EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 26 July 2013

on measures to encourage long-term lending

(CON/2013/55)

Introduction and legal basis

On 26 June 2013, the European Central Bank (ECB) received a request from the Nationale Bank van België/Banque Nationale de Belgique (NBB), acting on behalf of the Belgian Ministry of Finance, for an opinion on a draft law containing various provisions relating to limited purpose loans for socially responsible projects (hereinafter the 'draft law').

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 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 relates to the NBB. 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 aims to encourage long-term saving by retail investors to facilitate the collection by credit institutions of funds available for long-term lending to socially responsible projects and, thereby, to boost economic activity. To this end, following the entry into force of the draft law, certain types of savings certificates issued and fixed-term deposits collected by certain credit institutions will benefit from a favourable tax treatment i.e. a reduction of the withholding tax rate from 25% to 15%[2]. This is subject to the credit institutions only using the collected funds to grant limited purpose loans, i.e. to finance eligible projects, in compliance with the conditions set out in the draft law.

1.2 The benefit of this specific tax regime is subject to conditions relating to: (a) the savings certificates and fixed-term deposits, (b) the contracting credit institution, (c) the eligible

1 OJ L 189, 3.7.1998, p. 4.

2 Articles 22 and 23 of the draft law, amending Article 171, 3° and Article 269 of the Belgian Income Tax Code.

beneficiaries of the limited purpose loans[3], (d) the type of projects to be financed by such loans[4], and (e) the effective allocation of the collected funds to the financing of eligible projects[5]. In the event of a breach of the allocation requirements by the credit institution concerned, the latter will have to pay to the tax authorities 10% of the income paid or apportioned to the holders of the savings certificates or fixed-term deposits; the investors will not be affected and will retain the benefit of the reduced withholding tax[6].

1.3 The Financial Services and Markets Authority[7] will be responsible for the conditions relating to the collection of funds with investors, whilst the NBB will be responsible for monitoring the credit institution's compliance with the specific accounting rules and the allocation requirements[8]. In this respect, the draft law establishes specific reporting requirements to ensure that the NBB has all the data necessary to verify compliance. Pursuant to the Explanatory Memorandum to the draft law these tasks fall within the NBB's current prudential supervision competences[9]. The draft law specifies that for the purpose of this new responsibility, the NBB may exercise all of the relevant powers it has pursuant to the Law of 22 February 1998 establishing the Organic Statute of the Nationale Bank van België/Banque Nationale de Belgique, and the special laws applicable to credit institutions[10].

2. General observations

The draft law introduces measures of economic policy by using a tax incentive in the form of a reduced withholding tax rate. As regards tax incentives, it is essential to reduce the risk of abuse. Against this background, the ECB welcomes the clarifications made with respect to the criteria for eligible funding instruments (i.e. savings certificates and term deposits)[11]. These clarifications are in line with the basic rationale stipulated in the Explanatory Memorandum, namely that the purpose of the draft law is not for credit institutions to make an additional interest margin by way of a reduced rate[12].

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3 Article 2, 5° of the draft law. In addition, the income generated by the financed project must be subject to taxes in Belgium (Article 2, 9° of the draft law, Explanatory Memorandum p. 8).

4 The eligible projects must have a socio-economic dimension; the concrete eligibility criteria will be defined in a Royal Decree (Article 8 of the draft law).

5 Articles 5, 9 and 10 of the draft law. Specific accounting rules are established to allow identification of the savings collected by the credit institution and their subsequent allocation (Article 6 of the draft law). The allocation of the funds may occur indirectly, through an interbank loan, provided that the credit institution receiving such a loan directly provides the funds to the financing of an eligible project (Article 5 of the draft law).

6 Article 24 of the draft law and commentary in the Explanatory Memorandum, p. 22.

7 Articles 16 to 19 of the draft law, and commentary in the Explanatory Memorandum, p. 20.

8 Article 12 to 15 of the draft law.

9 Commentary of Chapter IV of the draft law in the Explanatory Memorandum, p. 18.

10 Article 12 of the draft law.

11 Under Article 2, 1° of the draft law, the savings certificates are defined as non-equity securities referred to in Article 16, §1, 6° of the Law of 16 June 2006 concerning public offers of investment instruments and admission of investment instruments for trading on regulated markets. Article 4 of the draft law lays down a number of additional conditions to be met by these instruments, as well as by eligible fixed term deposits (e.g. minimum maturity of 5 years, coverage by a deposit guarantee scheme, and alignment with the market rate). See commentary on Article 4 in the Explanatory Memorandum, p. 10.

12 See commentary on Article 4 in the Explanatory Memorandum, esp. p. 13.

3. Specific observations

3.1 The ECB understands that the main purpose of the monitoring task entrusted to the NBB under the draft law is to ensure that the tax incentive is not diverted from its original aim, which is to foster the financing of eligible projects[13]. Since the draft law provides for the NBB to be fully reimbursed for the costs incurred in carrying out this new task by a contribution from credit institutions[14], it does not directly raise concerns regarding monetary financing or financial independence[15].

3.2 However, the draft law would raise concerns regarding compliance with the prohibition on privileged access under Article 124 of the Treaty and Council Regulation (EC) No 3604/93 of 13 December 1993 specifying definitions for the application of the prohibition of privileged access referred to in Article 104a of the Treaty[16] if the tax advantages established for the benefit of persons that acquire savings certificates from or place term deposits with credit institutions had the effect of putting private and public institutions on an unequal footing, for instance, by encouraging credit institutions to lend to public sector borrowers or to buy Belgian public sector bonds. Although there are no such immediate concerns due to the generic character of the draft law[17], the ECB underlines that full compliance with the prohibition on privileged access will need to be ensured in the actual implementation of the draft law, *inter alia*, when defining the criteria for eligible projects[18] and for sufficiently liquid and low-risk assets[19].

3.3 The rationale underlying this new responsibility primarily concerns tax considerations. Given that the NBB has no competence in respect of fiscal matters[20] when carrying out its prudential supervisory tasks, the objectives and criteria that will assist the NBB in using its supervisory powers for the purpose of monitoring the draft law should be clarified, to avoid conflict of interest with its supervisory tasks.

Furthermore, the obligation to professional secrecy[21] prevents the NBB from notifying the Ministry for Finance of any breach of the provisions that it is responsible for monitoring under the draft law.

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13 Commentary on Article 6 and Chapter IV of the draft law in the Explanatory Memorandum, p. 14 and 18.

14 Article 15 of the draft law, see Opinion CON/2012/35. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

15 With respect to the task of creating a central register of bank account numbers see Opinions CON/2011/30 and CON/2011/98.

16 OJ L 332, 31.12.1993, p. 4–6.

17 Article 2, 5° of the draft law defines the eligible borrowers as a government, government institution or a company, whether or not within the framework of a collaboration agreement. Credit for individuals falls outside the scope of the draft law (commentary on Article 2, 4° of the draft law in the Explanatory Memorandum, p. 5).

18 Article 8 of the draft law; these criteria will be laid down in an implementing Royal Decree.

19 A Royal Decree will implement Article 10(3) of the draft law, which lays down that the collected funds must be invested in sufficiently liquid and low-risk assets, generating a yield in line with market rates, pending their allocation to the financing of an eligible project.

20 Article 36/4 of the Law of 22 February 1998.

21 Article 35 of the Law of 22 February 1998.

In this respect, the NBB only has the powers to denounce criminal offences to the judicial authorities[22], or to notify information to statutory auditors[23].

3.4 Credit institutions granting interbank loans with the funds collected under the favourable tax regime will be required to ascertain the final allocation of the funds to the financing of an eligible project[24]. The ECB believes that this is best achieved by including a relevant requirement in the terms and conditions of the interbank loans, restricting the use of the funds received to eligible projects.

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

Done at Frankfurt am Main, 26 July 2013.

[signed]

The President of the ECB

Mario DRAGHI

22 Article 36/13, 2° of the Law of 22 February 1998, and Article 20 of the draft law, defining the breaches of Articles 5, 6, 9, 10 and 11 of the draft law as criminal offences.

23 Article 36/14, § 1, 9° of the Law of 22 February 1998.

24 Articles 5, 8 and 10 of the draft law.