



OPINION OF THE EUROPEAN CENTRAL BANK
of 5 June 2012
on the reorganisation and sale of real estate assets in the financial sector
(CON/2012/46)

Introduction and legal basis

On 17 May 2012, the European Central Bank (ECB) received a request from Banco de España, on behalf of the Spanish Secretary of State for Economic Affairs, for an opinion on Royal Decree Law 18/2012, on the reorganisation and sale of real estate assets in 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 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 role of Banco de España and contains 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 Royal Decree-Law

1.1 The Royal Decree-Law increases the provisioning measures established for non-troubled real estate assets under Royal Decree Law 2/2012 of 3 February 2012 on the reorganisation of the financial sector (hereinafter the ‘RDL 2/2012’). The rate for generic provisions was set at 7% and is now increased, as a one-off measure. The increase ranges from 7% to 45%, depending on the type of loan, i.e. loans secured by land, ongoing and finished developments and real estate related loans without security interest. The provisions must be created within the same time-frame as that established by RDL 2/2012, namely before 31 December 2012, with an additional 12 months for credit institutions involved in a restructuring process. Credit institutions must present a plan to Banco de España detailing the measures they intend to adopt to create the provisions before 11 June 2012. Banco de España can then impose additional measures, such as requiring a credit institution to request financial aid from the Fund for Orderly Bank Restructuring (FROB).

¹ OJ L 189, 3.7.1998, p. 42.

- 1.2 The Royal Decree-Law establishes the creation of asset management companies (AMCs) to which credit institutions must transfer all real estate assets which have been foreclosed or received in lieu of payment i.e. properties, but not loans. Such transfers must be completed before the end of 2012, with an additional 12 months for those institutions involved in a restructuring process. All banks are also required to transfer to their respective AMC assets which have been foreclosed or received in payment of debt after the end of 2012. The AMCs will be public limited companies without banking activities, and their purpose will be the management and disposal of real estate assets received. Assets have to be transferred at fair value or, if that value cannot be determined, according to book value, net of the provisions required under RDL 2/2012 and the Royal Decree-Law. From 2013 onwards, the assets transferred will be valued on the basis of the general method established in the Law on commercial companies, namely an evaluation by an independent expert. The AMCs created by credit institutions that have received financial aid must make an annual disposal of at least 5% of their assets to an unrelated third party. Likewise, credit institutions that have received financial aid will have a three year period to reduce their stake in the AMCs to a non-controlling position.
- 1.3 The Royal Decree-Law also contains some tax incentives to encourage the disposal of urban real estate assets, including partial exemptions on corporate tax, income tax and non-resident income tax.

2. General observations

The ECB was consulted on 17 May 2012 following the approval of the Royal Decree-Law by the Government on 11 May 2012. This means that the ECB was consulted on a law which is already in force and not on ‘draft legislative provisions’ as defined by Decision 98/415/EC. The ECB reminds the consulting authority of the importance of consulting the ECB at an appropriate point in time in order to enable the authority initiating the draft legislative provisions 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 for non-troubled real estate assets*

The ECB welcomes this measure as part of the general efforts taken by the Spanish Government to restore the confidence of investors and markets in the Spanish financial system. It is in line with the previous provisioning exercise established in February 2012 under RDL 2/2012 and the increase of the core capital requirements under Royal Decree Law 2/2011 of 18 February 2011 on the strengthening of the financial system. In this context, the ECB takes note of the recently announced measure concerning the appointment of (a) two external consulting firms to assess the resilience of the Spanish banks’ balance sheets, and (b) three audit firms to perform on-site work on the

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

procedures for recognising and provisioning for impairment in Spanish banking groups' accounts. The ECB welcomes an increase of generic provisions for performing real estate assets, which forces the banks to build up effective buffers for this part of their portfolios in view of the downturn of the cycle for such assets. The ECB understands that a further adjustment of the provisions may be the consequence of the results provided by external consulting and audit firms. The ECB also notes the scope of the Royal Decree-Law and that the provisioning measures concern only loan assets relating to land for real estate development and property construction and not the rest of the banks' loan portfolios.

3.2 *Creation of AMCs*

The ECB welcomes the proposed creation of AMCs as a step in the right direction. Combined with the creation of provisions, this should (a) contribute to greater transparency regarding the real estate portfolios of Spanish banks, and (b) enhance asset management processes in banks, thus decreasing the potential for future losses. In addition, the creation of AMCs should create incentives for the sale of assets. It remains unclear, however, whether the envisaged framework is sufficient to achieve an effective separation of the risks of banks. In addition, the Royal Decree-Law is not very specific on how the AMCs will be funded, and whether there might be any kind of Government guarantees in place. Likewise, the economic rationale for an annual disposal rate of 5% of assets transferred to AMCs, which are receiving support from the FROB, remains unclear. In this regard, the ECB would recommend further steps towards a complete deconsolidation and separation of risks between entities. However, the ECB welcomes that institutions that have received financial aid from the FROB will have to reduce their stake in the AMC within three years.

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

Done at Frankfurt am Main, 5 June 2012.

[signed]

The President of the ECB

Mario DRAGHI