



## **OPINION OF THE EUROPEAN CENTRAL BANK**

**of 21 January 2010**

**on the second prolongation of the State recapitalisation scheme**

**(CON/2010/11)**

### **Introduction and legal basis**

On 13 January 2010 the European Central Bank (ECB) received a request from the Swedish Ministry of Finance for an opinion on a draft ordinance (hereinafter the ‘second amending Ordinance’) amending the Ordinance on capital contributions to solvent banks and others (SFS 2009:46) (hereinafter the ‘Ordinance’).

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 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<sup>1</sup>, as the amending 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. Background**

1.1 On 16 February 2009 the ECB received a request from the Swedish Ministry of Finance for an opinion on a draft version of the Ordinance, which entered into force on 17 February 2009. Due to this late consultation by the Swedish Ministry of Finance, the ECB was not afforded sufficient time to adopt an opinion on the Ordinance.

1.2 The Ordinance was intended to contribute capital to solvent banks with the objective of facilitating the provision of credit to the real economy. The Swedish State may provide capital to fundamentally sound banks:

- 1) either through a market transaction where the State subscribes up to 70% of a private issue on the same terms as other investors; or
- 2) for subscriptions of more than 70% of an issue, through an instrument and on terms determined by the State.

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<sup>1</sup> OJ L 189, 3.7.1998, p. 42.

Until now, the State has used the recapitalisation scheme only for Nordea Bank AB in the spring of 2009, subscribing to its pro rata share, in accordance with its ownership, of the bank's rights issue.

- 1.3 On 30 June 2009 the ECB received a request from the Swedish Ministry of Finance for an opinion on a first prolongation of the Ordinance (hereinafter the 'first amending Ordinance') extending its validity by six months from 17 August 2009 until 17 February 2010. On 14 July 2009 the ECB adopted its Opinion CON/2009/58 on the first amending Ordinance.

## **2. Purpose of the second amending ordinance**

The current second amending Ordinance's sole purpose is to extend the validity of the Ordinance by another six months from 18 February until 17 August 2010.

## **3. General observations**

- 3.1 In its Opinion CON/2009/58, the ECB already commented on the Ordinance and on the first amending Ordinance. To the extent relevant, the observations made in Opinion CON/2009/58 also apply to the proposed second amending Ordinance.
- 3.2 In particular, the ECB reiterates that any initiatives put in place by the competent national authorities to restore confidence in the financial markets should be coordinated and should aim to implement common principles in a spirit of close cooperation with other Member States and the Union institutions since significant differences in national implementation could create distortions in global banking markets. In this regard, the ECB emphasises that coordination of the duration of national financial support schemes across the Union is of crucial importance in order to ensure a level playing field<sup>2</sup>. In addition, the ECB notes the need for national support measures to be temporary in nature<sup>3</sup>.
- 3.3 The consulting authority has informed the ECB that the draft law is to be adopted by 21 January 2010. In view thereof, the consulting authority would seem to invoke the exemption provided for in Article 3(2) of Council Decision 98/415/EC, which allows for a reduction of the minimum time limit for submission of ECB opinions of one month in case of extreme urgency. The ECB wishes to draw the consulting authority's attention to the fact that the second sentence of Article 4 of Decision 98/415/EC states that the ECB must be consulted 'at an appropriate stage' in the legislative process. This implies that the consultation should take place at a point in the legislative process that affords the ECB sufficient time to examine the draft legislative provisions and to adopt its opinion in the required language versions and which also enables the relevant national

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<sup>2</sup> See notably ECB Opinions CON/2009/24, paragraph 3.1, CON/2009/54, paragraph 2.5.2, and CON/2009/73, paragraph 3.2. All ECB opinions are available on the ECB's website at [ecb.europa.eu](http://ecb.europa.eu).

<sup>3</sup> See notably ECB Opinions CON/2009/24, paragraph 2.2, CON/2009/62, paragraph 3.3, and CON/2009/73, paragraph 3.2, and CON/2009/92, paragraph 3.6.

authorities to take the ECB's opinion into consideration before the legislative provisions are adopted.

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

Done at Frankfurt am Main, 21 January 2010.

[signed]

*The President of the ECB*

Jean-Claude TRICHET