EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 24 October 2011

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

(CON/2011/85)

Introduction and legal basis

On 21 October 2011, the European Central Bank (ECB) received a request from the French Ministry of Economic Affairs, Finances and Industry for an opinion on a draft Supplementary Budget Act providing for a State guarantee covering certain loans to Dexia SA and Dexia Crédit Local SA (hereinafter the 'draft law').

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 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 law, and in particular Article 4 thereof, 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 law

1.1 The draft law[2] is motivated by the current financial market crisis, and in particular in the context of the restructuring plan for the Dexia group, by the need to restore investor confidence and reassure Dexia's clients and creditors that Dexia will be able to continue to meet its obligations[3]. To this end, the French State will grant two types of guarantees under the draft law covering financing of certain entities of the Dexia group[4].

1.2 Under the draft law[5], the Minister for Economic Affairs will be authorised to grant the State guarantee in return for payment (first guarantee) for:

(a) financing raised by Dexia SA and Dexia Crédit Local from credit institutions and institutional depositors, as well as bonds and debt securities that they issue for institutional

1 OJ L 189, 3.7.1998, p. 42.

2 Draft Law on the budget 2011 No 3804.

3 See the explanatory memorandum to the draft law.

4 See Article 4 of the draft law.

5 In accordance with Article 34-II-5 of Organic Law No 2001-692 of 1 August 2001 on finance laws.

investors, provided that such financing, bonds and securities have been raised or subscribed between the date of publication of this draft law once adopted and 31 December 2021; and

(b) debt securities issued by Dexia Crédit Local SA and entered into its balance sheet at the date of publication of this draft law once adopted. The guarantee is granted for a maximum ceiling of EUR 32 850 000 000.

In the event of a transfer by Dexia SA of direct or indirect control over Dexia Crédit Local SA to a third party, the guarantee will cease to apply to financing, bonds and debt securities raised or issued after the transfer.

The guarantee is subject to a joint call by the beneficiaries of the Belgian and Luxembourg guarantees granted within the limit of 36.5% of the eligible amounts.

1.3 Under the draft law, the Minister for Economic Affairs will also be authorised to grant in return for payment the State guarantee (second guarantee) to Dexia SA and Dexia Crédit Local SA for commitments the two entities took, with the agreement of the French State, with regard to assets entered into the balance sheet of Dexia Municipal Agency on the date of transfer of Dexia Crédit Local SA of more than 50% of Dexia Municipal Agency's capital. This second guarantee is granted for a maximum of EUR 10 000 000 000. It will apply above a ceiling of EUR 500 million within a limit of 70% of the amounts due and of a total of EUR 6 650 000 000.

1.4 The conditions under which each of the guarantees mentioned may be called will be defined in one or several agreements entered into by the Minister for Economic Affairs with the undertakings in question and, as far as the first guarantee is concerned, with the two other States.

1.5 The draft law further provides that the governing bodies of a credit institution receiving from State support may not decide or propose (i) the allocation of stock options or bonus shares to members of the governing bodies; (ii) the allocation or payment of variable elements of remuneration based on performance and the allocation or payment of delayed remuneration; and (iii) the distribution of dividends by the credit institution to shareholders when its solvency or liquidity is or likely to be jeopardised.

2. General observations

2.1 As explained in the draft law[6], the State guarantees supporting the Dexia restructuring plan will emanate from Belgium, Luxembourg and France. In this respect, the ECB was also consulted on 12 October 2011 by the Belgian authorities regarding a draft royal decree granting a State guarantee covering certain loans granted to Dexia SA and Dexia Crédit Local SA[7] and on 14 October 2011 by the Luxembourg authorities regarding 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[8]. The ECB is unable to fully assess consistency between the legislation due to

6 See draft law.

7 CON/2011/79.

8 CON/2011/82.

different legislative techniques, and considering that certain modalities, varying according to the Member States, still have to be defined in implementing agreements between these States and the Dexia entities[9]. The ECB emphasises the importance of ensuring the utmost consistency between the three sets of rules.

2.2 It should also be ensured that the draft law 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[10].

3. Interaction of the draft law with the monetary policy of the euro area

The draft law does not define the type of liabilities falling within the meaning of 'financing' under Article 4-I of the draft law. It also does not specify in detail the assets covered under the second guarantee. In this respect, the ECB makes the following observations.

First, the ECB 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[11]. 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[12].

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[13]. In this context, the ECB reiterates its view that the extension of the State guarantee to cover

9 See Article 4-III of the draft law.

10 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).

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

12 CON/2009/92, paragraph 3.5.

13 CON/2009/73, paragraph 3.1, and 3.3.2 CON/2009/92, paragraph 3.5.

interbank deposits should be avoided[14], 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[15]. It could also affect the transmission of monetary policy decisions[16] 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[17], the ECB notes the need for national support measures to be temporary in nature[18]. The financing that will be covered by the first guarantee may be issued until 31 December 2021[19]. Moreover, the maturity of the financing covered is not defined in the enacting terms of the draft law, and a 10 years' maturity is only indicated in its recitals[20]. No time restriction is specified for the second guarantee. Thus, the support scheme could be considered of a longer-term rather than temporary nature.

5. Pricing of the guarantee

The explanatory memorandum to the draft law specifies that the remuneration due to the French State for the first guarantee will take into account European standards. The ECB takes note of the intention of the French State[21] to apply the pricing formula recommended by the ECB's Governing Council[22], which is also affirmed by the Commission's staff in their assessment of the application of State aid rules to Government guarantee schemes covering bank debt.

---

14 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.

15 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.

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

17 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.

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

19 Article 4-I (a) of the draft law.

20 See explanatory memorandum.

21 See explanatory memorandum: 'This guarantee will be remunerated according to European standards'.

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

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

Done at Frankfurt am Main, 24 October 2011.

[signed]

The President of the ECB

Jean-Claude TRICHET