EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 29 January 2010

on measures to support bank lending to businesses

(CON/2010/14)

Introduction and legal basis

On 8 January 2010 the European Central Bank (ECB) received a request from the President of Narodowy Bank Polski (NBP) for an opinion on a draft resolution on promissory notes eligible for discounting at Narodowy Bank Polski and on the rules and procedures applicable to the discounting of promissory notes (hereinafter the 'draft resolution')[1].

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 Article 2(2) 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 resolution relates to the introduction of a new instrument of monetary policy in a Member State that has not adopted the euro. 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 resolution

1.1 Under Article 44 of the Law on Narodowy Bank Polski[3], NBP may accept bills of exchange and promissory notes from banks for discounting and rediscounting, and the eligible types of such bills and notes are specified by resolution of the NBP Management Board. Pursuant to this mandate, the rules governing the rediscounting mechanism were defined in 1999[4]. The purpose of the draft resolution is to introduce a discounting mechanism under which NBP will accept for discounting promissory notes presented by banks, applying to such notes the discount rate to be set by the Monetary Policy Council.

1.2 The draft resolution is a measure designed to address the current unfavourable market conditions restraining banks' lending to businesses. To this end, it introduces discount credit, a new

1 Draft resolution of 7 January 2010.

2 OJ L 189, 3.7.1998, p. 42.

3 The Law of 29 August 1997 on Narodowy Bank Polski (consolidated text: *Dziennik Ustaw* (Dz. U.) of 2005 No 1, item 2).

4 Resolution No 2/98 of the Management Board of Narodowy Bank Polski of 27 February 1998 on the types of bills of exchange eligible for rediscounting with Narodowy Bank Polski, and specifying the rules and procedures applicable to the rediscounting of bills (as published in *Dziennik Urzędowy NBP* of 9 March 1998 No 3, item 5).

refinancing instrument enabling NBP to indirectly finance banks' lending to businesses without engaging in direct relationships with original borrowers[5].

1.3 The draft resolution specifies the eligibility criteria and procedural set-up applicable to the proposed discounting instrument. The following are eligible to submit promissory notes for discounting at NBP: (i) domestic banks; (ii) branches of foreign banks; and (iii) branches of credit institutions[6], which (a) have an account with NBP; and (b) have entered with NBP into a discount credit agreement. Promissory notes[7] with maturities of less than one year are eligible for discounting at NBP, if they meet general requirements specified in the Law on bills of exchange[8] and additional requirements set out in the draft resolution[9].

2. ECB comments

2.1 The ECB understands that the scope of the draft resolution covers credit institutions established in Poland, including subsidiaries of foreign credit institutions, as well as branches of European Economic Area (EEA) credit institutions from outside Poland. The ECB welcomes this, as it ensures a level playing field for all domestic and foreign credit institutions.

2.2 Although non-participating Member States retain their powers in the field of monetary policy, it is nevertheless beneficial for them to gradually achieve consistency with Eurosystem standards so that credit institutions operating in their territories can become acquainted with the requirements that will apply once these Member States have adopted the euro. Such gradual harmonisation prior to the adoption of the euro will contribute to the smooth integration of the national central bank (NCB) into the Eurosystem. In this context, the ECB draws NBP's attention to the fact that the Eurosystem's single list of eligible collateral does not include promissory notes other than those which are issued by credit institutions that are eligible counterparties to the Eurosystem's monetary policy operations, which are secured by a pool of residential mortgages, and which comply with certain other eligibility criteria[10].

2.3 The requirement for lending to be based on adequate collateral, specified in Article 18 of the Statute of the European System of Central Banks and of the European Central Bank, does not presently apply to NBP due to a derogation in Article 42(1) of the Statute. However, in the interest

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5 See the explanatory memorandum to the draft resolution, p. 1. See also 'Monetary policy guidelines for the year 2010', p. 18 (available on NBP's website at www.nbp.pl).

6 As defined in Articles 2, 4(3) and 4(1)(1), (2) and (17) of the Law on banking of 29 August 1997 (consolidated text: Dz. U. of 2002 No 72, item 665) – credit institutions registered in Poland are legally referred to as 'banks' (this definition does not cover the Polish version of credit unions), the term 'credit institution' as used in Polish law only relates to EEA credit institutions from outside Poland, and non-EEA credit institutions are referred to as 'foreign banks'.

7 In the English version of this opinion, the terms 'bill of exchange' and 'promissory note' are used in this Opinion in the light of their respective definitions both in the relevant convention (see Article 1 vs. Article 75 of the Convention Providing a Uniform Law for Bills of Exchange and Promissory Notes (Geneva, 1930)) and in the relevant provisions of Polish law (see Article 1 vs. Article 101 of the Law on bills of exchange referred to in footnote 8 below).

8 The Law of 28 April 1936 on bills of exchange (Dz. U. of 1936 No 37, item 282, and of 2006 No 73, item 501).

9 See paragraphs 1(1)(2)-(8) of the draft resolution.

10 See Section 6.2.2 of Annex I to Guideline ECB/2000/7 of 31 August 2000 on monetary policy instruments and procedures of the Eurosystem (OJ L 310, 11.12.2000, p. 1).

of encouraging NCB lending only against adequate collateral, the ECB notes that the draft resolution might benefit from including an express provision requiring examination of the creditworthiness of original borrowers, complementing those safeguards which are already included in it and in the template discount credit agreement attached to it[11], as well as the general statutory requirement for credit institutions to ensure creditworthiness of borrowers[12].

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

Done at Frankfurt am Main, 29 January 2010.

[signed]

The President of the ECB

Jean-Claude TRICHET

11 For example, the re-endorsement mechanism under which the promissory notes which serve as discount credit collateral will not be presented by NBP to the drawers for repurchase, but will be re-indorsed to the banks which presented them for discounting, while at the same the current account of the bank held with NBP will be debited with the full amount of the notes (see paragraph 12(1) of the draft resolution); the acceleration clause applied in the event of the bank's default (see paragraph 4(5) of the draft resolution); the right for NBP to review the relevant credit documentation (see paragraph 2(3) of the template discount credit agreement); the requirement for banks, when presenting promissory notes for discounting, to certify that that they are not aware of the drawer having defaulted in the past in the repayment of its obligations under a promissory note or a bill of exchange (see paragraph 4(3)(2) of the draft resolution); the right for NBP to terminate the discount credit agreement with immediate effect (see paragraph 6(1) of the template discount credit agreement).

12 Article 70(1) of the Law on banking referred to in footnote 6.