



OPINION OF THE EUROPEAN CENTRAL BANK
of 17 November 2008
at the request of the Irish Minister for Finance
on a draft Financial Services (Deposit Guarantee Scheme) Bill 2008
(CON/2008/69)

Introduction and legal basis

On 30 October 2008 the European Central Bank (ECB) received a request from the Irish Minister for Finance for an opinion on a draft Financial Services (Deposit Guarantee Scheme) Bill 2008 (hereinafter the 'draft law'), accompanied by the draft European Communities (Deposit Guarantee Schemes) (Amendment) Regulations 2008, an implementing instrument to be adopted under the draft law (hereinafter the 'draft amending Regulations').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community 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 draft law relates to the Central Bank and Financial Services Authority of Ireland (hereinafter the 'Central Bank') and contains 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

The draft law will amend the European Communities (Deposit Guarantee Schemes) Regulations 1995² (hereinafter the '1995 Regulations'), which established the Irish deposit-guarantee scheme. The amendments will be introduced in two forms: (i) by way of transferring some of the provisions of the 1995 Regulations into the draft law, which, when adopted, will have a higher legislative status than the 1995 Regulations; and (ii) by way of amendments to the 1995 Regulations by the draft amending Regulations that are to be adopted by the Minister for Finance under the delegation contained in the draft law³. As a result, the following main changes will be introduced: (i) the statutory deposit protection level will be raised from current EUR 20 000 to EUR 100 000 and the present co-insurance requirement resulting in depositors bearing 10% of the loss up to the statutory deposit protection level⁴ will be

1 OJ L 189, 3.7.1998, p. 42.

2 Statutory Instrument No 168 of 1995.

3 See Section 2 of the draft law.

4 See Section 11(3)(a) of the 1995 Regulations, as amended by Section 8 of the draft amending Regulations.

eliminated; (ii) credit unions will be included within the scope of institutions covered by the deposit-guarantee scheme⁵; and (iii) within the Central Bank's institutional framework, the responsibility for the functions related to the deposit-guarantee scheme will be taken away from the scope of responsibilities of the Irish Financial Services Regulatory Authority, an autonomous statutory body forming part of the legal personality of the Central Bank and reallocated to the Central Bank's general responsibilities⁶.

2. General observations

- 2.1 In line with its previous opinions⁷, the ECB welcomes the proposed increase in the total amount of protected deposits in accordance with the conclusions of the Ecofin Council held on 7 October 2008⁸. In this respect, the ECB repeats that Member States must act in a coordinated manner to avoid significant differences in national implementation from having a counter-productive effect and creating distortions in global banking markets. In particular, harmonisation as regards the guaranteed amount and the duration of the guarantee are necessary within the European Union. Moreover, the ECB also emphasises the importance of ensuring that any legislative proposals responding to the current financial situation comply with Community law, including EC competition law, and understands that nothing in the draft law and the draft implementing Regulations will preclude the Irish authorities appropriately transposing the proposed amendments to Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes⁹, once they are adopted.
- 2.2 The ECB commented in a recent opinion addressed to the Irish authorities on the set of Government guarantees covering all retail and corporate deposits to the extent they are not covered by the existing Irish deposit-guarantee scheme¹⁰. The ECB highlighted that in general the existing mechanism of the deposit-guarantee scheme should be used to the extent possible when providing the guarantees. In the context of the present consultation, the ECB reiterates its earlier position that

⁵ See definition of 'credit institution' in Section 3(1) of the 1995 Regulations, as amended by Section 4(d) of the draft amending Regulations.

⁶ See Part 1 of Schedule 2 to the Central Bank and Financial Services Authority of Ireland Act 2003, as amended by Section 10 of the draft law together with the Schedule to the draft law, Item 2.

⁷ See, e.g., paragraph 2.2 of ECB Opinion CON/2008/51 of 17 October 2008 at the request of the Greek Ministry of Economy and Finance on a draft law on, inter alia, the establishment of the 'Depositors and Investors of Credit Institutions Compensation Fund' and paragraph 2.1 of ECB Opinion CON/2008/61 of 28 October 2008 at the request of the Belgian Minister for Finance on a draft royal decree implementing the Law of 15 October 2008 on measures promoting financial stability [title shortened].

⁸ The Council (Ecofin) agreed in its 7 October meeting 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'. See the press release of the 2894th Council meeting (13784/08), available on the Council's website at www.consilium.europa.eu.

⁹ OJ L 135, 31.5. 1994, p. 5. See also European Commission's 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, 15 October 2008, COM(2008) 661 final.

¹⁰ See ECB Opinion CON/2008/48 of 15 October 2008 at the request of the Irish Minister for Finance on a draft Credit Institutions (Financial Support) Scheme 2008.

the relationship between the existing Irish deposit-guarantee scheme and the newly provided special Government guarantees should be further clarified¹¹.

3. Central bank independence and the monetary financing prohibition

- 3.1 The ECB notes that the proposed reallocation of responsibility for the performance of the functions related to the deposit-guarantee scheme will result in the direct performance by the Central Bank of *inter alia* the following functions foreseen by the 1995 Regulations: (i) hosting the deposit accounts on which the deposits contributing to the funding of the Irish deposit-guarantee scheme are maintained¹²; (ii) annually recalculating the amounts to be maintained on the deposit accounts by the covered credit institutions¹³; and (iii) determining that the covered credit institution is unable to pay out deposits and ensuring in such cases that payouts of guaranteed deposits are made from the deposit accounts under the deposit-guarantee scheme¹⁴. Additionally, certain new functions related to the operation of the deposit-guarantee scheme are assigned by the draft law to the Central Bank, in particular the provision of advice to the Minister for Finance as regards variations in amounts required to be held by the respective credit institutions or classes of credit institutions, taking into account their capital and liquidity levels and other prudential parameters¹⁵. The ECB appreciates that the principle of risk-based contributions has the effect of aligning the calculation of a credit institution's contributions to the deposit guarantee scheme with its risk profile¹⁶. At the same time, the ECB notes that the activities performed by the Central Bank need to comply with the monetary financing prohibition contained in Article 101 of the Treaty and 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 Treaty¹⁷. In the same vein, the ECB expects that functions to be performed by the Central Bank for the benefit of the deposit-guarantee scheme will be conducted in a manner fully compatible with the Central Bank's institutional and financial independence, as a safeguard for the proper performance of the Central Bank's tasks under the Treaty and the Statute of the European System of Central Banks and of the European Central Bank¹⁸.

11 See paragraph 3.10 of ECB Opinion CON/2008/48.

12 Section 5(1) of the 1995 Regulations.

13 Section 5(3) of the 1995 Regulations, to be superseded by Section 5(1) of the draft law.

14 Sections 9(1)(a), 12(2) and 13(9) of the 1995 Regulations.

15 Sections 4(3)-(4) of the draft law.

16 See paragraph 3.2 of ECB Opinion CON/2008/51 of 17 October 2008 at the request of the Greek Ministry of Economy and Finance on a draft law on, *inter alia*, the establishment of the 'Depositors and Investors of Credit Institutions Compensation Fund'.

17 OJ L 332, 31.12.1993, p. 1.

18 See paragraph 3.4 of ECB Opinion CON/2008/52 of 17 October 2008 at the request of the Spanish State Secretary for Economic Affairs on a Royal Decree-Law creating a Fund for the acquisition of financial assets [title shortened] and paragraph 3.4 of ECB Opinion CON/2008/65 of 12 November 2008 at the request of the Banca d'Italia on behalf of the Italian Ministry for Economic Affairs and Finance on a draft ministerial decree containing provisions to implement Decree-Law No 157/2008 on further urgent measures to guarantee the stability of the credit system.

3.2 Moreover, the ECB notes that under the current Section 19(1) of the 1995 Regulations, the Central Bank may, at its discretion and to such extent as it may deem proper from time to time, make payments constituting refundable support to the Irish deposit-guarantee scheme, to protect the interests of depositors or to promote the orderly and proper regulation of banking¹⁹. In this context, the ECB underlines that national deposit-guarantee 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 Treaty²⁰, as more specifically stated in past ECB opinions²¹ and in the ECB's Convergence Reports²². Section 19(1) of the 1995 Regulations needs to comply with the above criteria by specifying that the payments foreseen in this Section may only be made on a short-term basis to cover urgent needs related to maintaining the stability of the financial system.

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

Done at Frankfurt am Main, 17 November 2008.

[signed]

The President of the ECB

Jean-Claude TRICHET

¹⁹ Section 19(1) of the 1995 Regulations.

²⁰ Interpreted in line with Regulation (EC) No 3603/93.

²¹ 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.

²² See, e.g. the ECB's Convergence Report December 2006, p. 30.