EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 18 October 2011

on a State guarantee covering certain loans granted to Dexia SA and Dexia Crédit Local SA

(CON/2011/82)

Introduction and legal basis

On 14 October 2011, the European Central Bank (ECB) received a request from the Governor of the Banque centrale du Luxembourg (BCL), acting on behalf of the Luxembourg Ministry of Finance, for an opinion on a draft Grand-Ducal Regulation authorising the Government to extend a financial guarantee in the context of the ordered restructuring of the Dexia banking group (hereafter 'the draft Grand-Ducal Regulation'). The ECB was requested to deliver an opinion under extremely urgent circumstances.

The ECB's competence to deliver an opinion is based on Article 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[1], since the draft Grand-Ducal Regulation 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 Grand-Ducal Regulation

The draft Grand-Ducal Regulation authorises the Government to guarantee, on behalf of the Luxembourg State and in return for payment, the financing raised by Dexia SA and Dexia Crédit Local SA from credit institutions and institutional depositors as well as the bonds and debt securities issued by Dexia SA and Dexia Crédit Local SA for institutional investors. This guarantee applies to the financing raised, as well as the bonds and debt securities issued, by Dexia and Dexia Crédit Local until 31 December 2021 and having a maximum duration of 10 years. This guarantee will be granted for a maximum amount of EUR 2 700 000 000. It will be exercised subject to the joint guarantee call of the Kingdom of Belgium and the French Republic. The draft Grand-Ducal Regulation enters into force on the day of its publication in the *Mémorial*. Its validity will be limited to three months. The Minister for Finance will be entrusted with implementing the draft Grand-Ducal Regulation.

1 OJ L 189, 3.7.1998, p. 42.

2. General observations

2.1 In the context of the State guarantees supporting the Dexia restructuring plan, the ECB deems that it is important to ensure the coordination of the French, Belgian[2] and Luxembourg legislation. The ECB is unable to fully assess consistency between the legislation due to different legislative techniques[3], and considering that certain modalities, varying according to the Member States, still have to be defined in implementing agreements between the three States and the Dexia entities[4].

2.2 It is also important to ensure that the draft Grand-Ducal Regulation and any subsequent implementing measures fully comply with the relevant provisions of Union law, including competition and State aid rules. In particular, national authorities should seek to coordinate their responses to the current financial situation with their Union partners, to act in a united manner and to avoid that national measures adversely affect the functioning of the single market and the other Member States. In this respect, it is essential that Member States comply with the guidance given by the European Commission in its communications on the application of State aid rules to support measures in favour of banks and government guarantee schemes covering bank debt, including with regard to the temporary nature of the acceptability of such aid measures and the necessity for credit institutions receiving State support to submit a restructuring plan[5].

2.3 The ECB notes that the guarantee to be issued by the Luxembourg Government is a significant financial commitment by the State within the meaning of Article 99 of the Luxembourg Constitution and Article 80(1)(d) of the amended Law of 8 June 1999 on the State budget, accounts and treasury[6], which must therefore be approved by a law. As this guarantee needs to be granted urgently in the context of an international crisis, the Grand-Duke is empowered by Article 32(4) of the Luxembourg Constitution to enact a regulation that deviates from existing laws, provided that the validity of such regulation is limited to three months. The ECB assumes that the draft Grand-Ducal Regulation will therefore be subsequently confirmed by a law, as was the case for the Grand-Ducal Regulation of 10 October 2008 enacted for the first Dexia rescue package, that was confirmed by Article 44(1) of the Law of 19 December 2008 on the budget for State income and expenditure for 2009[7].

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2 With regard to Belgium the ECB issued Opinion CON/2011/79 on 13 October 2011.

3 The draft Grand-Ducal Regulation only contains the very basic principles of the guarantee, as the details are left to the implementation measures to be adopted by the Minister for Finance .

4 See Opinion CON/2011/79, paragraph 1.

5 See notably the Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of banks in the context of the financial crisis, (OJ C 329, 7.12.2010, p. 7); Communication from the Commission – The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis (OJ C 270, 25.10.2008, p. 8); Commission Communication on the treatment of impaired assets in the Community banking sector, 25.2.2009 (OJ C 72, 26.3.2009, p. 1).

6 This provision, amended by the Law of 29 May 2009, provides that any financial undertaking, including State guarantees exceeding EUR 40 000 000, must be authorised by a law.

7 *Mémorial* A 200, 23.12.2008, p. 2769.

3. Interaction of the draft Grand-Ducal Regulation with the monetary policy of the euro area

The draft Grand-Ducal Regulation does not define the type of liabilities falling within the meaning of 'financing' under Article 1(1) of the Grand-Ducal Regulation. In this respect, the ECB makes the following observations.

First, it reminds the consulting authority that government guarantees for bank debt should, when implemented: (i) address the funding problems of liquidity-constrained solvent banks by improving the functioning of the market for bank debt of longer-term maturity; (ii) preserve the level playing field among financial institutions and avoid market distortions; and (iii) ensure consistency in the management of Eurosystem liquidity. In this vein, government guarantees for short-term bank debt with a maturity of three to 12 months may be provided to revitalise the short-term bank debt market[8]. In this regard, the ECB reiterates that granting government guarantees for bank debt with a maturity of less than three months should be avoided to the extent possible[9].

Second, it is also stressed that it is of the utmost importance that support operations conducted by national authorities do not in any way affect the conduct and the implementation of monetary policy in the euro area[10]. In this context, the ECB reiterates its view that the extension of the State guarantee to cover interbank deposits should be avoided[11], as this could entail substantial distortion in the various national segments of the euro area money market by potentially increasing short-term debt issuance activity across Member States and therefore impairing the implementation of the single monetary policy, which is an exclusive competence of the Eurosystem under Article 127(2) of the Treaty[12]. It could also affect the transmission of monetary policy decisions[13] and make it difficult to maintain the necessary level playing field in the euro area between the financial institutions benefiting from the State guarantee and those not benefiting.

4. Temporary nature of the scheme

In line with the assessment in the Commission's staff working document[14], the ECB notes the need for national support measures to be temporary in nature[15]. It is understood that the support scheme covers a time period of up to 20 years, as the loans covered by the guarantee may be issued until 31 December 2021 at the latest and may be for a maximum duration of 10 years, and thus could be considered of a longer-term rather than temporary nature.

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8 CON/2009/73, paragraph 3.1, CON/2009/12, paragraph 3.3, CON/2009/49, paragraph 3.9.

9 CON/2009/92, paragraph 3.5.

10 CON/2009/73, paragraph 3.1, CON/2009/12, paragraph 3.2, CON/2009/92, paragraph 3.5.

11 CON/2009/73, paragraph 3.1, CON/2009/49, paragraph 3.9, CON/2008/50, paragraph 3.2, CON/2009/12, paragraph 3.3.2.

12 CON/2009/73, paragraph 3.1, CON/2009/49, paragraph 3.9, CON/2009/12, paragraph 3.3.2 and CON/2008/48, paragraph 3.7.

13 CON/2009/73, paragraph 3.1, CON/2009/12, paragraph 3.3.2, CON/2009/49, paragraph 3.9.

14 DG Competition Staff Working Document - The application of State aid rules to government guarantee schemes covering bank debt to be issued after 30 June 2011, available on the Commission's website at www.ec.europa.eu.

15 CON/2009/73, paragraph 3.2, CON/2009/24, paragraph 3.1, CON/2009/54, paragraph 2.5.2.

5. Pricing of the guarantee

As the Minister for Finance will determine the remuneration due to the State for the guarantee in accordance with Article 1(1) of the draft Grand-Ducal Regulation, the ECB underlines that the pricing formula recommended by the ECB's Governing Council[16] should be taken into consideration when determining the remuneration due to the State. This was also affirmed by the Commission staff in their assessment of the application of State aid rules to government guarantee schemes covering bank debt.

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

Done at Frankfurt am Main, 18 October 2011.

[signed]

The President of the ECB

Jean-Claude TRICHET

16 Recommendations of the Governing Council of the European Central Bank on government guarantees for bank debt, 20 October 2008.