



EUROPEAN CENTRAL BANK

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OPINION OF THE EUROPEAN CENTRAL BANK

of 5 July 2024

on the potential appointment of the Governor or a Deputy Governor of the Bulgarian National Bank as a caretaker prime minister

(CON/2024/23)

Introduction and legal basis

On 29 May 2024 and 5 June 2024 the European Central Bank (ECB) received a request from Българска народна банка (Bulgarian National Bank (BNB)), acting on behalf of the Bulgarian Minister for Finance, for an opinion on a draft law amending the Law on the Bulgarian National Bank (BNB) concerning the potential appointment of the Governor or a Deputy Governor of BNB as caretaker prime minister, which enters into force and repeals and replaces the previous Law on BNB as of the date stipulated in the Council Decision on the adoption by the Republic of Bulgaria of the euro, adopted in accordance with Article 140(2) of the Treaty, and in the Council Regulation adopted in accordance with Article 140(3) of the Treaty (hereinafter the 'draft law amending the future Law on BNB').

Previously, on 20 December 2023, the National Assembly of the Republic of Bulgaria adopted a Law amending the Constitution of the Republic of Bulgaria (hereinafter the 'Law amending the Constitution')¹, and on 2 April 2024, the National Assembly of the Republic of Bulgaria adopted a Law amending the Law on BNB (hereinafter the 'Law amending the current Law on BNB')², concerning the potential appointment of, inter alia, the Governor or a Deputy Governor of BNB as caretaker prime minister. The ECB has decided to deliver an own initiative opinion on (1) the Law amending the Constitution and (2) the Law amending the current Law on BNB.

The ECB's competence to deliver an opinion on the draft law amending the future Law on BNB, the Law amending the Constitution and the Law amending the current Law on BNB (collectively, the 'draft or adopted laws') is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and Article 2(1), third indent, of Council Decision 98/415/EC³, as the draft or adopted laws relate to BNB. In accordance with Article 17.5, first sentence, of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

¹ Закон за изменение и допълнение на Конституцията на Република България, ДВ. 106, 22.12.2023.

² Закон за изменение и допълнение на Закона за Българската народна банка, ДВ. 29, 2.4.2024.

³ 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).

1. Purpose of the draft or adopted laws

1.1 *Law amending the Constitution*

The Law amending the Constitution amended the provisions of the Constitution that concern the formation of the Bulgarian government⁴. In particular, the Constitution provides that should no agreement be reached on the formation of a government, the President of the Republic of Bulgaria, following consultations with the parliamentary groups and acting on a motion by the caretaker prime minister-designate, must appoint a caretaker government, and must schedule new elections within two months. A caretaker prime minister is to be appointed from among the Chairperson of the National Assembly, the Governor or a Deputy Governor of the Bulgarian National Bank, the President or a Vice-President of the Bulgarian National Audit Office, and the Ombudsman or a deputy thereof⁵. In accordance with the Constitution, the principal task of the caretaker government is to organise fair and free elections. Restrictions on the powers of the caretaker government may be provided in a law⁶. The ECB understands that the Law amending the Constitution is currently being reviewed by the Constitutional Court⁷.

1.2 *Law amending the current Law on BNB*

The Law amending the current Law on BNB amended the provisions of the Law on BNB currently in force⁸ to clarify that the Governor and the Deputy Governors must not engage in any activity, other than teaching, or as members of the bodies in companies where BNB participates, or in international organisations related to BNB's activities, unless they are appointed as caretaker prime minister in accordance with the Constitution. They may perform a non-remunerative activity following a unanimous decision of the BNB Governing Council insofar as there is no conflict of interest. In case of appointment of the Governor or a Deputy Governor as a caretaker prime minister, these persons interrupt their duties as Governor or Deputy Governor only for the period during which they are appointed as caretaker prime minister, following which they continue the mandate as Governor or Deputy Governor for which they were appointed. Moreover, on appointment as caretaker prime minister, the Governor appoints a deputy from among the Deputy Governors, who will carry out the Governor's duties after such appointment. When appointing a Deputy Governor as caretaker prime minister, the Law on BNB provides that, on a motion by a Deputy Governor, the Governing Council is to designate an alternate deputy governor to exercise his or her duties when he or she is absent⁹.

1.3 *Draft law amending the future Law on BNB*

The draft law amending the future Law on BNB¹⁰ proposes to clarify that the Governor and any Deputy Governor are entitled to refuse the appointment as caretaker prime minister and that in the event that the Governor or a Deputy Governor explicitly consents to be appointed as a caretaker prime minister, he or she must submit their resignation as Governor or Deputy Governor. In such a

4 See Article 99 of the Constitution.

5 See Article 99(5) of the Constitution.

6 See Article 99(7) of the Constitution.

7 Case 1/2024 and Case 2/2024 of the Constitutional Court of the Republic of Bulgaria.

8 See Articles 12(5) to (6) of the Law on BNB.

9 See Article 19(4) of the Law on BNB.

10 The draft law amending the future Law on BNB amends Article 13 of the future Law on BNB.

case, their successor Governor or Deputy Governor, as the case may be, must be appointed no later than one month after the termination of the duties of the outgoing Governor or Deputy Governor. Where the Governor is appointed as a caretaker prime minister, the duties of Governor are to be exercised by a Deputy Governor designated by the outgoing Governor, until the appointment of a successor Governor. Where a Deputy Governor is appointed as a caretaker prime minister, the BNB Governing Council, on a motion by a Deputy Governor, must designate an alternate Deputy Governor to exercise the duties of Deputy Governor until a successor Deputy Governor is appointed. The draft law amending the future Law on BNB also provides that when the Governor or Deputy Governor is appointed as a caretaker prime minister, their duties as Governor or Deputy Governor, as the case may be, are terminated on their appointment as a caretaker prime minister¹¹.

2. Observations

2.1 *Tenure and reappointment as caretaker prime minister*

2.1.1 While the period of time between the appointment of a caretaker prime minister and the holding of new elections may not be more than two months, the Constitution is silent on the overall duration of the tenure of the caretaker prime minister. The ECB understands that, given the time necessary to form a regular government after elections have been held, which is not limited by the Constitution, the possibility cannot be excluded that the duration of the caretaker government could exceed two months.

2.1.2 Moreover, the Constitution does not specify whether the caretaker prime minister may be reappointed in the case where, following the holding of elections, no agreement can be reached on the formation of a regular government. In this regard, the ECB understands that, should it not be possible to form a regular government following the holding of elections, new elections may have to be scheduled, and, in accordance with the Constitution, the President would be required to appoint a new caretaker prime minister. Furthermore, the ECB understands that in such a case the new caretaker prime minister is to be determined at that point in time, and that nothing in the Constitution prevents the same caretaker prime minister from being reappointed as caretaker prime minister.

2.2 *Institutional independence*

2.2.1 Pursuant to Article 130 of the Treaty, when exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'), members of the decision-making bodies of the national central banks (NCBs) must not seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body. Furthermore, the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the NCBs in the performance of their tasks.

2.2.2 It follows from Article 130 of the Treaty that a member of an NCB's decision-making body cannot at the same time assume the function of a member of a national government, in particular not as prime minister. Otherwise, the independent exercise of the powers and carrying out of the tasks and duties,

¹¹ See Article 13(8) of the draft law amending the future Law on BNB.

in which the member of an NCB's decision-making body can take an independent stance, which may be different to that of the government, is not conceivable. In this regard, it is imperative that, once appointed, the Governor or Deputy Governor, as caretaker prime minister, is required to fully respect the institutional independence of BNB and its decision-making bodies in compliance with Article 130 of the Treaty¹².

- 2.2.3 Most importantly, the possible appointment of a Governor or a Deputy Governor of an NCB in the European System of Central Banks as a caretaker prime minister, entailing the interruption of his or her term of office, risks in principle compromising the independent exercise of the powers and carrying out of the tasks and duties conferred upon the NCB¹³. An NCB Governor or Deputy Governor who is appointed as a caretaker prime minister on an ad hoc basis and resigns from his or her position as NCB Governor or Deputy Governor when accepting this position does not run such a risk¹⁴. However, the Law amending the Constitution seems to be unprecedented insofar as it establishes a permanent regime that envisages the temporary appointment of a Governor or a Deputy Governor as a caretaker prime minister. Such regime may expose the Governor or Deputy Governor to political leverage and influence involving serious conflicts of interest. In particular, in case of a temporary interruption of the term of office, the risk may arise that the Governor or Deputy Governor takes stances as caretaker prime minister that are incompatible with the stance of the NCB, before going back to their position as Governor or Deputy Governor, following which conflicts arise with previous stances that they may have taken as caretaker prime minister.
- 2.2.4 In the light of the requirement to independently exercise the powers and carrying out the tasks and duties conferred upon the NCB by the Treaties and the Statute of the ESCB, as laid down in Article 130 of the Treaty, the risk that the Governor or Deputy Governor takes stances as caretaker prime minister that are incompatible with the stance of the NCB would not be sufficiently mitigated by only requiring the temporary interruption of the term of office of the Governor or a Deputy Governor. Hence, the Law amending the current Law on BNB should require the Governor or a Deputy Governor to resign from that position on appointment as caretaker prime minister in order to exclude the materialisation of this risk¹⁵. In this vein, the ECB welcomes the express stipulation in the draft law amending the future Law on BNB that in the event that the Governor or a Deputy Governor explicitly consents to be appointed as a caretaker prime minister, he or she must submit their resignation as Governor or Deputy Governor. The ECB also welcomes the provision in the draft law amending the future Law on BNB that where the Governor or a Deputy Governor is appointed as a caretaker prime minister, their duties as Governor or Deputy Governor, as the case may be, are terminated with their appointment as a caretaker prime minister since this increases legal certainty and enhances clarity as to the point in time at which the resignation becomes legally effective.
- 2.2.5 The ECB notes that the Law amending the Constitution and the Law amending the current Law on BNB include several factors which could be regarded as mitigating the risk that the Governor or Deputy Governor takes stances as caretaker prime minister that are incompatible with the stance of

¹² See the ECB's Convergence Report 2024, paragraph 7.1.2.1.

¹³ See the ECB's Convergence Report 2024, paragraph 7.1.2.1.

¹⁴ See the ECB's Convergence Report 2024, paragraph 7.1.2.1.

¹⁵ See the ECB's Convergence Report 2024, paragraph 7.1.2.1.

the NCB. First, the appointment as caretaker prime minister is meant to be short and new elections must be scheduled within two months of appointment. Second, the principal task of the caretaker government is to organise fair and free elections. Third, possible restrictions on the powers of the caretaker prime minister can be provided in a law as provided in the Constitution. However, despite these potentially mitigating factors, in the case of a temporary interruption of the term of office, the risk cannot be excluded that the Governor or a Deputy Governor takes stances as caretaker prime minister that are incompatible with the stance of the NCB, before going back to his or her position as Governor or a Deputy Governor, as a result of which conflicts arise with previous stances taken as caretaker prime minister¹⁶.

2.3 *Personal independence*

2.3.1 Pursuant to Article 14.2 of the Statute of the ESCB, a Governor may be relieved from office only if he or she no longer fulfils the conditions required for the performance of his or her duties or if he or she has been guilty of serious misconduct. Consequently, the appointment of a BNB Governor as caretaker prime minister may not amount to a relieving from office without the existence of such a ground.

2.3.2 The ECB understands that the appointment of a BNB Governor as caretaker prime minister is subject to that BNB Governor's agreement to take up the appointment. The draft law amending the future Law on BNB makes this explicit. On this basis, there is no need for the protection of the personal independence of the BNB Governor by the mechanism of Article 14.2 of the Statute of the ESCB¹⁷. The appointment of the BNB Governor as caretaker prime minister in such a case could not amount to a relieving from office without the existence of a ground laid down in Article 14.2 of the Statute of the ESCB¹⁸. The ECB welcomes the explicit clarification in the draft law amending the future Law on BNB that the appointment of a BNB Governor as caretaker prime minister is subject to that BNB Governor's acceptance.

2.3.3 In this context, it is noted that any provision on a replacement of a BNB Governor introduced into the Law on BNB cannot amount to the appointment of another person as Governor for only two months. In accordance with Article 14.2 of the Statute of the ESCB, first subparagraph, the term of office of a Governor of an NCB must be no less than five years¹⁹. In these relatively short periods contemplated by the Law amending the current law on BNB and the draft law amending the future Law on BNB, the BNB Governor would also not have the possibility of making use of Article 10.2, second subparagraph, of the Statute of the ESCB and Article 4.4 of the ECB Rules of Procedure and could not appoint an alternate as a member of the Governing Council. Making use of this provision would

¹⁶ See the ECB's Convergence Report 2024, paragraph 7.1.2.1.

¹⁷ See the ECB's Convergence Report 2024, paragraph 7.1.2.2.

¹⁸ In the light of the requirements flowing from Article 130 TFEU as to the independence of members of decision-making bodies of NCBs other than the Governor, it is understood that the appointment of a Deputy Governor of BNB as caretaker prime minister is also subject to the acceptance of the appointment by the relevant Deputy Governor.

¹⁹ See the ECB's Convergence Report 2024, paragraph 7.1.2.2, footnote 198.

presuppose that there is a Governor in office who may act as Governor but is prevented from attending meetings of the Governing Council for a prolonged period (i.e. more than one month)²⁰.

This opinion will be published on EUR-Lex.

Done at Frankfurt am Main, 5 July 2024.

[signed]

The President of the ECB

Christine LAGARDE

²⁰ Nevertheless, a representative of BNB, in particular a Deputy Governor, could, pursuant to Article 3.5 of the ECB Rules of Procedure, be invited by the Governing Council to attend its meetings, if it deems it appropriate to do so. Under certain conditions, such a representative could also vote on shareholder issues under Article 10.3 of the Statute of the ESCB.