

III

(Preparatory acts)

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 7 January 2013

on a proposal for a Council regulation establishing a facility for providing financial assistance for Member States whose currency is not the euro**(CON/2013/2)**

(2013/C 96/03)

Introduction and legal basis

On 19 July 2012, the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a Council regulation establishing a facility for providing financial assistance for Member States whose currency is not the euro ⁽¹⁾ (hereinafter the 'proposed regulation').

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, since the proposed regulation contains provisions falling within the ECB's fields of competence. In particular, the ECB administers assistance granted to Member States whose currency is not the euro (hereinafter 'non-euro area Member States') under the current facility, established by Regulation (EC) No 332/2002 ⁽²⁾, and would have a role in the assessment, monitoring and administration of financial assistance under the proposed regulation. 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. General observations

The proposed regulation is intended to replace Regulation (EC) No 332/2002 in order to set up medium-term financial assistance for non-euro area Member States under more flexible terms and with a view to ensuring a larger level playing field between euro area and non-euro area Member States, in response to the current financial crisis. The proposed regulation introduces instruments and procedures similar to those already developed for providing financial assistance to Member States whose currency is the euro (hereinafter 'euro area Member States'). Whereas Regulation (EC) No 332/2002 (following its last amendment) explicitly provided only for medium-term financial assistance in the form of loans to non-euro area Member States conditional on the adoption of adjustment programmes, the proposed regulation makes available two additional financing instruments: a precautionary conditioned credit line (PCCL) and an enhanced conditions credit line (ECCL). Indeed, the PCCL and the ECCL are among the instruments that might be used to provide assistance to the euro area Member States. The limit of medium-term financial assistance that may be granted under the proposed regulation has remained the same as under Regulation (EC) No 332/2002, being EUR 50 billion.

The ECB understands that until such time that Regulation (EU) No 407/2010 establishing a European financial stabilisation mechanism ⁽³⁾ is repealed, Union financial assistance to the non-euro area Member

⁽¹⁾ COM(2012) 336 final.

⁽²⁾ Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments (OJ L 53, 23.2.2002, p. 1).

⁽³⁾ Council regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism (OJ L 118, 12.5.2010, p. 1).

States may take place under Regulation (EU) No 407/2010 or the proposed regulation. It therefore welcomes the effort to strive for as identical as possible instruments available to the euro and non-euro area Member States and the effort to synchronise the procedures for granting such assistance. Taking into account that the European Financial Stabilisation Mechanism (EFSM) will be discontinued ⁽¹⁾ in the light of the entry into force of the Treaty on the European Stability Mechanism, it may be beneficial to clarify whether any assistance that might be granted to a non-euro area Member State under Regulation (EU) No 407/2010 would be governed by the proposed regulation after the discontinuation of the EFSM.

2. *Specific observations*

- 2.1. The ECB takes note of the introduction of credit lines allowing for assistance for non-euro area Member States whose economic and financial situation is fundamentally sound ⁽²⁾. The ECB considers that the granting of the credit lines is compatible with Article 143 of the Treaty, which envisages the Union's possibility of intervening not only when a non-euro area Member State is in difficulties, but also when it is 'seriously threatened with difficulties' as regards its balance of payments, where such potential difficulties are liable in particular to jeopardise the functioning of the internal market. At the same time, the ECB considers very important a close interpretation of the eligibility criteria when assessing access to the credit lines, and strict compliance with them over time. It is indeed of the essence to prevent moral hazard behaviour by the recipients of such credit lines. As in the case of euro area Member States, this will involve a particular effort by all relevant parties.

- 2.2. With respect to the role of the ECB and the Eurosystem, the proposed regulation contains similar provisions regarding the administration of financial assistance, respectively the opening and use of accounts with the national central bank (NCB) of the relevant Member State and of the respective NCB with the ECB. In this respect, the ECB understands that under the proposed regulation it would act as fiscal agent, in accordance with Article 21.2 of the Statute of the European System of Central Banks and of the European Central Bank, and that no financing from the European System of Central Banks would be expected, in compliance with the monetary financing prohibition set out in Article 123 of the Treaty. Therefore, the ECB reiterates that the accounts to be used for the management of this financial assistance at the NCBs and at the ECB will not provide for the possibility of an overdraft ⁽³⁾.

- 2.3. The proposed regulation establishes, in addition to the administration of the loans and credit lines, a broader participation by the ECB in cases of European Union financial assistance to non-euro area Member States than is currently the case under Regulation (EC) No 332/2002. Although the latter limits the ECB's role to the administration of the loan, the ECB has been participating as an observer in the missions to Member States outside the euro area that receive financial assistance under Regulation (EC) No 332/2002. The proposed regulation takes account of this fact and suggests, among other things, that the ECB may cooperate with the Commission as regards the assessment of the sustainability of general government debt and current or potential financing needs, the preparation of macro-economic adjustment programmes, the monitoring of their progress via regular missions, and enhanced surveillance when an ECCL is granted or a PCCL is drawn. Also, in most instances the involvement of the International Monetary Fund (IMF) is sought. Under Regulation (EC) No 332/2002, these activities in the context of medium-term financial assistance for balance of payments purposes were assigned to the Commission alone. The role of the ECB and the IMF under the proposed regulation appears to mirror, to a large extent, the system in place for euro area Member States under the EFSM, the European Financial Stability Facility (EFSF) and the European Stability Mechanism (ESM). Given that the ECB is not the monetary authority of the non-euro area Member States, the ECB would like to distinguish between its involvement in respect of non-euro area Member States and its involvement in respect of euro area Member States, and notes that its role in the proposed cooperation with the Commission will have to be organised within its mandate and with respect for its independence.

⁽¹⁾ See European Council conclusions of 16 and 17 December 2010; http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/118578.pdf

⁽²⁾ Article 4 of the proposed regulation.

⁽³⁾ See the second subparagraph of paragraph 1 of Opinion CON/2009/37 of 20 April 2009 on a proposal for a Council regulation amending Regulation (EC) No 332/2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments (OJ C 106, 8.5.2009, p. 1).

- 2.4. The ECB notes that, in its assessment of the fulfilment of the convergence criteria set out in Article 140 of the Treaty and further detailed in a Protocol attached to the Treaty, it will continue to take into account the implications of international balance of payment support and liquidity assistance for the assessment of exchange rate stability, in particular for the currencies participating in the exchange rate mechanism II, ERM II. This will continue to be the case in the future and will therefore also apply to any assistance granted under the proposed regulation.
- 2.5. The ECB notes that the establishment of the proposed regulation cannot have implications for the functioning of ERM II in stage three of Economic and Monetary Union, which will continue to be governed by the existing legal framework ⁽¹⁾.

Where the ECB recommends that the proposed regulation is amended, specific drafting proposals are set out in the Annex accompanied by explanatory text to this effect.

Done at Frankfurt am Main, 7 January 2013.

The President of the ECB
Mario DRAGHI

⁽¹⁾ Agreement of 16 March 2006 between the ECB and the national central banks of the Member States outside the euro area laying down the operating procedures for an exchange rate mechanism in stage three of Economic and Monetary Union (OJ C 73, 25.3.2006, p. 21).

ANNEX

Drafting proposals

Text proposed by the Council	Amendments proposed by the ECB ⁽¹⁾
Amendment 1	
Article 3(2), (3), (7) and (8) and Article 5(2)	
<p data-bbox="256 544 336 571">'Article 3</p> <p data-bbox="256 629 798 757">2. The Commission shall assess, in liaison with the ECB and wherever possible, the IMF, the sustainability of the general Government debt and the current or potential financial needs of the Member State concerned and forward this assessment to the EFC.</p> <p data-bbox="256 815 798 1144">3. The Member State concerned shall prepare in agreement with the Commission, acting in liaison with the ECB and wherever possible, the IMF, a draft macro-economic adjustment programme containing policy requirements and aimed at re-establishing a sustainable balance of payments position and at restoring its capacity to finance itself fully on the financial markets. The draft macro-economic adjustment programme shall take due account of the recommendations addressed to the Member State concerned under Articles 121, 126 and 148 of the Treaty and its actions to comply with them, while aiming at broadening, strengthening and deepening the required policy measures.</p> <p data-bbox="256 1330 293 1357">[...]</p> <p data-bbox="256 1415 798 1693">7. The Commission, in liaison with the ECB and wherever relevant the IMF, shall monitor the progress made in the implementation of the macro-economic adjustment programme via regular review missions. It shall inform the EFC on a quarterly basis. The Member State concerned shall cooperate fully with the Commission and the ECB. It shall in particular provide to the Commission and the ECB all the information that they deem necessary for the monitoring of the programme. The Member State concerned shall also have obligations laid down in Article 6(2).</p> <p data-bbox="256 1789 798 1966">8. The Commission — in liaison with the ECB and wherever possible the IMF — shall examine with the Member State concerned the changes that may be needed to its macro-economic adjustment programme. The Council, acting by a qualified majority on a recommendation from the Commission, shall approve any change to be made to that programme.</p>	<p data-bbox="818 544 898 571">'Article 3</p> <p data-bbox="818 629 1359 757">2. The Commission shall assess, in liaison with the ECB and wherever possible, appropriate, the IMF, the sustainability of the general Government debt and the current or potential financial needs of the Member State concerned and forward this assessment to the EFC.</p> <p data-bbox="818 815 1359 1272">3. The Member State concerned shall prepare in agreement with the Commission, acting in liaison with the ECB taking into account the views of the ECB, should the ECB decide to give advice in this respect, and wherever possible appropriate, acting in liaison with the IMF, a draft macro-economic adjustment programme containing policy requirements and aimed at re-establishing a sustainable balance of payments position and at restoring its capacity to finance itself fully on the financial markets. The draft macro-economic adjustment programme shall take due account of the recommendations addressed to the Member State concerned under Articles 121, 126 and 148 of the Treaty and its actions to comply with them, while aiming at broadening, strengthening and deepening the required policy measures. Where the Member State concerned is a Member State whose currency is participating in ERM II, the commitments under ERM II should be taken into account.</p> <p data-bbox="818 1330 855 1357">[...]</p> <p data-bbox="818 1415 1359 1693">7. The Commission, in liaison with the ECB and wherever relevant appropriate the IMF, shall monitor the progress made in the implementation of the macro-economic adjustment programme via regular review missions. It shall inform the EFC on a quarterly basis. The Member State concerned shall cooperate fully with the Commission and the ECB. It shall in particular provide to the Commission and the ECB all the information that they deem necessary for the monitoring of the programme. The Member State concerned shall also have obligations laid down in Article 6(2).</p> <p data-bbox="818 1789 1359 2040">8. The Commission — in liaison with the ECB taking into account the views of the ECB, should the ECB decide to give advice in this respect, and wherever possible appropriate, acting in liaison with the IMF — shall examine with the Member State concerned the changes that may be needed to its macro-economic adjustment programme. The Council, acting by a qualified majority on a recommendation from the Commission, shall approve any change to be made to that programme.</p>

Text proposed by the Council	Amendments proposed by the ECB ⁽¹⁾
<p>Article 5</p> <p>2. The Commission shall assess, in liaison with the ECB and wherever possible, the IMF, the sustainability of the general Government debt and the current or potential financial needs of the Member State concerned and forward this assessment to the EFC.'</p>	<p>Article 5</p> <p>2. The Commission shall assess, in liaison with the ECB and wherever possible appropriate, the IMF, the sustainability of the general Government debt and the current or potential financial needs of the Member State concerned and forward this assessment to the EFC.'</p>

Explanation

For the avoidance of any doubt with regard to the role of the IMF, it is necessary to use consistent terminology throughout the proposed regulation. Furthermore, the proposed regulation should remain consistent with other comparable legal instruments providing for Union and non-Union financial assistance, e.g. Regulation (EU) No 407/2010, the EFSF Framework Agreement and the ESM Treaty.

The deletion of 'acting in liaison with the ECB' in Article 3(3) and 'in liaison with the ECB' in Article 3(8) and the insertion of 'taking into account the view of the ECB, should the ECB decide to give advice in this respect' in both paragraphs aim at reflecting that the ECB should have less involvement in the preparation of the adjustment programmes. Whilst the remainder of the text proposed by the Council provides for the ECB to have a role which can be described as being more of a monitoring nature, the ECB's role in Article 3(3) and (8) would be one of an institution which develops an economic adjustment programme. The ECB considers it inappropriate to assume such role for a non-euro area Member State given that it is the national central bank of such Member State that is in charge of monetary policy in that Member State. The ECB should therefore not interfere in the independent decision-making of that national central bank by contributing to an economic adjustment programme.

Amendment 2

Article 3(11) and (12)

<p>'11. Where the Member State concerned experiences insufficient administrative capacity or significant problems in the implementation of its programme, it shall seek technical assistance from the Commission which may constitute for this purpose groups of experts with Member States and other European and/or relevant international institutions. Technical assistance may include the establishment of a resident representative and support staff to advise authorities on the adjustment programme implementation.</p> <p>12. The relevant Committee of the European Parliament may offer the opportunity to the Member State concerned to participate to an exchange of views on the progress made in the implementation of the adjustment programme.'</p>	<p>'11. Where the Member State concerned experiences insufficient administrative capacity or significant problems in the implementation of its macro-economic adjustment programme, it shall seek technical assistance from the Commission which may constitute for this purpose groups of experts with Member States and other European and/or relevant international institutions. Technical assistance may include the establishment of a resident representative and support staff to advise authorities on the adjustment programme implementation.</p> <p>12. The relevant Committee of the European Parliament may offer the opportunity to the Member State concerned to participate to an exchange of views on the progress made in the implementation of the macro-economic adjustment programme.'</p>
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Explanation

For the avoidance of doubt as to the nature of the programme referred to and for consistency reasons, it is suggested to refer to the 'macro-economic adjustment programme' throughout the text of the proposed regulation.

Amendment 3

Article 3(10)

<p>'10. At the latest within six months following the decision provided for in paragraph 9, the Council, acting by qualified majority on a proposal from the Commission, may decide to resume the disbursements if it considers that the Member State concerned complies with the agreed terms of the financial assistance. Where such decision has not been adopted within this deadline, no further disbursements of Union financial assistance under this Regulation shall be made.'</p>	<p>'10. At the latest within six months following the decision provided for in paragraph 9, the Council, acting by qualified majority on a proposal from the Commission, may decide to resume the disbursements if it considers that the Member State concerned complies with the agreed terms of the financial assistance. Where such decision has not been adopted within this deadline, no further disbursements of the agreed Union financial assistance under this Regulation shall be made.'</p>
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Text proposed by the Council	Amendments proposed by the ECB (1)
<i>Explanation</i>	
<i>The aim of this suggestion is to clarify that the provision is not intended to preclude access to new financial assistance, which e.g. might be necessary due to certain developments beyond the Member State concerned.</i>	
Amendment 4	
Article 4(1)	
‘1. Access to a PCCL shall be limited to Member States whose economic and financial situation is still fundamentally sound.’	‘1. Access to a PCCL shall be limited to Member States whose economic and financial situation remains is still fundamentally sound.’
<i>Explanation</i>	
<i>The proposed amendment aims to clarify that only Member States whose situation remains fundamentally sound and will not change shortly may access the PCCL. The proposed change aims to ensure that departure from the terminology that has so far been used under the EFSF/ESM legal framework is not understood as implying a material change.</i>	
Amendment 5	
Article 5(5)	
‘5. The Commission and the Member State concerned shall conclude a MoU detailing the conditions attached to the credit line.’	‘5. The Commission and the Member State concerned shall conclude a MoU detailing the conditions attached to the credit line. The Commission shall communicate the MoU to the European Parliament and to the Council. ’
<i>Explanation</i>	
<i>For consistency with Article 3(6), it is proposed to provide for communication of the MoU detailing the conditions attached to the credit line to the European Parliament and to the Council.</i>	
Amendment 6	
Article 11(1)	
‘1. The Member State concerned shall inform the Commission in advance of its intention to draw down funds from its credit line at least 45 calendar days in advance. Detailed rules shall be laid down in the decision referred to in Article 5(5).’	‘1. The Member State concerned shall inform the Commission and the ECB in advance of its intention to draw down funds from its credit line at least 45 calendar days in advance. Detailed rules shall be laid down in the decision referred to in Article 5(5).’
<i>Explanation</i>	
<i>Given that the ECB is allocated certain responsibilities with regard to the administration of the loans, it should be informed at the same time as the Commission of the Member State's intention to draw down funds from its credit line.</i>	
Amendment 7	
Article 12(3)	
‘3. Once the decision on a loan has been made by the Council, the Commission shall be authorised to borrow on the capital markets or from financial institutions at the most appropriate time in between planned disbursements so as to optimise the cost of funding and preserve its reputation as the Union's issuer in the markets. Funds raised but not yet disbursed shall be kept at all times on dedicated cash or securities account which are handled in accordance with rules applying to off-budget operations and cannot be used for any other goal than to provide financial assistance to Member States under the present mechanism.’	‘3. Once the decision on a loan has been made by the Council, or a request from a Member State to draw funds from its credit line has been received , the Commission shall be authorised to borrow on the capital markets or from financial institutions at the most appropriate time in between planned disbursements so as to optimise the cost of funding and preserve its reputation as the Union's issuer in the markets. Funds raised but not yet disbursed shall be kept at all times on dedicated cash or securities account which are handled in accordance with rules applying to off-budget operations and cannot be used for any other goal than to provide financial assistance to Member States under the present mechanism.’

Text proposed by the Council	Amendments proposed by the ECB ⁽¹⁾
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Explanation

It is necessary to extend the scope of Article 12(3) to enable the Commission to borrow on the capital markets or from financial institutions at the most appropriate time in the context of all types of financial assistance, including if a Member State decides to draw funds from its credit line.

Amendment 8

Article 14(2) — Administration of the loans **and credit lines**

<p>‘2. The Member State concerned shall open a special account with its National Central Bank for the management of the Union financial assistance received. It shall also transfer the principal and the interest due under the loan to an account with the ECB fourteen TARGET2 business days prior to the corresponding due date.’</p>	<p>‘2. The Member State concerned shall open a special account with its National Central Bank for the management of the Union financial assistance received. The central bank of the Member State concerned shall open a special account with the ECB. The Member State it shall, by means of the account opened with its central bank, also transfer the principal and the interest due under the loan or credit line to the respective an account with the ECB fourteen TARGET2 business days prior to the corresponding due date.’</p>
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Explanation

It is clarified that the Member State itself does not have an account with the ECB; instead the central bank of the Member State concerned opens an account with the ECB on behalf of that Member State. It is also suggested to clarify that administration concerns not only loans, but also credit lines as these constitute different financing instruments and as such will necessitate opening an account at the ECB.

⁽¹⁾ Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.