



OPINION OF THE EUROPEAN CENTRAL BANK

of 9 July 2014

on the legal framework for credit institutions

(CON/2014/52)

Introduction and legal basis

On 28 April 2014, the European Central Bank (ECB) received a request from the Polish Minister for Finance for an opinion on a draft law amending the Law on banking and certain other legal acts (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/EC¹, 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 main purpose of the draft law is to transpose Directive 2013/36/EU of the European Parliament and of the Council² and to give effect to the streamlining resulting from Regulation (EU) No 575/2013 of the European Parliament and of the Council³. In that regard, the draft law amends the Law on banking of 29 August 1997⁴ and several other legal acts. Some of these amendments go further than transposition or implementation of Union law.

1.2 The draft law makes a number of changes to the current law having, inter alia, the following effects.

- (a) The Polish Financial Supervision Authority (KNF) is designated as the national competent authority (NCA) for the purposes of Article 4(1) of Directive 2013/36/EU. However, in accordance with limitations imposed by the Polish Constitution on the range of binding legal acts of general application that may be adopted and the power of administrative bodies to

¹ Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

² Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

³ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

⁴ Consolidated text published in *Dziennik Ustaw* (Dz. U.) of 2012, item 1376.

adopt them, the KNF will not have the power to adopt such legal acts; this power will be conferred on the Minister for Finance.

- (b) Under the provisions of a draft law on which the ECB has recently delivered an opinion⁵, and in line with the second sentence of Article 458(1) of Regulation (EU) No 575/2013, the body responsible for the conduct of macroprudential oversight is not the NCA, but a newly-created authority, the Systemic Risk Board, which will obtain the status of designated authority within the meaning of Article 458(1).
- (c) The Minister for Finance will no longer be consulted by the KNF on, or involved in, the authorisation of banks from third countries that open branches in Poland. This aligns the authorisation procedure with the procedure applicable to domestic banks, where no provision is made for the involvement of the Minister for Finance⁶.
- (d) The legislation governing Bank Gospodarstwa Krajowego (BGK) is to be amended⁷, providing for the payment of levies by BGK towards the Polish deposit guarantee scheme and facilitating its investment activities⁸.

2. Authority to adopt binding legal acts of general application

The ECB takes note of the limitations imposed by the Polish Constitution on the range of binding legal acts of general application that may be adopted and on the power of administrative bodies to adopt them. The ECB also takes note of the reasons why the draft law confers such power on the Minister for Finance, instead of the NCA. At the same time, the power under national legislation of any national authority other than the NCA to exercise an option granted to the NCA under Regulation (EU) No 575/2013 is without prejudice to the ECB's power to exercise such an option if it is or becomes the competent authority in accordance with Council Regulation (EU) No 1024/2013⁹. Regulation (EU) No 575/2013 remains directly applicable in relation to any option provided to the NCA by the Regulation and, therefore, the ECB would be competent to exercise such an option if it is or becomes the competent authority according to Regulation (EU) No 1024/2013.

3. Capital buffers

The ECB notes that Directive 2013/36/EU, insofar as it concerns procedures for the imposition of capital buffers, is to be implemented by a draft law on the macroprudential oversight of the financial system¹⁰.

⁵ See Article 4(3) of a draft law on the macroprudential oversight of the financial system on which the ECB has issued Opinion CON/2014/18. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

⁶ See Article 1(22)(a) of the draft law.

⁷ BGK is the only credit institution in Poland established by legislation as a State-owned bank to support the Government's policies. It is exempted from Directive 2013/36/EU in accordance with Article 2(5)(18) thereof.

⁸ See in particular Articles 3 and 4 of the draft law.

⁹ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

¹⁰ See Opinion CON/2014/18.

4. Board member requirements

Board member requirements for credit institutions, including requirements relating to the suitability of board members, are set out in Articles 13(1) and 91(1) of Directive 2013/36/EU and are further detailed in the European Banking Authority's Guidelines on the assessment of the suitability of members of the management body and key function holders¹¹. The requirement in the draft law that all members of a credit institution's management board and supervisory board demonstrate a proven knowledge of the Polish language goes far beyond such Union requirements on the suitability of board members. Member States are subject to the general principle of non-discrimination on grounds of nationality enshrined in Article 18 of the Treaty¹² and this requirement could be considered discriminatory.

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

Done at Frankfurt am Main, 9 July 2014.

[signed]

The President of the ECB

Mario DRAGHI

¹¹ EBA/GL/2012/06, 22 November 2012, available on the European Banking Authority's website at <https://www.eba.europa.eu/>.

¹² See, further, the principle of non-discrimination in Article 21(1) of the Charter of Fundamental Rights of the European Union which has the same legal value as Union primary law according to Article 6 of the Treaty on European Union.