



**OPINION OF THE EUROPEAN CENTRAL BANK**  
**of 30 March 2012**  
**on implementing measures relating to recapitalisation**  
**(CON/2012/23)**

**Introduction and legal basis**

On 26 March 2012, the European Central Bank (ECB) received a request from the Portuguese Minister of State and for Finance for an opinion on a draft ministerial order implementing Law 63-A/2008 of 24 November on the recapitalisation of credit institutions (hereinafter the ‘draft ministerial 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<sup>1</sup>, as the draft ministerial order relates to the Banco de Portugal 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 draft ministerial order**

- 1.1 The draft ministerial order establishes the implementation procedures for Law 63-A/2008 of 24 November, as amended and republished by Law No 4/2012 of 11 January (hereinafter the ‘Law on recapitalisation’), on which the ECB adopted Opinion CON/2011/95<sup>2</sup>. The Law on recapitalisation aims at reinforcing the resilience of the banking sector by establishing the conditions and procedures for providing temporary public support to viable credit institutions having their head office in Portugal, but delegated to the Government essential implementation details.
- 1.2 The draft ministerial order defines (i) the terms and conditions for public investment and disinvestment, including the criteria for the remuneration of the investment and the corporate bodies of the credit institution, (ii) the additional terms and elements of the recapitalisation plan, and (iii) the threshold from which the State may exercise the voting rights attached to its shareholding in the credit institution.

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<sup>1</sup> OJ L 189, 3.7.1998, p. 42.

<sup>2</sup> Available on the ECB’s website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

**2. General observations**

- 2.1 The ECB generally welcomes the draft ministerial order, which is overall appropriate for restoring the solvency of viable banks in the current economic and financial crisis context<sup>3</sup>.
- 2.2 As stated in Opinion CON/2011/95, the ECB notes that recapitalisation through the purchase by the State of capital instruments eligible for Core Tier 1 should be made exclusively in cash, and not by means of bonds or other debt instruments issued by the State.
- 2.3 To enable banks to meet additional capital requirements by the end of June 2012, as recommended by the European Banking Authority on 8 December 2011<sup>4</sup>, it should be ensured that the national legal framework governing the recapitalisation of credit institutions, including the ministerial order, is finalised without delay.

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

Done at Frankfurt am Main, 30 March 2012.

[signed]

*The President of the ECB*

Mario DRAGHI

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<sup>3</sup> See notably ECB opinion CON/2011/95.

<sup>4</sup> See EBA Recommendation on the creation and supervision oversight of temporary capital buffers to restore market confidence (EBA/REC/2011/1) on the EBA's website at [www.eba.europa.eu](http://www.eba.europa.eu).