



OPINION OF THE EUROPEAN CENTRAL BANK
of 14 November 2012
on the stabilisation of the financial market
(CON/2012/88)

Introduction and legal basis

On 31 October 2012, the European Central Bank (ECB) received a request from the German Federal Ministry of Finance for an opinion on a draft third law implementing measures for the stabilisation of the financial market (hereinafter the ‘draft 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 sixth indent 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 draft law relates 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 law

1.1 The draft law is based on the Law of 17 October 2008 on financial market stabilisation² and its extensions on, *inter alia*, the nationalisation of credit institutions and bad bank schemes³. Some of the provisions have subsequently been phased out. The draft law amends the Law on the Financial Market Stabilisation Fund and several related Laws, as well as the Law on the Restructuring Fund. The draft law has the following main objectives:

- (a) *Extension of the operation of the Financial Market Stabilisation Fund.* The explanatory memorandum to the draft law points out that the transposition of the proposed directive establishing a framework for recovery and resolution of credit institutions and investment firms⁴ may take until 2015. Until that time the national arrangements will need to remain in force. However, the Second Law on financial market stabilisation⁵ only allows new requests for Financial Market Stabilisation Fund measures until the end of 2012. Therefore, the draft

¹ OJ L 189, 3.7.1998, p. 42.

² [2008] *Bundesgesetzblatt* I p. 1982.

³ See Opinions CON/2008/57, CON/2009/24, CON/2009/54, CON/2010/83 and CON/2012/2. All ECB opinions are published on the ECB’s website at www.ecb.europa.eu.

⁴ COM(2012) 280 final.

⁵ [2012] *Bundesgesetzblatt* I p. 206.

law prolongs measures introduced by the Law on financial market stabilisation until 31 December 2014.

- (b) *Financial interlinking of the Financial Market Stabilisation Fund and the Restructuring Fund.* Currently, two separate systems finance the Financial Market Stabilisation Fund, providing pre-emptive recapitalisation support to credit institutions, and the Restructuring Fund, supporting the orderly recovery or resolution of ailing credit institutions. The Financial Market Stabilisation Fund is backed by the federal budget and the Restructuring Fund by the banking industry, with possible bridge financing from the federal budget. The draft law reduces budget risks by closer financial interconnection between both systems. In particular, for any possible losses resulting from future measures financed by the Financial Market Stabilisation Fund, recourse will be taken to the Restructuring Fund. Thus, the banking sector will bear the burden of future stabilisation measures.

1.2 Furthermore, the draft law aligns the scope of institutions eligible for measures financed by the Financial Market Stabilisation Fund with the institutions eligible for restructuring measures that are generally subject to contributions to the Restructuring Fund. In addition, the Federal Financial Supervisory Authority (BaFin) will be consulted before initiating stabilisation measures that may affect operation of the restructuring measures by BaFin in relation to a credit institution. Moreover, the Bundestag will need to agree to dissolve the Financial Market Stabilisation Fund. Recourse to the Financial Market Stabilisation Fund for measures having their basis until 2010 will not be subject to the debt brake. Lastly, the employment contracts of the heads of resolution agencies are to be limited to five years, and their renewed appointment will be subject to agreement of the Federal Financial Market Stabilisation Authority.

2. General observations

In line with its previous opinions⁶, the ECB emphasises that when adopting measures to deal with the financial crisis, Member States should act in a coordinated manner. While the extension of measures introduced by the Law on financial market stabilisation⁷ is based on legitimate grounds, the Member States will ultimately need to phase out such harmonised measures to maintain a level playing field in the Union⁸. It is expected that the German legislator will have to adjust German restructuring law once the harmonised Union regime for the restructuring and resolution of credit institutions has been introduced.

3. Financing of the Financial Market Stabilisation Fund

The ECB welcomes the intention to decrease moral hazard in the budgetary financing of the Financial Markets Stabilisation Fund by the proposed financial interconnection between this Fund and the

⁶ See Opinions CON/2008/57, CON/2009/24, CON/2009/54 and CON/2010/83.

⁷ Article 1(5) of the draft law, amending Section 4(1)(5) of the Law on the Financial Market Stabilisation Fund.

⁸ See, *inter alia*, ECB Opinion CON/2008/57.

Restructuring Fund which is already financed by banking industry contributions⁹. The ECB notes the need to ensure that the financial resources of resolution funds are adequate and the contributions to such funds raised from credit institutions are set at a level which is appropriately calibrated to ensure financial stability.

4. Consultation of BaFin regarding application of the stabilisation measures

The ECB welcomes the introduction of the requirement to consult BaFin before stabilisation measures are introduced. This will facilitate the optimal selection of stabilisation and restructuring measures for an ailing credit institution¹⁰. This is further justified in view of the proposed financial interconnection between the Financial Market Stabilisation Fund and the Restructuring Fund, which has direct implications for the financial resources available for stabilisation and restructuring measures.

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

Done at Frankfurt am Main, 14 November 2012.

[signed]

The Vice-President of the ECB

Vítor CONSTÂNCIO

⁹ Article 1, Section 2(1) of the draft law.

¹⁰ Article 1, Section 4(1a) of the draft law.