EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 26 July 2012

on State guarantees

(CON/2012/60)

Introduction and legal basis

On 6 July 2012 the European Central Bank (ECB) received a request from the Governor of the Banco de España, on behalf of the Spanish Deputy Minister for Economic Affairs and Competitiveness, for an opinion on the royal decree-law 21/2012, of 13 July, on liquidity measures in the public administration and in the financial sector[1]; its first final provision amended Article 52(2)(b) and (c) of Law 2/2012 of 29 June 2012 on the State General Budget for 2012, on State guarantees[2] (hereinafter the 'draft RDL').

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[3], 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 RDL

The draft RDL lays down the conditions for the State guarantees, the eligibility of institutions, the applicable fees and the requesting and granting procedures. It applies to credit institutions with a registered office in Spain which the Banco de España considers solvent but to have temporary liquidity problems.

The eligible issues are new issues of bonds and obligations. The securities may be issued until 15 December 2012. The draft RDL does not mention the type of securities, maturity, interest rate or minimum amount of issue.

On granting the guarantee, a fee of 0.5% of the guaranteed amount may be charged. In addition, a fee applies to every guaranteed issue of securities. This fee will be calculated in following European Commission criteria[4]. The maximum amount of the State guarantees is EUR 55 000 million.

1 *Boletín Oficial del Estado*, 14.7.2012, p. 50519.

2 *Boletín Oficial del Estado,* 30.4.2012, p. 46432.

3 OJ L 189, 3.7.1998, p. 42.

4 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).

2. General observations

The consultation request was submitted on 5 July 2012, and the consulting authority requested the ECB to consider the consultation as a matter of urgency, without however setting a time limit. On 13 July 2012, the draft RDL was adopted and published in the *Boletín Oficial del Estado*. In this context, the ECB reminds 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.

3. Pricing

The ECB welcomes that Article 52bis(4) of the draft RDL specifies that guarantee fees applied to financial institutions benefiting from the State guarantees will be in line with the above-mentioned 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.

4. Relationship with the single monetary policy

According to Article 52bis(1) of the draft RDL, 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 ECB's previous opinions[5], 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.

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

Done at Frankfurt am Main, 26 July 2012.

[signed]

The Vice-President of the ECB

Vítor CONSTÂNCIO

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5 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.