EUROPEAN CENTRAL BANK
EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK
of 20 February 2012
on State guarantees
(CON/2012/13)

Introduction and legal basis

On 27 January 2012 the European Central Bank (ECB) received a request from the Governor of the Banco de España, on behalf of the Spanish State Secretary for Economic Affairs, for an opinion on a draft order developing Article 49(2)(b) of Law 39/2010 of 22 December 2010 on the State General Budget for 2011, on State guarantees (hereinafter the 'draft order').

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 provisions[1], as the draft provisions relate to the Banco de España and to rules applicable to financial institutions that 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 order

The draft order lays down further details concerning Article 49(2)(b) of Law 39/2010 of 22 December 2010 on the State General Budget for 2011 by laying down rules on the conditions for the State guarantees, the eligibility of institutions and operations, the applicable fees and the requesting and granting procedures.

The draft order covers credit institutions with a registered office in Spain and which have issued, with or without State guarantees, similar securities to those covered by the present State guarantees scheme.

The eligible bank bonds are non-subordinated securities, without any other type of guarantee, traded in Spanish secondary markets. The securities can be issued until 30 June 2012, and have a maturity of between one and five years. The interest rate can be fixed or variable. The minimum amount of each issue is EUR 10 000 000.

1 OJ L 189, 3.7.1998, p. 42.

The scheme contemplates two types of fees: a fee on the granting of the guarantee amounting to 0.5% of the guaranteed amount, and a fee on every guaranteed issue of securities. This fee will be calculated in accordance with a formula set out in an annex to the draft order, taking into account several factors and following European Commission criteria[2]. The maximum amount of the State guarantees is EUR 100 000 million.

2. General observations

The consultation request was submitted on 27 January, and the consulting authority requested the ECB to consider the consultation as a matter of urgency, without however setting a time limit. On 1 February, without further notice, the draft order was adopted and published in the *Boletín Oficial del Estado* including an annex on the fee structure that had not been included in the draft text submitted to the ECB. In this context, the ECB would like to remind the Spanish authorities that, according to Article 4 of Decision 98/415/EC, the ECB must be consulted at an appropriate stage enabling the authority initiating the draft legislative provision to take into consideration the ECB's opinion before taking its decision on the substance. Furthermore, it should be ensured that the ECB is able to perform its advisory role in an appropriate manner by making available the full draft text to it.

3. Specific comments

3.1 *Pricing*

The ECB welcomes that Article 4(b) of the draft order specifies that guarantee fees applied to financial institutions benefiting from the State guarantees will be in line with criteria adopted by the Commission The ECB reiterates its view that coordination of the duration of national financial support schemes across the Union is of crucial importance to ensure a level playing field. In addition, the ECB notes the need for national support measures to be temporary in nature.

3.2 *Relationship with the single monetary policy*

According to Article 3 of the draft order, only bank bonds ('obligaciones' and 'bonos') may be guaranteed. The ECB understands that interbank deposits will not be guaranteed. This is in line with the view stated by the ECB in previous opinions[3], whereby the extension of State guarantees to interbank deposits should be avoided, as it could entail a 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.

2 See Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis (OJ C 356, 6.12.2011, p. 7).

3 Opinion CON/2008/50, paragraph 3.2, Opinion CON/2009/12, paragraph 3.3.2, Opinion CON/2009/49, paragraph 3.9 and Opinion CON/2009/73, paragraph 3.1.

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

Done at Frankfurt am Main, 20 February 2012.

[signed]

The President of the ECB

Mario DRAGHI