



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

## OPINION OF THE EUROPEAN CENTRAL BANK

of 29 October 2015

on the deposit guarantee scheme

(CON/2015/40)

### Introduction and legal basis

On 9 October 2015 the European Central Bank (ECB) received a request from the Irish Minister for Finance (hereinafter, the 'Minister') for an opinion on a draft law<sup>1</sup> amending the Financial Services (Deposit Guarantee Scheme) Act 2009 (hereinafter the 'draft law'), and draft regulations transposing certain provisions of Directive 2014/49/EU<sup>2</sup> (hereinafter the 'draft regulations', and together with the draft law, the 'draft laws') into Irish 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<sup>3</sup>, as the draft laws relate to the Central Bank of Ireland ('CBI') 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 law

1.1 The draft regulations provide that the CBI may, where it considers it appropriate and necessary having regard to the objectives of the draft regulations, provide finance to the deposit guarantee contributory fund on a short-term and urgent basis in order to meet the financing requirements of that fund under the draft regulations. The draft law provides that, where the CBI uses its own funds in respect of a payment from the contributory fund due to: (a) the available financial means of the contributory fund not being sufficient in respect of the costs to the fund of a particular compensation event in Ireland; (b) there being no funds standing to the credit of the credit institutions in the legacy fund; and (c) the extraordinary ex-post contributions referred to in the draft regulations not being immediately accessible, including for reasons relating to the financial position of the credit institution or credit institutions concerned, the amount of the payment is, with the approval of the Minister, to be repaid out of the State's Central Fund or the growing produce thereof within two weeks.

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<sup>1</sup> Finance (Miscellaneous Provisions) Bill 2015.

<sup>2</sup> Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149).

<sup>3</sup> Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

- 1.2 The draft law also provides for a transitional funding arrangement for the new deposit guarantee scheme for the period during which the new contributory fund is being built up, and for the return of money recovered by the deposit protection account to credit institutions for compensation events occurring on or before 1 November 2015.

## 2. General observations

- 2.1 The ECB welcomes the draft laws.
- 2.2 The ECB stresses that it does not opine on whether the draft laws effectively discharge Ireland's obligations to implement Directive 2014/49/EU. Rather, the ECB focuses on those provisions which may affect the CBI's role as a member of the European System of Central Banks.

## 3. Monetary financing prohibition

- 3.1 In line with its previous opinions, including ECB Opinion CON/2008/69, addressed to the Irish authorities and concerning the Financial Services (Deposit Guarantee Scheme) Bill 2008<sup>4</sup>, the ECB reiterates its view that activities performed by the CBI need to comply with the monetary financing prohibition laid down in Article 123(1) of the Treaty and Council Regulation (EC) No 3603/93<sup>5</sup>. This prohibits central banks from providing overdraft facilities or any other type of credit facility to the public sector, including any financing of the public sector's obligations vis-à-vis third parties. In the same vein, the ECB expects that functions to be performed by the CBI for the benefit of the deposit guarantee scheme will be conducted in a manner fully compatible with the CBI's institutional and financial independence, as a safeguard for the proper performance of the CBI's tasks under the Treaty and the Statute of the European System of Central Banks and of the European Central Bank<sup>6</sup>.
- 3.2 In this context, the ECB has consistently emphasised that the only forms of central bank financing of a national deposit guarantee scheme for credit institutions compatible with the monetary financing prohibition are: (a) intraday credit in line with the general rules on provision of such credit by the central bank<sup>7</sup>; and (b) short-term emergency liquidity financing under strict conditions established in the ECB's convergence reports, i.e. if such funding is short term, addresses urgent situations, systemic stability aspects are at stake and decisions are at the central bank's discretion<sup>8</sup>. Provisions to this effect need to be inserted into the draft law<sup>9</sup>. Taking these criteria into account, the following points are made.
- 3.3 The ECB welcomes the fact that the CBI is to be repaid the monies advanced to the contribution fund within two weeks. However, it is of utmost importance in satisfying the 'short term' financing

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<sup>4</sup> See most recently CON/2015/17. See also ECB Opinion CON/2008/69, ECB Opinion CON/2008/5, and ECB Opinion CON/2007/26. All ECB opinions are published on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

<sup>5</sup> Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty (OJ L 332, 31.12.1993, p. 1).

<sup>6</sup> See e.g. paragraph 3.4 of ECB Opinion CON/2008/52 and paragraph 3.4 of ECB Opinion CON/2008/65.

<sup>7</sup> Article 4 of Regulation (EC) No 3603/93.

<sup>8</sup> See e.g. paragraph 2.2 of ECB Opinion CON/2014/86.

<sup>9</sup> See e.g. paragraphs 2.2 to 2.8 of ECB Opinion CON/2008/5.

aspect of the convergence criteria that the role of the CBI is clearly defined, and that the process by which it can recover monies paid to the deposit guarantee contribution fund in the circumstances described in the draft regulations is clear and unambiguous. In this respect, the inclusion of an obligation to seek ministerial approval for repayment of the monies advanced to the contributory fund by the CBI implies that there is discretion as to whether or not the money should be repaid. In order to satisfy the criteria it is clear that the monies must be repaid. Therefore, to eliminate ambiguity on this point, the ECB suggests that the reference to seeking ministerial approval is deleted. Also, in the interests of legal certainty, it should be made clear in the draft law that the 'contributory fund' referred to therein is one and the same as the 'deposit guarantee contributory fund' referred to in the draft regulations.

- 3.4 In addition, the draft law provides that the CBI is to be repaid where it has used own funds in respect of a payment from the contributory fund money where the payment of own funds was made due to the reasons set out in (a) to (c) in paragraph 1.1. For the sake of clarity, it would be helpful if the draft regulations are amended so as to refer explicitly to the circumstances set out in the draft law and in (a) to (c) in paragraph 1.1.
- 3.5 In respect of the 'urgency' requirement of the criteria, the draft regulations are clear that the CBI may provide finance to the deposit guarantee contributory fund where required on an 'urgent basis' to meet the funding requirements of that fund under the regulations.
- 3.6 In respect of the requirement that an NCB has discretion as to whether or not to advance finance, the draft regulations provide the CBI with a broad discretion to advance monies where it considers it 'appropriate and necessary' having regard to the objectives of Part 6 of the draft regulations. These objectives are not clearly identified in the draft regulations. In order to more fully align the text of the draft regulations with the convergence criteria, the ECB suggests that the general reference to the objectives of Part 6 of the regulations should be replaced with an express reference to the objective of safeguarding systemic stability.
- 3.7 Finally, the ECB invites the consulting authority to consider whether it may be useful to insert a reference to Article 123(1) of the Treaty into the text of the draft laws.

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

Done at Frankfurt am Main, 29 October 2015.

[signed]

*The President of the ECB*

Mario DRAGHI