



OPINION OF THE EUROPEAN CENTRAL BANK
of 15 February 2012
on the reorganisation of the Spanish financial sector
(CON/2012/11)

Introduction and legal basis

On 2 February 2012, the European Central Bank (ECB) received a request from the Deputy Minister for Economic Affairs and Competitiveness for an opinion on Royal Decree-Law 2/2012 on the Reorganisation of the financial sector (hereinafter the ‘Royal Decree-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 third and sixth indents 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 Royal Decree-Law relates to the Banco de España and 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 Royal Decree-Law

The Royal Decree-Law is primarily aimed at addressing market concerns over the valuation of real estate assets to which credit institutions and consolidated groups of credit institutions have large exposures through loans to real estate developers and repossessed assets. It provides for the ‘cleaning-up’ of bank balance sheets by increased (generic and specific) provisioning combined with a requirement for an additional capital buffer on impaired assets. The total amount to be provisioned is estimated at EUR 50 billion.

The Royal Decree-Law is also aimed at promoting consolidation of the sector to strengthen profitability and to eliminate overcapacity, encouraging as much as possible private solutions in the consolidation process. In this context, entities involved in a merger will have to present a viability plan and corporate governance measures that allow for quick and efficient integration; additionally, they must commit to increasing the number of loans granted to the private sector. In this regard, the Royal Decree-Law introduces operational changes to the Fund for Orderly Bank Restructuring (FROB) by enabling it to provide financing through convertible bonds in the merger process. The FROB’s own resources are increased from EUR 9 billion to 15 billion.

¹ OJ L 189, 3.7.1998, p. 42.

The Royal Decree-Law strengthens corporate governance of savings banks that indirectly exercise their financial activity by simplifying their legal framework, with management remuneration limits for the institutions assisted by public funds.

Finally, the Royal Decree-Law streamlines the procedures for mobilising collateral in favour of the Eurosystem. Following the Royal-Decree Law, two significant changes can be introduced in the Eurosystem collateral management procedures. As regards marketable securities, besides the current method of earmarking, counterparties could create pledges by transferring the relevant securities to a dedicated securities account of the beneficiary, in line with the collateral management procedures currently used within the Eurosystem. As regards credit claims, the Royal Decree-Law sets the basis for counterparties to create valid security interests over credit between the parties by merely including the relevant credit claims in a list submitted to the collateral taker. The Royal Decree-Law expressly clarifies that the express consent of the guarantor or the debtor of the credit claims granted as collateral is not required for the valid creation of the security.

2. General observations

The ECB only received the consultation request on 2 February 2012, although the Royal Decree-Law was approved by the Spanish Government on 3 February. The consultation request did not state the dates of approval by the Government or validation by the Parliament, nor did it establish a specific time limit. As underlined in several ECB opinions, Article 3 of Decision 98/415/EC provides that the consulting authorities may set a time limit for the submission of an ECB opinion, but it may not be less than one month, unless a shorter time limit is justified with reasons for the extreme urgency. The ECB reminds the consulting authority of the importance of consulting the ECB at an appropriate point in time ‘enabling the authority initiating the draft legislative provision to take into consideration the ECB’s opinion before taking its decision on the substance’².

3. Specific comments

3.1 Rules regarding the one-off increase in provisioning and capital buffers

Title I of the Royal Decree-Law aims at addressing banks’ impaired exposures to land and real estate under development in Spain through increased provisions and additional capital buffers for those exposures. The assets concerned are those classified as doubtful, substandard or foreclosed. It also requires banks to provision against the performing (normal) exposures to the abovementioned assets. These measures are broadly welcomed by the ECB as strengthening the resilience of the Spanish banking sector at the current juncture while limiting the scope for public intervention. In this context, the ECB has two observations. First, in the current situation in the Spanish real estate market, where market activity is very low or even non-existent in some segments, it is appropriate to apply the same treatment of the valuation of real estate properties across the market to ensure simplicity and transparency of valuations;

² See Article 4 of Decision 98/415/EC.

ECB-PUBLIC

however, once market activity recovers, market values should be applied for valuing real estate assets and collateral.

Second, the new measures apply to the classified assets as of end-December 2011 and need to be fulfilled by banks by end-2012, and, for some credit institutions involved in merger processes, by 2013. The ECB recommends providing additional guidance in order to avoid ambiguity as to how the provisioning and capital buffers should be made for those classified assets that may be recovered or disposed in 2012 or in the following period, if the measures are extended.

3.2 Integration process and corporate governance of savings banks

The ECB welcomes the implicit incentives provided by the Royal Decree-Law for banks to engage in further integration activity through: (a) an extension of the deadline to comply with the new provisioning requirements; and (b) a possibility to obtain financing from the FROB to facilitate the integration process. The Royal Decree-Law also contains a requirement for those banks that opt for public support via the FROB to further improve their corporate governance, which is aimed at improving the professionalism and dedication of the members of their decision-making bodies. The ECB generally supports the measures while highlighting that mergers only among the weaker institutions might limit the overall benefits of the reform.

3.3 Rules regarding the posting of collateral in favour of the Eurosystem

The Royal Decree-Law updates the wording of the sixth additional provision of Law 13/1994 of 1 June 1994 on the Banco de España's autonomy, which contains the rules on creating and enforcing security interests granted in favour of the Banco de España, the ECB and Union central banks in general. The ECB welcomes this initiative, as it will enhance legal certainty and will increase operational efficiency, streamlining the procedures for the posting of collateral in favour of the Eurosystem. These streamlined procedures for mobilising collateral in a more timely and efficient manner will amplify the operational capacity of the Spanish counterparties while, at the same time, preserving the protection of the Banco de España and, more generally, of the Eurosystem from incurring losses when conducting credit operations with them. Moreover, the alignment of the procedures for the mobilisation of collateral with those applied in other Member States is regarded as a step forward in ensuring an equal level playing field for counterparties across the euro area.

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

Done at Frankfurt am Main, 15 February 2012.

[signed]

The Vice-President of the ECB

Vítor CONSTÂNCIO