



OPINION OF THE EUROPEAN CENTRAL BANK

of 13 October 2011

on a State guarantee covering certain loans granted to Dexia SA and Dexia Crédit Local SA

(CON/2011/79)

Introduction and legal basis

On 12 October 2011, 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 royal decree granting a State guarantee covering certain loans granted to Dexia SA and Dexia Crédit Local SA (hereinafter the 'draft royal decree'). The ECB was requested to deliver an opinion under extremely urgent circumstances.

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 provisions¹, since the draft royal decree 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 royal decree

- 1.1 Article 36/24 §1 of the Law of 22 February 1998 establishing the Organic Statute of the Nationale Bank van België/Banque Nationale de Belgique² empowers the King, on advice from the NBB, to adopt certain measures, including notably the establishment of a system to grant a State guarantee covering liabilities entered into by certain supervised institutions or covering certain claims held by

¹ OJ L 189, 3.7.1998, p. 42.

² This provision was originally adopted as Article 117*bis* of the Law of 2 August 2002 on the supervision of the financial sector and on financial services, whose substance was transferred to the Law of 22 February 1998 NBB in the context of the recent reform of the Belgian supervisory architecture. The ECB issued the following two opinions on this reform: CON/2010/7 and CON/2011/5. ECB Opinion CON/2008/50, paragraph 2.1 commented on an early draft of the empowering clause. All ECB opinions are available on the ECB's website at www.ecb.europa.eu.

these institutions³ in the event of a sudden crisis in the financial markets or a serious threat of a systemic crisis and, if the measures are taken, to limit the scale or effects thereof⁴.

The draft royal decree is based on this empowering provision and is motivated by the need, given the current turbulence in the international financial markets, to take certain measures to safeguard the stability of and confidence in the Belgian financial system. These measures consist in the setting up of a guarantee scheme covering particular loans of certain entities of the Dexia group in the context of the group's restructuring⁵.

- 1.2 Under the draft royal decree, the Belgian State will guarantee loans granted to Dexia SA and/or Dexia Crédit Local SA by other credit institutions or professional counterparts⁶, up to a maximum principal amount of EUR 54 450 000 000⁷. The guarantee will only apply for loans issued until 31 December 2021 at the latest and having a maturity of maximum 10 years⁸. The guarantee will be payable at first demand⁹ and its remuneration is to be determined by the Minister for Finance¹⁰.

The entry into force of the State guarantee will be conditional on the Minister for Finance entering into one or several agreement specifying certain aspects of the arrangement, notably: (i) the identification of the guaranteed loans¹¹; (ii) Dexia SA and Dexia Crédit Local SA's undertaking to pay the remuneration agreed for the guarantee and to implement any measure aimed at restoring their solvability deemed useful by the Minister for Finance¹²; (iii) the duration of the guarantee and events causing the guarantee to expire^{13 14}.

2. General observations

It is important to ensure that the draft royal decree and any subsequent implementing measures fully comply with the relevant provisions of Union law, including competition and State aid rules. In this

3 See in particular Article 36/24, §1, 2° of the Law of 22 February 1998.

4 Belgium has consulted the ECB on seven other draft legislative provisions adopted in this context: (i) Opinion CON/2008/46; (ii) Opinion CON/2008/50; (iii) Opinion CON/2008/61; (iv) Opinion CON/2008/74; (v) Opinion CON/2009/25; (vi) CON/2009/29 and (vii) CON/2009/73.

5 See the references to the safeguard of the stability of the Belgian financial system in recital 3 of the draft royal decree.

6 Article 1 of the draft royal decree.

7 Article 2 of the draft royal decree. In addition to the principal, the guarantee also covers interests and ancillary costs, which are not subject to the EUR 54 450 000 000 ceiling.

8 Article 2 of the draft royal decree. The categories of 'professional counterparts' that are eligible for the guarantee are to be identified by the Minister for Finance in a further contract or regulation.

9 Article 3 of the draft royal decree. The eligible beneficiaries will need to provide a precise justification of the amounts concerned and declare that these amounts are payable and unpaid.

10 Article 4 of the draft royal decree.

11 Article 5, 1° of the draft royal decree.

12 Article 5, 3° and Article 5, 4° of the draft royal decree.

13 Article 5, 5° of the draft royal decree.

14 The following will also need to be specified in the agreements : (i) whether the guarantee is assignable (Article 5, 6° of the draft royal decree); (ii) the arrangements ensuring subrogation and compensation of the Belgian State in the event of a call on the guarantees, and any possible related security (Article 5, 7° of the draft royal decree); (iii) the arrangements for informing the State of the development of the guaranteed loans (Article 5, 8° of the draft royal decree; (iv) the pay out deadlines (Article 5, 9° of the draft royal decree), as well as (v) any other provision deemed useful by the Minister for Finance (Article 5, 10° of the draft royal decree).

respect, it is essential that Member States comply with the guidance given by the European Commission in its communications on the application of State aid rules to support measures in favour of banks and government guarantee schemes covering bank debt¹⁵, including with regard to the temporary nature of the acceptability of such aid measures and the necessity for credit institutions receiving State support to submit a restructuring plan.

3. Interaction of the draft royal decree with the monetary policy of the euro area

The draft royal decree does not define the type of liabilities falling within the meaning of ‘loans’ under Article 1 of the draft royal decree since they will be defined in the agreement(s) referred to in Article 5 of the draft royal Decree. In this respect, the ECB makes the following observations.

First, it reminds the consulting authority that government guarantees for bank debt should, when practically implemented: (i) address the funding problems of liquidity-constrained solvent banks by improving the functioning of the market for bank debt of longer-term maturity; (ii) preserve the level playing field among financial institutions and avoid market distortions; and (iii) ensure consistency in the management of Eurosystem liquidity. In this vein, government guarantees on short-term bank debt with a maturity of three to 12 months may be provided to revitalise the short-term bank debt market¹⁶. In this regard, the ECB reiterates that granting government guarantees for bank debt with a maturity of less than three months should be avoided to the extent possible¹⁷.

Second, it is also stressed that it is of the utmost importance that support operations conducted by national authorities do not in any way affect the conduct and the implementation of monetary policy in the euro area¹⁸. In this context, the ECB reiterates its view that the extension of the State guarantee to cover interbank deposits should be avoided¹⁹, as this could entail substantial distortion in the various national segments of the euro area money market by potentially increasing short-term debt issuance activity across Member States and therefore impairing the implementation of the single monetary policy, which is an exclusive competence of the Eurosystem under Article 127(2) of the Treaty²⁰. It could also affect the

¹⁵ See notably the Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of banks in the context of the financial crisis, (OJ C 329, 7.12.2010, p. 7); the DG Competition Staff Working Document - The application of State aid rules to government guarantee schemes covering bank debt to be issued after 30 June 2011, published on the Commission’s website at www.ec.europa.eu; the Communication from the Commission – The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis (OJ C 270, 25.10.2008, p. 8); the Eurosystem’s Guiding principles for bank asset support schemes, 25 February 2009; and Commission Communication of 25 February 2009 on the treatment of impaired assets in the Community banking sector (OJ C 72, 26.3.2009, p. 1). See furthermore in this context the Recommendations of the Governing Council of the European Central Bank on government guarantees for bank debt, 20 October 2008.

¹⁶ CON/2009/73, paragraph 3.1, CON/2009/12, paragraph 3.3, CON/2009/49, paragraph 3.9.

¹⁷ CON/2009/92, paragraph 3.5.

¹⁸ CON/2009/73, paragraph 3.1, CON/2009/12, paragraph 3.2, CON/2009/92, paragraph 3.5 .

¹⁹ CON/2009/73, paragraph 3.1, CON/2009/49, paragraph 3.9, CON/2008/50, paragraph 3.2, CON/2009/12, paragraph 3.3.2.

²⁰ CON/2009/73, paragraph 3.1, CON/2009/49, paragraph 3.9, CON/2009/12, paragraph 3.3.2 and CON/2008/48, paragraph 3.7.

transmission of monetary policy decisions²¹ and make it difficult to maintain the necessary level playing field in the euro area between the financial institutions benefiting from the State guarantee and those not benefiting.

4. Temporary nature of the scheme

Also in line with the guidance given by the Commission on 30 June 2011²², the ECB notes the need for national support measures to be temporary in nature²³. It is understood that the support scheme covers a time period of up to 20 years, as the loans covered by the guarantee may be issued until 31 December 2021 at the latest and may be for a maximum duration of 10 years, and thus could be considered of a longer-term rather than temporary nature.

5. Pricing of the guarantee

As for Article 4 of the draft royal decree, the ECB underlines that, for the Minister of Finance to determine the remuneration due to the State for the guarantee, the pricing formula recommended by the Governing Council on 20 October 2008 should be taken into consideration. This was also supported by the Commission in its guidance related to the application of State aid rules to government guarantees of 2011.

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

Done at Frankfurt am Main, 13 October 2011.

[signed]

The President of the ECB

Jean-Claude TRICHET

21 CON/2009/73, paragraph 3.1, CON/2009/12, paragraph 3.3.2, CON/2009/49, paragraph 3.9.

22 DG Competition Staff Working Document - The application of State aid rules to government guarantee schemes covering bank debt to be issued after 30 June 2011, published on the Commission's website at www.ec.europa.eu.

23 CON/2009/73, paragraph 3.2, CON/2009/24, paragraph 3.1, CON/2009/54, paragraph 2.5.2.