EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 23 October 2009

on the extension of State Treasury support to financial institutions

(CON/2009/82)

Introduction and legal basis

On 13 October 2009 the European Central Bank (ECB) received a request from the Polish Minister for Finance for an opinion on a draft law amending the Law on the provision of State Treasury support to financial institutions (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 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 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 The draft law amends the Law of 12 February 2009 on the provision of State Treasury support to financial institutions[2] (hereinafter the 'Law of 12 February 2009') on which the ECB was consulted at the drafting stage in November 2008[3]. The Law of 12 February 2009 introduced a scheme whereby various support measures were offered to eligible financial institutions[4], including: (i) State guarantees for the repayment of refinancing credit (extended to a bank by Narodowy Bank Polski) or a credit facility or loan provided within a line of credit (extended by a bank to another bank); (ii) loans of Treasury securities; and (iii) preferential sales of Treasury securities to financial institutions. Under the provisions currently in force, the support measures are available to eligible financial institutions until 31 December 2009[5].

1 OJ L 189, 3.7.1998, p. 42.

2 As published in *Dziennik Ustaw* of 2009 No 39, Item 308.

3 See Opinion CON/2008/80; all ECB opinions are published on the ECB's website at www.ecb.europa.eu.

4 The Law of 12 February 2009, as adopted by the Parliament, specified six categories of financial institutions established in Poland that were eligible for the support measures: banks, credit unions, investment funds, brokerage houses, insurance companies and pension funds.

5 Article 20(1) and (2) of the Law of 12 February 2009.

1.2 Since the Polish Government intends to 'prepare for further potential consequences of the global financial crisis …'[6], the aim of the draft law is to extend the deadline by which eligible financial institutions may apply for support to 31 December 2010[7]. At the same time, attention is drawn in the explanatory memorandum to the fact that 'granting support under the Law must be preceded by a notification of the scheme to the Commission'[8], and that under the existing State aid approval support measures may be applied until 25 March 2010[9]. Hence, the draft law introduces a provision under which the extension will apply from when the Commission's State aid approval is granted[10].

1.3 The draft law does not change the conditions of support, the criteria by which the eligibility of financial institutions is assessed or any parameters of the support scheme other than the deadline by which eligible financial institutions may apply for support.

2. Specific observations

2.1 *Interaction of the draft law with monetary policy decisions*

2.1.1 Since the aim of the draft law is to extend the scope of the support scheme laid down in the Law of 12 February 2009 on which the ECB has already been consulted, the ECB would like to reiterate certain points mentioned in its Opinion CON/2008/80 that are important from the perspective of monetary policy.

2.1.2 First, the ECB notes that the Law of 12 February 2009 does not explicitly exclude interbank deposits from among the obligations that may be secured with a State guarantee. Although the draft law amends the Law of 12 February 2009, the ECB understands that it does not include amendments which explicitly exclude interbank deposits. In this respect, the ECB reiterates its view that State guarantees to cover interbank deposits should be avoided as they have the potential to interfere with the conduct of the central bank's liquidity-providing operations, and thus have an impact on the transmission of Narodowy Bank Polski's monetary policy decisions[11].

2.1.3 Second, the ECB understands that the Law of 12 February 2009 introduces an explicit legal basis for the provision of State guarantees securing the repayment of Narodowy Bank Polski's refinancing credit, including in cases where such credit is provided as emergency liquidity assistance (ELA). In this context the ECB would like to reiterate[12] that, in order to ensure that the extension by national central banks of ELA secured by a State guarantee complies with the monetary financing prohibition, it is essential that the State guarantee covers 100 % of the amount

6 See the explanatory memorandum to the draft law, p. 1.

7 Article 20(1) of the Law of 12 February 2009, as amended by Article 1(1) of the draft law.

8 See the explanatory memorandum to the draft law, p. 1.

9 Case No N 208/2009, approval granted on 25 September 2009 for a period of six months from that date.

10 See Article 1(2) of the draft law, adding a new paragraph 3 in Article 20 of the Law of 12 February 2009.

11 See sub-paragraph 3.2(i) of Opinion CON/2008/80; see also, for example, paragraph 3.2 of Opinion CON/2008/50 and paragraph 2.3 of Opinion CON/2008/54.

12 See paragraph 4.3 of Opinion CON/2008/80.

of the credit where such guarantee would constitute the sole form of collateral for the ELA operation, and not only up to 50 % of the amount remaining for repayment, as stated in the Law of 12 February 2009[13].

2.2 *Temporary nature of the scheme*

In line with the conclusions of the Ecofin Council of 7 October 2008 and the Declaration issued by the Heads of State of the euro area on 12 October 2008, the ECB notes that harmonisation of the measures implemented at national level is essential to ensure the integration of financial markets within the European Union. In this regard, the ECB emphasises that coordination regarding the duration of national financial support schemes across the EU is of crucial importance in order to ensure a level playing field[14]. In addition, the ECB stresses the need for national support measures to be temporary in nature[15]. It is therefore assumed that the temporary nature of the support scheme introduced under the Law of 12 February 2009 is essentially maintained under the draft law and that the involvement of the Polish State will be limited in time.

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

Done at Frankfurt am Main, 23 October 2009.

[signed]

The President of the ECB

Jean-Claude TRICHET

13 See Article 4(2) of the Law of 12 February 2009.

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

15 See ECB Opinions CON/2009/24, paragraph 2.2, CON/2009/62, paragraph 3.3 and CON/2009/73, paragraph 3.2.