EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 25 March 2009

at the request of the Hungarian Minister for Finance
on a draft government regulation on the procedural rules for State guarantees in the interests of stabilising the financial system

(CON/2009/28)

Introduction and legal basis

On 17 March 2009 the European Central Bank (ECB) received a request from the Hungarian Minister for Finance for an opinion on a draft government regulation on the procedural rules for State guarantees in the interests of stabilising the financial system (hereinafter the 'draft regulation').

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 regulation 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 regulation

1.1 The legal basis for the adoption of the draft regulation is the Law on strengthening the financial intermediary system (hereinafter the 'Law')[2], which was intended to limit the effects of the global financial crisis in Hungary and maintain its financial stability. To that end, the Law provides *inter alia* that the Hungarian State is authorised to guarantee credit institutions' debts vis-à-vis their creditors subject to the cumulative fulfilment of the following conditions: (a) the Chair of the Hungarian Financial Supervisory Authority's Supervisory Council and the Governor of the Magyar Nemzeti Bank (MNB) jointly propose the guarantee; (b) the debt is based on a loan agreement or debt security; (c) the credit institution's debt maturity is between three months and five years; (d) the credit institution's debt arises between the entry into force of the draft law and 31 December 2009; (e) the debt is denominated in euro, Swiss francs or forint. The aggregated

1 OJ L 189, 3.7.1998, p. 42.

2 Act CIV/2008 on reinforcing the stability of the financial intermediary system. *Magyar Közlöny*, 22 December 2008, p. 24618.

amount of the State guarantee may not exceed HUF 1 500 billion. Article 7(8) of the Law provides that procedural rules related to the guarantees provided under the Law shall be laid down in a regulation by the Government.

1.2 The draft regulation lays down detailed procedural provisions for applications for and grants of State guarantees to beneficiary institutions. It sets out the procedure for the approval of applications for guarantees, the requirements relating to the provision of information, and detailed rules for enforcing the guarantees. The draft regulation also provides that agreements entered into with credit institutions must specify the credit institutions' commitments in relation to lending activities and other commitments and the consequences of breaching such commitments.

1.3 In line with the Law, the draft regulation will apply until 31 December 2009.

2. General observations

2.1 As stated, the draft regulation lays down detailed provisions for implementing the Law, on which the ECB commented in its Opinion CON/2008/81[3]. The observations made in Opinion CON/2008/81 also apply to the draft regulation.

2.2 In particular, in line with the 'Declaration on a concerted European action plan of the euro area countries' issued by the Heads of State of the euro area on 12 October 2008 (hereinafter the 'Declaration')[4], Member States must act in a coordinated manner to avoid significant differences in national implementation having a counter-productive effect and creating distortions in global banking markets. The Declaration acknowledges the need to work in cooperation with the ECB to ensure consistency with the Eurosystem's management of liquidity and compatibility with its operational framework[5].

2.3 Moreover, the ECB emphasises the importance of ensuring that the proposed arrangements comply with the relevant Community law provisions, including European Union single market principles and financial services legislation, as well as competition and State aid rules.

2.4 In paragraph 3.5 of its Opinion CON/2008/81 the ECB noted that State guarantees to cover interbank deposits should be avoided as they have the potential to interfere with the conduct of a central bank's liquidity-providing operations, and thus with the transmission of monetary policy decisions[6]. In particular, the ECB considered that State guarantees to be provided under the Law could relate to the repayment of unsecured loans drawn by a borrower bank from another bank, in which case the guarantee could have the same effect as a guarantee for the repayment of an

3 ECB Opinion CON/2008/81 of 1 December 2008 at the request of the Hungarian Ministry of Finance on a draft law on strengthening the financial intermediary system.

4 The Declaration is available on the French Presidency's website at www.ue2008.fr.

5 See paragraphs 2.2 and 3.2 et seq. of Opinion CON/2008/81.

6 See paragraph 3.2 of 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.

interbank deposit. In this context, the ECB reiterates its recommendation that the provision of State guarantees which have the same effect as guarantees for deposits should be avoided.

2.5 Finally, the ECB refers to the Recommendations of the Governing Council of the ECB on government guarantees for bank debt[7]. On this basis, the ECB reiterates its position that the price of a State guarantee should be risk-based and market-oriented, and determined on the basis of the costs of a corresponding guarantee in the market. It is important that the pricing of a State guarantee should link the level of charges to be paid by a credit institution receiving a guarantee to the residual maturities of the guaranteed obligations with maturities exceeding one year.

3. Specific observations

In line with the Law, the draft regulation provides for the involvement of the MNB, but limited only to the process of granting guarantees. In particular, the ECB understands that the Governor of the MNB gives his opinion on whether the provision of a guarantee to a given credit institution is justified in the light of the liquidity situation and the role of the credit institution in the financial system. It is understood that the involvement of the MNB will not go beyond this advisory role. In this context, the ECB recommends that the MNB should also be informed when the activation of a guarantee is expected, as provided for in Article 7(1) of the draft regulation in the case of the minister responsible for the state budget and the Government Debt Management Agency.

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

Done at Frankfurt am Main, 25 March 2009.

[signed]

The President of the ECB

Jean-Claude TRICHET

7 See the Recommendations of the Governing Council of the European Central Bank on government guarantees for bank debt, issued on 20 October 2008 and available on the ECB's website at www.ecb.europa.eu.