



OPINION OF THE EUROPEAN CENTRAL BANK
of 10 December 2009
on the extension of the Austrian State guarantees for the interbank market
(CON/2009/99)

Introduction and legal basis

On 3 December 2009, the European Central Bank (ECB) received a request from the Austrian Ministry for Finance for an opinion on a draft law amending the Law on the strengthening of the interbank money 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 amends the Law on the strengthening of the interbank money market of 26 October 2008 on which the ECB was consulted in the same month². The Interbank Market Support Act enabled the use of certain financial instruments to revive the interbank money market, namely empowering the Minister for Finance to (i) provide State guarantees to a newly established clearing house (*Oesterreichische Clearingbank AG*) that borrows from financial institutions and lends at a market rate to eligible financial institutions; and (ii) act as guarantor for bonds issued by eligible financial institutions. The amount available for both measures is EUR 65 billion. Under the provisions currently in force, the Minister for Finance may issue State guarantees until 31 December 2009.
- 1.2 In order to temporarily maintain the support scheme the Austrian Government intends to extend this deadline to 31 December 2010. In the explanatory memorandum to the draft law it is stated that the temporary extension of the deadline will be notified to the European Commission for approval.

¹ OJ L 189, 3.7.1998, p. 42.

² See ECB Opinion CON/2008/55; all ECB opinions are published on the ECB’s website at www.ecb.europa.eu.

- 1.3 The draft law does not amend the conditions under which (i) the clearing house may borrow and lend funds to eligible financial institutions; (ii) the Minister for Finance may provide a State guarantee to the clearing house for its lending and borrowing operations; and (iii) the Minister for Finance may act as guarantor for eligible financial institutions that issue securities for refinancing operations.

2. General observations

- 2.1 The ECB notes that on 14 October 2009, the Ministry for Finance consulted the ECB on measures to improve liquidity and increase the competitiveness of credit institutions. The ECB adopted its opinion on the same on 28 October 2009³. In the meantime, the measures were amended and now include the draft law. The Austrian authorities consulted the ECB on the amended measures only on request and at a late stage of the legislative process and the ECB would therefore like to reiterate that national authorities are under a duty to consult it on draft legislative provisions falling within its fields of competence at a point in the legislative process which affords it sufficient time to examine these provisions. Only in cases of extreme urgency may the time limit be reduced under Article 3(2) of Decision 98/415/EC. Indeed, it follows from Article 3(4) of Decision 98/415/EC that Member States are obliged to suspend the process of adoption of such provisions pending receipt of the ECB's opinion, as the adopting national authority should have the opportunity to meaningfully deliberate the ECB's opinion prior to adoption⁴.
- 2.2 The ECB also draws attention to the guidance provided by the Ecofin Council to the Member States in the Conclusions of its meeting of 7 October 2008⁵, and to the Declaration issued by the Heads of State of the euro area on 12 October 2008 (hereinafter the 'Declaration')⁶. The principles contained in the Declaration and the Conclusions of the Ecofin Council were endorsed by the European Council of 15 to 16 October 2008⁷. In particular, the ECB stresses that any initiative put in place by the competent national authorities to restore confidence in the national segments of the euro area financial markets should be coordinated and should aim to implement the common principles in question, in a spirit of close cooperation with other Member States and the EU institutions since, as acknowledged in the Declaration, significant differences in national

³ See ECB Opinion CON/2009/86.

⁴ See the Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions, Title IV, Section 1.

⁵ See 'Immediate Responses to Financial Turmoil', Ecofin Council Conclusions of 7 October 2008, available on the former French Presidency's website at www.ue2008.fr. The Ecofin Council recommended that: (i) interventions should be timely and the support should in principle be temporary; (ii) the interests of taxpayers should be protected; (iii) existing shareholders should bear the due consequences of the intervention; (iv) the Government should be in a position to bring about a change of management; (v) management should not retain undue benefits; (vi) governments may have, inter alia, the power to intervene in remuneration; (vii) legitimate interests of competitors must be protected, in particular through State aid rules; and (viii) negative spill-over effects should be avoided.

⁶ The text of the Declaration is available on the former French Presidency's website at www.ue2008.fr. The Member States agreed to: (i) ensure appropriate liquidity conditions for financial institutions; (ii) facilitate the funding of banks; (iii) provide financial institutions with additional capital resources to continue to ensure the proper financing of the economy; (iv) allow for an efficient recapitalisation of distressed banks; (v) ensure sufficient flexibility in the implementation of accounting rules; and (vi) enhance cooperation procedures among European countries.

⁷ See Brussels European Council of 15 to 16 October 2008, paragraph 3 of the Presidency Conclusions.

implementation could have a counter-productive effect, creating distortions in global banking markets.

3. Specific observations

3.1 Relationship of the draft law to the single monetary policy of the euro area

3.1.1 Since the draft law aims at extending the scope of the State guarantee scheme laid down in the Act of 26 October 2008, the ECB would like to recall some elements previously mentioned in its opinions on the Member States' financial rescue measures, including ECB Opinion CON/2008/55, which are important from the perspective of monetary policy.

3.1.2 As stated in the Declaration, it is stressed that it is of the utmost importance that support operations conducted by national authorities do not in any way affect the conduct and implementation of monetary policy in the euro area⁸. In this context, the ECB reiterates its view that the extension of the State guarantee to cover interbank deposits should be avoided⁹, as this could entail a substantial distortion in the various national segments of the euro area money market. It may thus impair the implementation of the single monetary policy, which is an exclusive competence of the Eurosystem under Article 127(2) of the Treaty¹⁰. It also appears crucial to ensure the harmonisation of State guarantee fees within the euro area and the European Union, as a level playing field is also essential in this respect. In this context, the ECB recalls the specific recommendations made by the Governing Council of the ECB on government guarantees¹¹ which may help to ensure such harmonisation.

3.2 Temporary nature of the scheme

In line with the Declaration and the Conclusions of the Ecofin Council of 7 October 2008, the ECB notes that harmonisation of the measures implemented at the national level is essential to ensure the integration of the financial markets within the EU, and within the euro area in particular. In this regard, the ECB emphasises that coordination regarding the duration of national financial support schemes across the EU is of crucial importance in order to ensure a level playing field¹². In addition, the ECB emphasises the need for national support measures to be temporary¹³. It is understood that the scheme's temporary nature is essentially maintained so that the involvement of the Austrian State will be limited in time.

⁸ See ECB Opinions CON/2009/12, paragraph 2.3 and CON/2009/73, paragraph 3.1.

⁹ See ECB Opinion CON/2008/55, paragraph 3.5, and more recently ECB Opinions CON/2009/12, paragraph 3.3.2, and CON/2009/49, paragraph 3.9.

¹⁰ See also ECB Opinion CON/2008/48, in particular paragraph 3.7, and more recently ECB Opinions, CON/2009/49, paragraph 3.9 and CON/2009/73, paragraph 3.1.

¹¹ Recommendations of the Governing Council of the European Central Bank on government guarantees for bank debt, 20 October 2008, available on the ECB's website.

¹² See notably ECB Opinions CON/2009/24, paragraph 3.1, CON/2009/54, paragraph 2.5.2, CON/2009/73, paragraph 3.2, CON/2009/79, paragraph 2 and CON/2009/82, paragraph 2.2.

¹³ See footnote 12.

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

Done at Frankfurt am Main, 10 December 2009.

[signed]

The President of the ECB

Jean-Claude TRICHET