK. Furthermore, some formal requirements applying to the BGK's operations are relaxed.

1.3 The draft law modifies BGK's activities. It extends support for Polish exports to also include the implementation of government programmes[6]. It creates a new task of issuing endorsements and guarantees within the framework of carrying out government programmes, on BGK's or the Treasury's behalf[7]. The draft law also allows the Minister for Finance to increase BGK's statutory funds, by way of providing BGK with Treasury bonds issued specifically for this purpose. Their issuance will be exempt from budget limits, but their value will be included in the calculation of government debt[8]. Furthermore, the draft law amends Article 128b of the Law on banking by allowing the Financial Supervision Commission to exempt BGK from some requirements of the Law on banking[9]. Such a possibility is extended to funds provided to BGK for government programme purposes. Additional conditions are dropped, including the requirement for the separate management of such funds and exclusion of the bank's own risk in relation to this activity.

1.4 The draft law provides for the winding up of several special public funds, including the EU Guarantee Fund and the transfer of their assets to BGK's statutory fund[10]. The ECB understands that this will result in a significant increase in BGK's funds compared to the relative size of other financial institutions.

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4 OJ L 177, 30.6.2006, p. 1. See Article 2.

5 Parliamentary document No 1638 of 6 February 2009, available on the lower chamber of Parliament's website at www.sejm.gov.pl.

6 Article 2(3)(a) of the draft law, amending Article 5(1)(3) of the Law on BGK.

7 Article 2(3)(a) of the draft law, introducing a new Article 5(1)(5) to the Law on BGK, in conjunction with Article 1(9) of the draft law, introducing a new Chapter 8a to the Law of 8 May 1997 on guarantees and endorsements granted by the Treasury and certain legal persons (Dz.U. of 2003, No 174, item 1689).

8 Article 2(4) of the draft law, introducing new Article 5a of the Law on BGK.

9 Article 7 of the draft law.

10 Articles 15 to 17 and 25 of the draft law.

2. General observations

2.1 Since the main aim of the draft law is to improve the transparency of BGK's operations, *inter alia* to better implement government programmes, the ECB understands that BGK will play a substantial role in assisting the government's economic programmes relating to the current financial crisis. In this context, and to the extent that the broadened scope of BGK's activities relates to the crisis, the ECB reiterates its statements expressed in its previous opinions on measures adopted in Poland to mitigate the financial turmoil[11] and emphasises the need to provide for the temporary character of such measures to meet their aim of restoring normal market conditions.

2.2 In view of the BGK's specific status due to its public sector role and its exemption from Directive 2006/48/EC, the ECB underlines the need to maintain a level playing field and avoid undue distortions of competition between financial institutions as a result of increasing BGK's statutory funds and broadening the scope of its activities. In particular, the ECB notes that enhancing BGK's activity on the credit market by providing additional funds and relaxing the requirements applying to its activities, including the possibility of obtaining an exemption from the requirements of the Law on banking[12], should not lead to the crowding out of credit provided by other credit institutions operating in the market. Furthermore, the ECB notes that the implementation of BGK's tasks within the framework of government programmes must respect the Community rules on State aid. Appropriate safeguards, including risk management and control measures, need also to be put in place to ensure that BGK's enhanced role does not impair the stability of the financial markets.

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

Done at Frankfurt am Main, 16 March 2009.

[signed]

The President of the ECB

Jean-Claude TRICHET

11 See ECB Opinion CON/2008/80 of 28 November 2008 at the request of the Polish Minister for Finance on a draft law on the provision of Treasury support to financial institutions and ECB Opinion CON/2009/19 of 9 March 2009 at the request of the Polish Minister for Finance on a draft law on the recapitalisation of certain financial institutions.

12 Article 128b of the Law on banking, as amended by Article 7 of the draft law.