



OPINION OF THE EUROPEAN CENTRAL BANK
of 26 March 2010
on a draft law on State capital investment in deposit banks
(CON/2010/26)

Introduction and legal basis

On 9 March 2010 the European Central Bank (ECB) received a request from the Finnish Ministry of Finance for an opinion on a draft proposal for a law on state capital investment in deposit banks (hereinafter the ‘draft law’), including as an annex a draft decree on State capital investment in deposit banks (hereinafter the ‘draft decree’).

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 provisions¹, as the draft law 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 and purpose of the draft law

On 24 November 2008, the ECB gave its opinion² on a draft Government proposal for a law on state capital investment in deposit banks (hereinafter the ‘original draft proposal’) and a draft decree annexed to it. However, the ECB notes that the law which was eventually enacted and which is currently in force differs in some respects from the original draft proposal which had been the subject of Opinion CON/2008/75. The scheme which was established under the law came into force on 1 January 2010 and will operate until 30 April 2010³. The main purpose of the scheme is to enable the provision of capital support to sound and solvent deposit banks, to ensure the proper financing of the economy.

The draft law aims at extending the operation of the scheme until the end of 2010, without making any further amendments to it. Under the scheme, the State may provide capital support to sound and solvent deposit banks by subscribing an unsecured capital loan which will form part of the original own funds of the bank referred to in Section 45 of the Law on Credit Institutions (Tier 1 capital). Eligible institutions

¹ OJ L 189, 3.7.1998, p. 42.

² Opinion CON/2008/75. All ECB opinions are available on the ECB’s website at www.ecb.europa.eu.

³ Law on State Capital Investment in Deposit Banks, 1171/2009 and Government Decree on State Capital Investment in Deposit Banks, 1749/2009. The scheme was approved by the European Commission on 11 September 2009, C(2009)6931.

are all Finnish deposit banks authorised by the Financial Supervisory Authority (FSA), including central bodies of co-operative banks, subsidiaries of foreign credit institutions and deposit banks' holding companies incorporated in Finland.

Capital loans may be subscribed up to a maximum of EUR 4 billion in total, and up to 25 % of each supported bank's minimum own funds. The capital loan principal of a capital loan is only repayable to the State after three years from the date of its issue, provided that certain solvency requirements are met and that the FSA gives its consent for the repayment. The Government has no right to demand the repayment of the capital loan.

The interest rate on the capital loan is based on the reference rate determined on the basis of the rate applicable to five year Government bonds plus six percentage points. If the issuer does not pay the full interest for a calendar year, the Government is entitled to appoint two additional members to the issuer's board of directors. The scheme contains certain restrictions applicable to the issuer of a capital loan, for example with regard to profit distribution, business restructuring, marketing and remuneration of the management.

2. General observations

- 2.1 In its Opinion CON/2008/75 the ECB emphasised, *inter alia*, the importance of complying with the Declaration on a concerted European action plan of the euro area countries⁴ of 12 October 2008 and referred to the criteria set out in the Commission Communication entitled 'The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis'⁵.
- 2.2 The ECB would like to reiterate 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 it is necessary to coordinate the duration of national financial support schemes across the Union in order to ensure a level playing field⁶. In addition, the ECB again underlines the need for national support measures to be temporary in nature⁷. The temporary nature of the State's intervention should be ensured by providing financial institutions with incentives to redeem such instruments as early as possible after a certain period of time.

⁴ The Declaration is available on the French Presidency's website at www.ue2008.fr.

⁵ OJ C 270, 25.10.2008, p. 8.

⁶ See, in particular, paragraph 3.1 of Opinion CON/2009/24, paragraph 2.5.2 of Opinion CON/2009/54, and paragraph 3.2 of Opinion CON/2009/73.

⁷ See, in particular, paragraph 3.2 of ECB Opinion CON/2010/11, paragraph 2.2 of CON/2009/24, paragraph 3.3 of CON/2009/62, paragraph 3.2 of CON/2009/73, and paragraph 3.6 of CON/2009/92.

- 2.3 The ECB points out that the draft law should be in line with the guidance provided in the abovementioned documents, as well as with the Commission Communication on ‘The recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition’⁸ and the recommendations of the ECB’s Governing Council on the pricing of recapitalisations⁹.

3. Temporary nature of the scheme

- 3.1 The ECB understands that the draft law aims to extend the scheme for a period of eight months, so that capital loans could be subscribed until 31 December 2010. The ECB notes that in line with the abovementioned Commission Communication on the recapitalisation of financial institutions a regular review of the scheme is to be conducted. The continued operation of the scheme in line with the State aid rules is dependent on the scheme being notified to and approved by the Commission. Such approval is usually provided for six months. Thus, if the Commission so decides, it may be necessary to resubmit the scheme for approval for the remaining two months.
- 3.2 The draft law, as with the existing scheme, requires from the issuer commitments related to management remuneration, profit distribution, acquisition of own shares and business restructuring until the capital loan has been repaid in full. The ECB notes, however, that the draft law, and hence also the existing scheme, differ from the original draft proposal on which the ECB gave its opinion in 2008¹⁰, in that the minimum term for the repayment of the capital loan is three years rather than five and no specific penalties apply if the capital loan principal is not repaid after this period of time¹¹. Therefore, there are fewer incentives than in the original draft proposal for financial institutions to redeem the State capital investment, making it more difficult to ensure the temporary nature of the State’s intervention.

4. The appropriate time to consult the ECB

The ECB notes that in cases of particular urgency that do not allow for a normal consultation period, the consulting authority may indicate urgency in the consultation request and ask for a shorter time limit for the ECB’s opinion to be adopted. This does not prejudice the national authorities’ duty under Articles 127(4) and 282(5) of the Treaty to consult the ECB on national draft legislative provisions falling within its fields of competence in due course of the national legislative process. Given that the consulting authority has not specified reasons for the extreme urgency, except that the current scheme expires on 30 April 2010, the ECB considers that the

⁸ OJ C 10, 15.1.2009, p. 2.

⁹ Recommendations of the Governing Council of the European Central Bank on the pricing of recapitalisations, issued on 20 November 2008 and available on the ECB’s website at www.ecb.europa.eu.

¹⁰ CON/2008/75.

¹¹ See CON/2008/75. The original draft proposal provided that the principal amount of the loan would be gradually raised in the event of non-repayment, but the law that was passed and is currently in force does not contain this penalty.

minimum consultation period of one month provided for in Article 3(1) of Decision 98/415/EC applies.

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

Done at Frankfurt am Main, 26 March 2010.

[signed]

The President of the ECB

Jean-Claude TRICHET