



OPINION OF THE EUROPEAN CENTRAL BANK

of 9 October 2012

on European Financial Assistance

(CON/2012/75)

Introduction and legal basis

On 17 July 2012, the European Central Bank (ECB) received a request from the Banco de España, on behalf of the Ministry of Economic Affairs and Competitiveness for an opinion on Royal Decree-Law 21/2012 of 14 July 2012 on liquidity measures for the General Government and in the financial sector (hereinafter the 'Royal Decree-Law'). The ECB was only consulted on the Fifth Additional Provision of the Royal Decree-Law which relates to the financial assistance for the recapitalisation of financial institutions in Spain by the European Financial Stability Facility (hereinafter the 'financial assistance programme').

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 of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions¹, as the Royal Decree-Law concerns the Banco de España and 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 Royal Decree-Law

The purpose of the Fifth Additional Provision is to clarify the competences of the different institutions involved in the implementation of the financial assistance programme, in order to ensure its successful launch. In particular, the Fifth Additional Provision provides for the following clarifications:

- 1.1 The information to be provided by the Banco de España to the European Commission, the ECB, the European Banking Authority (EBA), the International Monetary Fund (IMF), the European Financial Stability Facility (EFSF) and, where applicable, the European Stability Mechanism (ESM) within the framework of the financial assistance programme shall be exempt from the secrecy obligation under Article 6 of Royal Decree-Legislation 1298/1986 insofar as disclosure of the relevant information is required for the performance of the functions of those institutions in connection with the financial assistance programme.

¹ OJ L 189, 3.7.1998, p. 42.

ECB-PUBLIC

- 1.2 The Fund for Orderly Bank Restructuring (FROB) is authorised to enter into any agreements or contracts as required in order to formalise the financial assistance and to make the financial assistance programme available to the State and the FROB.
- 1.3 In the context of recapitalisation, the FROB may advance, as a loan, in cash or in securities, the amount of aid requested by participating credit institutions. The advance payment is subject to certain circumstances which, in the Banco de España's view, may ultimately impair the stability of the credit institution during the time frame required for the effective subscription and payment of the requested financial aid by the FROB. This advance payment will be offset as a credit claim against the credit institution on the date of subscription and disbursement of the instruments representing the equivalent amount of own resources. If, the subscription and disbursement do not ultimately take place, the credit institution will be obliged to immediately repay to the FROB all of the cash or securities granted under the loan. If the amount of the financial support granted is lower than the amount of the advance, the credit institution will immediately repay the corresponding excess amount.
- 1.4 The Deposit Guarantee Fund (DGF) may adopt measures to facilitate the implementation of the financial assistance programme. The DGF may also dispose of its assets for the constitution of guarantees requested in the context of such financial assistance. Such commitment and guarantees may be assumed by the credit institutions in the framework of the recapitalisation plans, as approved by the Banco de España.

2. Duty to consult the ECB

The Spanish government approved the Royal Decree-Law on 13 July 2012 and it was published in the *Boletín Oficial del Estado* on 14 July 2012, entering into force on the following day. The urgent consultation request was received by the ECB on 17 July 2012, which effectively meant that the ECB was consulted on an adopted legislation and not on a draft law. The ECB would like to draw the Ministry's attention to the proper procedure for its consultations².

3. Information shared by the Banco de España

- 3.1 The confidentiality regime under Article 6 of Royal Decree-Legislation 1298/1986 imposes a secrecy obligation regarding all data, documents and information in the Banco de España's possession. However, in the performance of its supervisory role, this provision allows the Banco de España to share certain information with central banks and other similar monetary authorities when the information is relevant for the performance of their relevant statutory functions, for example, in the implementation of monetary policy and the corresponding provision of liquidity, the oversight of payment, netting and clearing systems and the stability of the financial system.

² See Title IV, Section I of the Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions, available on the ECB's website at www.ecb.europa.eu.

3.2 The ECB understands that the supervisory information to be provided by the Banco de España to the ECB in the context of the financial assistance programme would be covered by the above mentioned Article 6, which permits the provision of supervisory information to central banks generally. Against this background, the ECB understands that, as far as concerns the information to be provided by the Banco de España to the ECB in particular, as distinct from the other institutions involved in the financial assistance programme, namely the Commission, the IMF, the EBA and the EFSF or the ESM, the new exemption regarding the Banco de España's secrecy obligations has no material legal impact. The ECB therefore has no objection to the insertion, for the avoidance of any possible doubt, of this specific additional clause for the provision of supervisory information by the Banco de España to the ECB.

4. Advance of the financial assistance as a loan by the FROB.

The ECB takes note of the possibility contained in the Fifth Additional Provision for the FROB to advance to any credit institution in the form of a loan, in cash or in securities, the amount of the financial aid requested by the participating credit institutions, and acknowledges that this tool will provide the FROB with additional flexibility to perform the duties conferred under the Financial Assistance Facility Agreement³.

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

Done at Frankfurt am Main, 9 October 2012.

[signed]

The President of the ECB

Mario DRAGHI

³ Master Financial Assistance Facility Agreement between the EFSF, the Kingdom of Spain, the FROB and the Banco de España, available at <http://www.eurozone.europa.eu/media/776296/2012-07-20-ffa-spain.pdf>.