EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 13 November 2008

at the request of the Spanish Ministry for Economic Affairs and Finance
on a draft order implementing Royal Decree-Law 7/2008 authorising State guarantees

(CON/2008/67)

Introduction and legal basis

On 11 November 2008 the European Central Bank (ECB) received a request from the Spanish Ministry for Economic Affairs and Finance for an opinion on a draft order implementing Royal Decree-Law 7/2008 of 13 October adopting urgent financial and economic measures in relation to the concerted European action plan for the euro area countries, in particular Article 1 authorising State guarantees (hereinafter the 'draft order').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and on the third and sixth indents 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 provisions relate to the Banco de España and to rules applicable to financial institutions that 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 order

The draft order will implement Article 1 of Royal Decree-Law 7/2008 by laying down rules on the conditions for the guarantees, the eligibility of institutions and operations, the applicable fees and the requesting and granting procedures.

2. General observations

The ECB adopted Opinion CON/2008/52 of 17 October 2008 on Royal Decree-Law 7/2008 and is now consulted on its implementing legislation. In this context, the ECB notes that the observations made in Opinion CON/2008/52 also apply to this draft order.

1 OJ L 189, 3.7.1998, p. 42.

3. Specific comments

3.1 *Eligibility for support*

The ECB welcomes that Article 2 of the draft order is in line with the Commission's guidance on compliance by the financial sector support schemes with State aid rules[2], in particular with the eligibility criteria that all institutions incorporated in the Member State concerned, including subsidiaries, with significant activities in that Member State, should be covered by the scheme. However, the ECB notes that there are no provisions ensuring that the beneficiary institutions will not be unfairly advantaged by making undue use of their guaranteed status to engage in a heightened level of activities which create market distortions and facilitate abnormal balance sheet growth[3]. In this regard, the ECB reiterates the importance of establishing appropriate safeguards such as limits to marketing of financial products or to expansion of activities on the basis of the State guarantees.

3.2 *Pricing*

The ECB welcomes that Article 4 of the draft order, in line with paragraph 3.4 of ECB Opinion CON/2008/52, recognises the need for harmonising pricing with the ECB's involvement. The ECB appreciates that the draft order's Annex on pricing of the State guarantee is broadly in line with the Eurosystem's recommendations on government guarantees on bank debt. In particular, it is important to ensure that the price of the State guarantee is risk-based and market-oriented in that it is determined on the basis of the costs of a corresponding guarantee in the market. However, for legal certainty reasons, the ECB recommends deleting the specific reference to the Eurosystem's recommendations on government guarantees on bank debt, which is not a legal act and is subject to revision. Finally, the ECB reiterates that it is crucial to ensure the harmonisation and coordination of the price determination of State guarantees within the European Union, given that a level playing field is of essence.

3.3 *Relationship with the single monetary policy*

As stated in previous opinions, the ECB considers that extending State guarantees to interbank deposits should be avoided, as it could entail a substantial distortion in the various national segments of the euro area money market by potentially increasing short-term debt issuance activity across Member States and therefore impairing the implementation of the single monetary policy. Therefore, the ECB welcomes that, according to Article 3(b) of the draft order, no interbank deposits may be covered by State guarantees.

---

2 See 'Communication from the Commission – The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis' of 13 October 2008, available on the Commission's website at www.ec.europa.eu (hereinafter the 'Commission Guidance').

3 See point 27 of the Commission Guidance; see, e.g. paragraph 3.4 of ECB Opinion CON/2008/48 of 15 October 2008 at the request of the Irish Minister for Finance on a draft Credit Institutions (Financial Support) Scheme 2008.

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

Done at Frankfurt am Main, 13 November 2008.

[signed]

The President of the ECB

Jean-Claude TRICHET