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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 16 September 2010

on the extension of the Irish State guarantee of certain liabilities of credit institutions

(CON/2010/71)

Introduction and legal basis

On 10 September 2010 the European Central Bank (ECB) received a request from the Irish Minister for Finance (hereinafter the 'Minister') for an opinion on a draft Credit Institutions (Eligible Liabilities Guarantee) (Amendment) Scheme 2010 (hereinafter the 'draft scheme') amending the Credit Institutions (Eligible Liabilities Guarantee) Scheme 2009 (hereinafter the 'ELG Scheme').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union 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[1], as the draft scheme 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 scheme

The ELG Scheme was signed into law on 9 December 2009. The ECB was consulted on the ELG Scheme at the draft stage and adopted its Opinion CON/2009/56[2]. Subsequently the ECB adopted its Opinion CON/2009/92 on proposed amendments to the ELG Scheme.

The Irish Government now proposes a prolongation of the validity of the ELG Scheme by three months, i.e. that eligible liabilities may be issued until 31 December 2010 together with some minor technical changes.

2. The appropriate time to consult the ECB

2.1 The ECB notes that the Minister has requested that the ECB provides its opinion as soon as possible in order to ensure that Union State aid approval for the draft scheme can be obtained

1 OJ L 189, 3.7.1998, p. 42.

2 All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

quickly and the draft scheme presented for parliamentary approval. The ECB points out that, in cases of particular urgency which do not allow for a normal consultation period, the consulting authority may indicate the urgency in the consultation request and ask for a shorter deadline for the ECB's opinion to be adopted. This does not prejudice the consulting authority's duty under Articles 127(4) and 282(5) of the Treaty to consult the ECB on national draft legislative provisions falling within its fields of competence in due course of the national legislative process. The second sentence of Article 4 of Decision 98/415/EC provides that the ECB must be consulted 'at an appropriate stage' in the legislative process. This implies that the consultation should take place at a point in the legislative process which affords the ECB sufficient time to examine the draft legislative provisions and to adopt its opinion in all required language versions, and which also enables the relevant national authorities to take the ECB's opinion into consideration before the provisions are adopted. Article 3(4) of Decision 98/415/EC also obliges Member States to suspend the adoption process for draft legislative provisions, pending receipt of the ECB's opinion.

2.2 The ECB would appreciate the Department of Finance giving due consideration to honouring their obligation to consult the ECB in the future, in accordance with Decision 98/415/EC.

3. General observations

3.1 The purpose of the draft scheme is the extension of the issuance period under the ELG Scheme from 29 September 2010 to 31 December 2010. The Minister in his request for an opinion advises that increased pricing will apply to liabilities issued under the draft scheme after 29 September 2010, the precise quantum of which is to be determined in conjunction with the European Commission. The ECB notes that it has not been requested to consider the pricing modalities for the purposes of this Opinion. The Minister also states that a positive assessment by the ECB on financial stability grounds of the requirement for a prolongation of the guarantee of short term and interbank liabilities is considered essential by the European Commission to the Commission's approval process.

3.2 The ECB reiterates the views expressed in previous opinions[3]. In particular, it recalls that coordination of the duration of national financial support schemes across the Union is of crucial importance in order to ensure a level playing field[4].

3.3 Taking into account financial stability considerations, an extension of the ELG Scheme may be beneficial.

3 See Opinions CON/2008/44 and CON/2010/29.

4 See Opinions CON/2009/24, paragraph 3.1, CON/2009/54, paragraph 2.5.2 and CON/2009/73, paragraph 3.2.

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

Done at Frankfurt am Main, 16 September 2010.

[signed]

The Vice-President of the ECB

Vítor CONSTÂNCIO