



## OPINION OF THE EUROPEAN CENTRAL BANK

of 15 April 2013

on the framework for State guarantees and on State guarantees for  
Dexia SA and Dexia Crédit Local SA

(CON/2013/27)

### Introduction and legal basis

On 9 April 2013, the European Central Bank (ECB) received a request from the Nationale Bank van België/Banque Nationale de Belgique (NBB), acting on behalf of the Belgian Ministry of Finance, for an opinion on a draft law amending the Law of 22 February 1998 establishing the Organic Statute of the Nationale Bank van België/Banque Nationale de Belgique (hereinafter the 'draft law'). The ECB was requested to deliver an opinion as a matter of extreme urgency.

The ECB's competence to deliver an opinion is based on Article 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 provisions<sup>1</sup>, since 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 changes introduced by the draft law are twofold: (i) it will introduce a ceiling on the amount in respect of which the King may establish a guarantee of the State by royal decree under Article 36/24 § 1 of the Law of 22 February 1998; and (ii) it will confer statutory law status on the Royal Decrees establishing a State guarantee for Dexia SA and Dexia Crédit Local SA (hereinafter the 'Royal Decrees establishing a State guarantee for Dexia')<sup>2</sup>.

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

<sup>2</sup> These Royal Decrees are: (i) the Royal Decree of 18 October 2011 granting a State guarantee covering certain liabilities of Dexia Crédit Local SA; and (ii) the Royal Decree of 19 December 2012 amending the Royal Decree of 18 October 2011 granting a State guarantee covering certain loans granted to Dexia SA and Dexia Crédit Local SA. The ECB opined on an early draft of these decrees in its Opinions CON/2011/79 and CON/2012/100. All ECB Opinions are available on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu). According to the Explanatory Memorandum, the annulment of these Royal Decrees is currently being sought before the Belgian Administrative Court (*Raad van State/Conseil d'État*).

- 1.2 Article 36/24 § 1 of the Law of 22 February 1998 empowers the King, in the event of a sudden crisis in the financial markets or a serious threat of a systemic crisis, and on the advice of the NBB, to adopt by royal decree certain measures aimed at limiting the scale or the consequences of such crisis. This provision, originally adopted in 2008 by the Belgian legislator, empowers the King to adopt by royal decree derogations to certain specified existing laws, or to establish a framework for establishing a State guarantee covering defined types of liabilities or assets of financial institutions<sup>3</sup>. Under the draft law, the power of the King to establish a guarantee of the Belgian State will be limited to EUR 25 billion<sup>4</sup> in total. This limit applies at group level (i.e. to related institutions within the meaning of the Belgian Companies Code), but not to institutions which are linked as a result of the exercise of control over them by the State. The ceiling only applies to the principal amount of the guarantee, but not the interest and incidental costs beyond that amount, which may also be covered<sup>5</sup>. In addition, the draft law clarifies that subsequent exchange rate developments which would bring the amounts guaranteed above the threshold will not affect the validity of the guarantee. Furthermore, the ceiling applies only to State guarantees established by the King under Article 36/24 § 1 of the Law of 22 February 1998, and is without prejudice to the powers of the Belgian Parliament to establish a guarantee of the Belgian State for a higher amount.
- 1.3 The draft law will confer statutory law status on the Royal Decrees establishing a State guarantee for Dexia, through a legislative mechanism called ‘ratification’ in Belgian law. Following their ratification by the draft law, the Royal Decrees establishing a State guarantee for Dexia will acquire the same legal status as statutory legislation enacted by Parliament, with effect from their respective dates of entry into force<sup>6</sup>. This ratification will only modify the position of the Royal Decrees establishing a State guarantee for Dexia in the hierarchy of legal acts in the Belgian legal system, and will not affect the substance of these Royal Decrees, whose provisions will remain unchanged.

## 2. General observation

The ECB understands that the draft law aims at reinforcing legal certainty with regard to State guarantees granted by the King in the event of a financial crisis. The ECB generally takes a favourable view of initiatives of national authorities aimed at enhancing legal certainty and financial stability. It is, however, primarily for national authorities to assess the legal soundness of the instruments used to achieve this aim, in the context of their specific domestic constitutional order.

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<sup>3</sup> These include: (i) liabilities entered into by certain supervised institutions, including direct or indirect subsidiaries, or certain claims held by these institutions; (ii) losses incurred on certain assets or financial instruments by certain supervised institutions; and (iii) liabilities entered into by entities whose activity consists of acquiring and managing certain assets held by supervised institutions (respectively, Article 36/24, § 1, 2°, 4° and 5° of the Law of 22 February 1998).

<sup>4</sup> New Article 36/24, § 3, of the Law of 22 February 1998, introduced by Article A of the draft law.

<sup>5</sup> See Explanatory Memorandum.

<sup>6</sup> Article B of the draft law; Explanatory Memorandum.

**3. Specific observation**

The Royal Decrees establishing a State guarantee for Dexia will not be subject to the ceiling introduced by the draft law, as they will be given statutory law status. The ECB understands that, in any event, the ceiling to be introduced by the draft law will not apply to State guarantees that have been established prior to its entry into force<sup>7</sup>. From the perspective of legal clarity, the ECB notes that the draft law itself does not specify the date of entry into force of the ceiling and its effect with regard to existing State guarantees.

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

Done at Frankfurt am Main, 15 April 2013.

[signed]

*The President of the ECB*

Mario DRAGHI

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<sup>7</sup> See Explanatory Memorandum.