



OPINION OF THE EUROPEAN CENTRAL BANK

of 25 June 2010

on extending government guarantees to banks and other institutions and the prolongation of the State recapitalisation scheme

(CON/2010/50)

Introduction and legal basis

On 20 May 2010, 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 on government guarantees’) and a draft ordinance (hereinafter the ‘draft ordinance on capital contributions’) amending Ordinance SFS 2009:46 on capital contributions to solvent banks and others.

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 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 Ordinance 2008:819 on government guarantees to banks etc. was adopted by the Swedish Ministry of Finance on 29 October 2008. The ECB was consulted on Ordinance 2008:819 at the draft stage and adopted its Opinion CON/2008/62 on 29 October 2008². Subsequently the ECB adopted the following opinions on proposed amendments to Ordinance 2008:819: Opinions CON/2009/30, CON/2009/79 and CON/2010/29.

The Swedish Government now proposes some changes Ordinance 2008:819 and a prolongation of its validity by six months, i.e. that guarantees may be issued until 31 December 2010.

¹ OJ L 189, 3.7.1998, p. 42.

² All ECB opinions are published on the ECB’s website at www.ecb.europa.eu.

- 1.2 Ordinance SFS 2009:46 on capital contributions to solvent banks and others entered into force on 17 February 2009. The ECB adopted the following opinions on proposed amendments to Ordinance SFS 2009:46: Opinions CON/2009/58 and CON/2010/11.

The Swedish Government now proposes prolonging the validity of Ordinance SFS 2009:46 until 17 February 2011.

- 1.3 On 27 May 2010 the Swedish Government enacted an amended draft ordinance on government guarantees, compared to the version submitted to the ECB, and the draft ordinance on capital contributions.
- 1.4 On 1 June 2010, the ECB received an updated request for an opinion by the Swedish Ministry of Finance, containing a revised wording of the draft ordinance on government guarantees.

2. The appropriate time to consult the ECB

- 2.1 The ECB points out that, in cases of particular urgency which do not allow for a normal consultation period, the consulting authority may indicate the urgency in the consultation request and ask for a shorter deadline for the ECB's opinion to be adopted. This does not prejudice the consulting authority's duty under Article 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 legislation process. The second sentence of Article 4 of Decision 98/415/EC provides 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 which affords the ECB sufficient time to examine the draft legislative provisions and to adopt its opinion in all required language versions, and which also enables the relevant national authorities to take the ECB's opinion into consideration before the provisions are adopted. Article 3(4) of Decision 98/415/EC also obliges Member States to suspend the adoption process for draft legislative provisions, pending receipt of the ECB's opinion. In this case the consulting authority did not indicate the urgency in the consultation request and did not ask the ECB to adopt its opinion within a shorter deadline.
- 2.2 The ECB would appreciate the Ministry of Finance giving due consideration to honouring their obligation to consult the ECB in the future, in accordance with Decision 98/415/EC.

3. Purpose of the draft ordinances

In the memorandum accompanying the draft ordinance, the Swedish Government states that there is currently no demand for government guarantees and that Swedish banks are well capitalised. The Swedish Government views the guarantee programs as a standby insurance policy that can provide banks access to medium term financing if conditions were to deteriorate. The Government also stresses the importance of support measures to be phased out gradually to facilitate institutions' return to market financing.

4. General observations

The draft ordinance on government guarantees introduces one new point to Article 9 of Ordinance 2008:819 whereby institutions, at certain thresholds, are obliged to design a plan concerning how to return to normal market financing. The draft ordinance on government guarantees also introduces a new Article 12 a on how to calculate the fee in accordance with Articles 11 and 12.

The ECB notes that the Swedish measures are in line with guidance from the European Commission for extending guarantee schemes beyond 30 June 2010.

The ECB reiterates its view³ that coordination of the duration of national financial support schemes across the Union is of crucial importance in order to ensure a level playing field⁴. In addition, the ECB notes the need for national support measures to be temporary in nature⁵.

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

Done at Frankfurt am Main, 25 June 2010.

[signed]

The President of the ECB

Jean-Claude TRICHET

³ See Opinion CON/2010/29.

⁴ See Opinions CON/2009/24, paragraph 3.1, CON/2009/54, paragraph 2.5.2, and CON/2009/73, paragraph 3.2.

⁵ See Opinions CON/2009/24, paragraph 2.2, CON/2009/62, paragraph 3.3, CON/2009/73, paragraph 3.2, and CON/2009/92, paragraph 3.6.