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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 29 October 2008

at the request of the Swedish Ministry of Finance on a draft ordinance on State guarantees for banks etc.

(CON/2008/62)

Introduction and legal basis

On 27 October 2008 the European Central Bank (ECB) received a request from the Swedish Ministry of Finance for an opinion on a draft ordinance on State guarantees for banks etc. (hereinafter the 'draft ordinance').

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 ordinance 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 ordinance

The draft ordinance implements the Law on State aid to credit institutions (hereinafter the 'Law')[2]. The draft ordinance provides for the granting of aid, in the form of State guarantees for debt obligations, to banking companies, savings banks, members' banks and credit market companies, within the framework of the Law. It specifies which credit institutions are eligible for receiving the guarantees and the scope of the guarantee commitment. It also sets out the terms and conditions under which the National Debt Office, which is responsible for taking decisions on the aid, will carry out its tasks.

1 OJ L 189, 3.7.1998, p. 42.

2 See ECB Opinion CON/2008/59 of 24 October 2008 at the request of the Swedish Ministry of Finance on a draft proposal on stabilising measures for the Swedish financial system.

2. General observations

2.1 Valuation and scope of the State guarantee

2.1.1 In accordance with the 'Declaration on a concerted European action plan of the euro area countries' of 12 October 2008 by the Heads of State of the euro area (hereinafter the 'Declaration')[3] and as endorsed by the European Council on 16 October 2008, Member States have to act in a coordinated manner to avoid significant differences in national implementation that could have a counter-productive effect, creating distortions in global banking markets.

2.1.2 According to Sections 2, 4, 6 and 7 of the draft ordinance, the State guarantees are only to be provided for bank debt issuance, defined as debt with a maturity of more than three months but less than five years, which thereby excludes interbank deposits from the scope of the State guarantees. The ECB welcomes such arrangements for granting government guarantees on bank debt and considers that the proposed arrangements in their practical implementation should aim at: (i) addressing the funding problems of liquidity-constrained solvent banks by improving the functioning of the market for bank debt of longer-term maturity; (ii) preserving the level-playing-field among financial institutions and avoiding market distortions; and (iii) ensuring consistency with the management of liquidity by Sveriges Riksbank.

2.1.3 As regards the price to be charged for granting a guarantee according to Section 13 of the draft ordinance, the ECB notes that the price for the guarantee will be risk-based and determined on the basis of the costs of a corresponding guarantee under normal market conditions. In this respect, for the sake of transparency, a further more precise indication should be given on the method to be used to calculate the charges. In the same vein, it is also noted that the draft ordinance should provide for potential cases where no market price is available for the risk of some assets. Moreover, the ECB would remind the Swedish authorities that it is of crucial importance to ensure harmonisation of the price for such guarantees within the EU where a level-playing-field is essential.

2.2 Involvement of the central bank

The ECB notes that according to Section 8 of the draft ordinance, Sveriges Riksbank and the Financial Supervisory Authority will be consulted on matters concerning aid, which includes regulations issued by the National Debt Office under the draft ordinance. The ECB understands that this function will be performed without prejudice to Sveriges Riksbank's independence and in compliance with Treaty provisions.

2.3 Conditions of support

2.3.1 The support in the form of State guarantees provided to credit institutions is made subject to a number of conditions specified in Sections 10 and 11 of the draft ordinance, which are aimed at ensuring that, *inter alia*, (i) the public authorities have at their disposal appropriate powers to

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

supervise and monitor the use of the provided State guarantee, and (ii) the provided State guarantee is not used by the supported credit institution to expand its operations as a result of the support it received. The ECB considers that such measures are in accordance with the principles of the Declaration, in particular the need to avoid any possible abuse of the provided support at the expense of entities not benefiting from the support arrangements[4].

2.3.2 The ECB further notes that, under Section 15 of the draft ordinance, institutions applying for a State guarantee will provide the National Debt Office with information needed to operate the support scheme. In this regard, the ECB reiterates that the general principles of secrecy and confidentiality of information provided by financial institutions should be adequately safeguarded.

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

Done at Frankfurt am Main, 29 October 2008.

[signed]

The President of the ECB

Jean-Claude TRICHET

4 See paragraph 3.1 of Opinion CON/2008/59.