

I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 18 November 2008

at the request of the Council of the European Union on a proposal for a Directive of the European Parliament and of the Council amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay

(CON/2008/70)

(2008/C 314/01)

Introduction and legal basis

On 24 October 2008, the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a Directive of the European Parliament and of the Council amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay ⁽¹⁾ (hereinafter the 'proposed directive').

The ECB's competence to deliver an opinion on the proposed directive is based on Article 105(4) of the Treaty establishing the European Community. 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. General observations

1.1. The ECB notes that the current financial market crisis has confirmed that deposit-guarantee schemes are vital for maintaining depositors' confidence and therefore safeguarding financial stability. The ECB supports the underlying aim of enhancing depositors' confidence and understands that for urgency reasons the proposed directive focuses on increasing the coverage level of national deposit-guarantee schemes (hereinafter the 'national schemes') in line with the Ecofin Council's conclusions of 7 October 2008 ⁽²⁾, reducing payout delay and discontinuing the current option for co-insurance.

1.2. At the same time the ECB supports the Commission's intention to continue work on convergence of the national schemes, with particular regard to harmonising their funding mechanisms, and to submit a report on the matter to the European Parliament and to the Council by 31 December 2009 ⁽³⁾. In view of the importance of the funding arrangements of the national schemes for the effectiveness of the financial safety net and for safeguarding financial stability, the ECB looks forward to contributing to the Commission's future work in this field and encourages timely completion of the Commission's report.

⁽¹⁾ COM(2008) 661 final.

⁽²⁾ See the press release of the 2894th Council meeting (13784/08), available on the Council's website at: www.consilium.europa.eu, as mentioned in the sixth paragraph of Section 1 of the explanatory memorandum to the proposed directive.

⁽³⁾ Article 12 of Directive 94/19/EC, as amended by Article 1(6) of the proposed directive; cf. recitals 1 and 7 of the proposed directive.

In this context, the ECB underlines that national schemes' funding arrangements must, *inter alia*, comply with the monetary financing prohibition laid down in the Treaty, and in particular with the prohibition on national central banks providing overdraft facilities or any other type of facility within the meaning of Article 101 of the Treaty ⁽¹⁾, as more specifically considered in past ECB opinions concerning draft national legislation ⁽²⁾ and in the ECB's Convergence Reports ⁽³⁾.

2. Specific observations

2.1. Coverage level of the guarantee

The ECB welcomes the increase in the minimum amount of guaranteed deposits to EUR 50 000 by the end of 2008 and the further increase to EUR 100 000 ⁽⁴⁾, as mentioned in the Council's conclusions of 7 October 2008 ⁽⁵⁾. At the same time, the ECB emphasises that any increase in the coverage exceeding the latter of the above mentioned amounts should be preceded by close coordination at the EU level, as substantial differences between national measures may have a counter-productive effect and create distortions in the single market.

2.2. Reduction of payout delay

The ECB welcomes the intention to reduce delays in payouts of guaranteed deposits significantly and thereby strengthen depositors' confidence ⁽⁶⁾. In this context, the ECB would emphasise that recent analysis at international level has highlighted that a prompt payout of depositors' claims is of key importance for effective deposit protection. At the same time, a pragmatic approach should be taken to introducing the necessary reduction in payout delays, thereby preserving credibility of the deposit-guarantee schemes. This implies establishing efficient operational processes for verifying claims and paying depositors, as well as ensuring that sufficient funding is available. In particular, procedures need to be put in place so that if a bank that operates on a cross-border basis fails, depositors receive payouts as efficiently as they would if the failed bank were operating in a single Member State. Moreover, the ECB suggests that the Commission's plan to assess whether it would be possible to harmonise further the funding arrangements used by the national schemes should be accompanied by a review of the effectiveness of payout procedures. Finally, in addition to shortening the payout period, the ECB suggests that public confidence in deposit-guarantee schemes could be enhanced by improving depositors' awareness of the terms and conditions of deposit protection, *inter alia* through appropriate disclosure of the terms and conditions by credit institutions.

Done at Frankfurt am Main, 18 November 2008.

The President of the ECB

Jean-Claude TRICHET

⁽¹⁾ Interpreted in line with 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).

⁽²⁾ See paragraphs 11-14 of ECB Opinion CON/2001/32 of 11 October 2001 at the request of the Portuguese Ministry of Finance on a draft decree law amending the legal framework of credit institutions and financial companies; paragraphs 11-13 of ECB Opinion CON/2005/50 of 1 December 2005 at the request of Národná banka Slovenska on a draft law amending the Act No 118/1996 Coll. on the protection of bank deposits and on amendments to certain laws, as last amended; paragraphs 2.1-2.3 of ECB Opinion CON/2007/26 of 27 August 2007 at the request of the Polish Minister for Finance on a draft law amending the Law on the Bank Guarantee Fund; and paragraphs 2.2-2.8 of ECB Opinion CON/2008/5 of 17 January 2008 at the request of the Polish Minister for Finance on a draft law amending the Law on the Bank Guarantee Fund.

⁽³⁾ See, e.g. the ECB's Convergence Report December 2006, p. 30.

⁽⁴⁾ Article 7(1) of Directive 94/19/EC, as amended by Article 1(3)(a) of the proposed directive and as complemented by the first and second subparagraphs of Article 2(1) of the proposed directive, which provides for retroactive application of the increased coverage level from 15 October 2008; cf. recital 3 of the proposed directive and Section 5.3 of the explanatory memorandum to the proposed directive.

⁽⁵⁾ The Council agreed that 'all Member States would, for an initial period of at least one year, provide deposit-guarantee protection for individuals for an amount of at least EUR 50 000, acknowledging that many Member States determine to raise their minimum protected amount to EUR 100 000'.

⁽⁶⁾ Article 1(3) of Directive 94/19/EC, as amended by Article 1(1) of the proposed directive, and Article 10(1) and (2) of Directive 94/19/EC, as amended by Article 1(5) of the proposed directive; cf. recital 5 of the proposed directive and Section 5.1 of the explanatory memorandum to the proposed directive.