EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 26 March 2009

at the request of the Swedish Ministry of Finance on a draft ordinance amending Ordinance 2008:819 on Government guarantees to banks etc

(CON/2009/30)

Introduction and legal basis

On 23 March 2009 the European Central Bank (ECB) received a request from the Swedish Ministry of Finance for an opinion on a draft ordinance amending Ordinance 2008:819 on Government guarantees to 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 is intended to amend Ordinance 2008:819 on Government guarantees to banks and others, which was issued by the Swedish Ministry of Finance on 29 October 2008. The ECB was consulted on Ordinance 2008:819 at the draft stage and issued its Opinion CON/2008/62 on 29 October 2008[2].

Under the current provisions, the Swedish guarantee scheme expires on 30 April 2009. While the scheme and other measures have contributed to the stabilisation of the financial markets, the Swedish Government predicts that markets will not have returned to normal functioning by the end of April 2009 and that further support is therefore required.

1 OJ L 189, 3.7.1998, p. 42.

2 ECB Opinion CON/2008/62 of 29 October 2008 at the request of the Swedish Ministry of Finance on a draft ordinance on State guarantees for banks etc.

To avoid unnecessary uncertainty for affected institutions and the financial markets, the Swedish Government therefore proposes the following changes to the existing guarantee scheme:

(a) Prolonging the period during which guarantees may be provided to 31 December 2009. The possibility of extending the scheme was already mentioned when it was established. The reason for extending the scheme is that the Government wants to send a clear signal that the measures will stay in place for as long as the disturbances in the financial markets remain.

(b) Adjusting the maximum amount of guaranteed instruments per participating institution. As a consequence of the extension of the period during which guarantees may be provided, the Government proposes to adjust the calculation of the maximum limit on guaranteed instruments per institution. The new limit relates to the sum of an institution's debt instruments maturing between 1 September 2008, and 31 December 2009 (hitherto 30 April 2009). The total limit for the scheme of SEK 1 500 billion of debt instruments remains unchanged.

(c) Including uncollateralised debt instruments with terms of up to five years in the scheme. The Government believes that three years' maturity is too short to sustain longer-term lending. This adjustment aims at mitigating the problems identified by banks and corporations in obtaining funding and credit with longer maturities than one to two years respectively.

(d) Adjusting the solvency requirements. Under the current guarantee scheme, the capital requirements for participating institutions are higher than the legal requirements. Only institutions with at least 6 % Tier 1 capital and at least 9 % combined Tier 1 and Tier 2 capital qualify for the scheme. The Swedish government fears that this may have had unwanted consequences, by implicitly setting a new minimum standard for capital ratio requirements. It therefore proposes to adjust the solvency requirements under the scheme in order to bring them in line with the basic legal requirements.

2. General observations

2.1 Extension of the scheme

Regarding the eight-month extension of the guarantee scheme, the ECB emphasises, in line with the Declaration of 12 October 2008 made at the summit of the euro area Member States in Paris[3], that European Union Member States have to act in a coordinated manner, since harmonisation of the expiry of national financial support schemes across the EU is of crucial importance[4].

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3 '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, available on the website of the French Presidency, www.ue2008.fr.

4 This is also in line with what the ECB has stated in its previous recent opinions, see paragraph 3.1 of ECB Opinion CON/2009/24 of 17 March 2009 at the request of the German Ministry of Finance on a draft law on the further stabilisation of the financial market and paragraph 3.2 of ECB Opinion CON/2009/6 of 26 January 2009 at the request of the Danish Ministry of Economic and Business Affairs on a proposal for a Law on State investments in credit institutions and a proposal for a Law amending the Law on financial stability.

2.2 *Maturity of instruments*

Once the guarantee scheme has been amended by the draft ordinance, the ECB understands that bank debt with a maturity of up to five years may be guaranteed. In this respect, the ECB reiterates that such arrangements for the granting of government guarantees on bank debt should, in their practical implementation, aim at: (a) addressing the funding problems of liquidity-constrained solvent banks by improving the functioning of the market for bank debt of longer term maturity; (b) preserving the level playing-field among financial institutions and avoiding market distortions; and (c) ensuring consistency with the management of liquidity by Sveriges Riksbank. As regards the extension of the State guarantee to bank debt of up to five years' maturity, the ECB notes that this measure appears to be in line with the ECB's recommendations[5] for the harmonisation and coordination of State guarantees across the EU and with the Declaration, according to which the euro area governments should make available a government guarantee of new medium term (up to five years) bank senior debt issuance. In this context, and given the integration of the financial markets within the EU, the ECB repeats that the coverage of such guarantees must be harmonised within the EU as regards the maturity of the guaranteed financial instruments in order to maintain a level playing-field, which is here of essence.

2.3 *Capital requirements*

The ECB acknowledges that under the current Swedish guarantee scheme, the capital requirements for participating institutions are higher than the legal requirements, something the draft ordinance aims to change. In this respect, the ECB draws attention to the EU Council Conclusions of 20 January 2009 on bank capital, which state that 'the provision of capital to the banking sector is not intended to create new, higher statutory capital requirements for the banking sector. Banks' capital requirements should continue to be assessed on a case-by-case basis, in line with existing EU regulation, based on their individual risk-profile and rigorous stress-testing. It should be recognised that capital provides a buffer both to withstand the challenging economic conditions and to maintain lending to creditworthy borrowers'[6].

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

Done at Frankfurt am Main, 26 March 2009.

[signed]

The President of the ECB

Jean-Claude TRICHET

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5 The reference is to the Recommendations of the Governing Council of the European Central Bank on the government guarantees for bank debt of 20 November 2008, available on the ECB's website at www.ecb.europa.eu.

6 See the Council conclusions on bank capital, as adopted by the Council (ECOFIN) on 20 January 2009.