



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 9 November 2018

on the strengthening of financial supervision and investor protection

(CON/2018/50)

Introduction and legal basis

On 18 September 2018 the European Central Bank (ECB) received a request from the Polish Parliament for an opinion on a draft law amending certain laws to strengthen financial supervision and investor protection (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 third and sixth indents of Article 2(1) of Council Decision 98/415/EC¹, as the draft law relates to *Narodowy Bank Polski* (NBP) 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 draft law

1.1 The draft law proposes to amend a series of laws, including the Law on the supervision of the financial market², in order to strengthen financial supervision and investor protection. In this respect, the draft law introduces three main categories of changes. First, the draft law proposes changes to the structure, financing and membership of *Komisja Nadzoru Finansowego* (current KNF, the Polish Financial Supervision Authority), as well as to the sharing of information obtained in the course of KNF's activities. Second, the draft law introduces the obligatory dematerialisation of certain securities. Third, the draft law proposes to establish *Fundusz Edukacji Finansowej* (FEF, the Financial Education Fund).

1.2 *Changes to the structure, financing and membership of the current KNF, exchange of information and identification of systemic risk*

The draft law proposes to abolish the current KNF and to replace it with the new KNF. The new KNF would comprise the KNF Office and the KNF. The KNF Office would be a state legal entity with its own legal personality. The KNF Office would have the task of providing support services in relation to supervision, and would report to the Prime Minister. Within the KNF Office there would

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 Ustawa z dnia 21 lipca 2006 r. o nadzorze nad rynkiem finansowym (Dz. U. z 2018 r. poz. 621, z późn. zm.).

be a separate body or organ - the KNF - which would be competent in the field of supervision over the financial market. The KNF would have the same tasks as the current KNF. All current KNF employees would remain employed by the KNF Office. The main reason for establishing the KNF Office, as a legal person, is to ensure its independence in the management of its own funds. The KNF Chairman would be responsible for managing the current activities of the KNF Office and would represent the KNF Office externally.

The draft law also proposes to extend KNF's membership to include representatives of the Prime Minister and, in an advisory capacity, *Bankowy Fundusz Gwarancyjny* (the Bank Guarantee Fund), the President of *Urząd Ochrony Konkurencji i Konsumentów* (UOKiK, the Office of Competition and Consumer Protection) and the Minister responsible for coordinating special services. According to the explanatory memorandum, the extension of KNF's membership aims to ensure better coordination of state bodies in financial markets by allowing for a more efficient identification of risks.

The draft law includes provisions that will enable an exchange of information obtained in the course of KNF's activities between institutions that will be represented in KNF. In addition, the draft law proposes that KNF and NBP shall exchange information, including protected information, which is necessary to perform their tasks. Furthermore, the draft law will enable the sharing of certain information related to KNF's activities with other public bodies or persons heading them, including *Agencja Bezpieczeństwa Wewnętrznego* (the Internal Security Agency), *Agencja Wywiadu* (the Foreign Intelligence Agency), *Służba Kontrwywiadu Wojskowego* (the Military Counterintelligence Service), *Służba Wywiadu Wojskowego* (the Military Intelligence Service), *Centralne Biuro Antykorupcyjne* (the Central Anti-Corruption Bureau), *Krajowa Administracja Skarbowa* (the National Revenue Administration) and the Police.

Under the draft law the KNF Chairman must inform the Prime Minister about systemic risk identified in the financial system.

1.3 *Introduction of obligatory dematerialisation of certain securities*

The draft law introduces the obligatory dematerialisation of corporate bonds, investment certificates issued by closed investment funds and covered bonds, irrespective of whether or not such securities are the subject of a public offer or intended for trading on any trading venue. The main purpose of these changes is to increase the transparency of the identity of the issuer and the volume of the issuance of these securities as well as strengthen investor protection and flexibility, on the basis that only entities that are best prepared for this purpose (i.e. brokerage houses and banks which have a licence for securities accounts) will record these securities and that investors will have the flexibility to transfer these securities to other entities. In addition, creating one central repository of information about debt securities issued and their maturity will improve access to such information for KNF, other entitled bodies and investors.

The draft law also proposes to introduce the concept of an issuing agent which will make it easier for issuers to record debt securities in the depository and shorten the relevant process.

1.4 *Establishment of FEF*

The draft law proposes to establish the FEF. The main purpose of FEF is to increase the financial awareness of Polish citizens, in particular through setting out an educational strategy, organising and supporting educational projects and information campaigns and co-operating with the Minister responsible for education. FEF will be supported by *Rada Edukacji Finansowej* (the Council of Financial Education (hereinafter, the 'FEF Council')) which will comprise a representative, each appointed by the Minister responsible for financial institutions, of, among others, each of the following: (i) the Minister responsible for financial institutions, (ii) the Minister responsible for education, (iii) the KNF Chairman, (iv) the NBP President, (v) the President of UOKiK and (vi) *Rzecznik Finansowy* (the Financial Ombudsman). The FEF Council will be responsible for FEF's strategy and ways of performing its tasks, and for supervising how these tasks are performed. The FEF Council will also supervise how FEF manages its funds and will decide on FEF's rules of procedure. FEF will be administered by the Central Securities Depository of Poland and funded through, among other things, sanctions imposed, among others, by KNF, the President of UOKiK and *Rzecznik Finansowy*.

2. Specific observations

2.1 *Composition of the new KNF and the authority of the Prime Minister*

Regarding the authority of the Prime Minister in respect of the new KNF, the ECB notes that, in accordance with Article 4(4) of Directive 2013/36/EU³ Member States must ensure that the competent authorities have, among other things, the independence necessary to carry out the functions relating to prudential supervision, investigations and penalties set out in that Directive and in Regulation (EU) No 575/2013⁴.

2.2 *Exchange of information*

The ECB understands that the draft law effectively requires the sharing of information between KNF and NBP which is necessary to perform their tasks, and that certain information obtained in the course of KNF's activities may also be exchanged with a number of other bodies, including those which will be represented in the new KNF. However, the draft law does not otherwise specify the exact scope of information that may be subject to exchange. Accordingly, the ECB has two observations.

First, the ECB notes that NBP is subject to Council Regulation (EC) No 2533/98⁵ concerning the collection of statistical information by the ECB. Article 8(1) of Council Regulation (EC) No 2533/98 provides that the European System of Central Banks (ESCB), of which NBP is part, shall use confidential statistical information exclusively for the exercise of the tasks of the ESCB except in a limited number of circumstances, including, as regards the ECB and national central banks, if that

³ 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).

⁴ 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).

⁵ Council Regulation (EC) No 2533/1998 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8).

statistical information is used in the field of prudential supervision. The ECB invites the Polish authorities to consider whether the sharing of information proposed by the draft law, in particular with other public bodies or persons heading them whose tasks do not include prudential supervision, complies with the above exception.

Second, to the extent that information that could be exchanged between the various bodies as proposed by the draft law constitutes confidential information for the purposes of Directive 2013/36/EU, the ECB draws attention to Articles 53 to 62 of that Directive which set out the conditions under which confidential information may be shared with third parties, and which refer to specific permitted recipients in this respect. The ECB invites the Polish authorities to consider whether the sharing of information proposed by the draft law complies with these provisions.

2.3 *Identification of systemic risk*

The provision of the draft law under which the KNF Chairman must inform the Prime Minister about systemic risk identified in the financial system is imprecise, as it is not clear whether it concerns informing the Prime Minister about systemic risk identified by KNF or by the *Komitet Stabilności Finansowej* (KSF, the Financial Stability Committee). In that respect the ECB understands that, in accordance with the Law on the macroprudential oversight of the financial system and crisis management⁶, KSF (whose board includes the NBP President, as Chairman in respect of macroprudential oversight tasks) is the competent authority responsible for macroprudential supervision in Poland.⁷ One of the tasks of KSF is to identify systemic risks. Against that background, the ECB invites Polish authorities to clarify the relevant provision to avoid any conflicts of competence between KNF and KSF in respect of the identification of systemic risks.

2.4 *Dematerialisation of certain securities*

The ECB welcomes the obligatory dematerialisation of the relevant securities and their recording in a central securities depository (CSD), as proposed by the draft law, as this will contribute to the elimination of the operational complexities and risks related to handling physical securities in Poland, and to the reduction of settlement and custody costs⁸, as recommended in the CPSS-IOSCO Principles⁹. It is also noted that, for those securities admitted to trading or traded on trading venues, the dematerialisation is in line with the requirements in Article 3 of Regulation (EU) No

⁶ Ustawa z dnia 5 sierpnia 2015 r. o nadzorze makroostrożnościowym nad systemem finansowym i zarządzaniu kryzysowym w systemie finansowym, Dz.U. 2015 poz. 1513.

⁷ The law on the macroprudential oversight implemented Recommendation ESRB/2011/3 of the European Systemic Risk Board of 22 December 2011 on the macro-prudential mandate of national authorities (OJ C 41, 14.2.2012, p. 1.). See also ECB Opinion CON/2014/18.

⁸ See, e.g., paragraph 2 of ECB Opinion CON/2012/3. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

⁹ Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions (IOSCO), Principles for financial market infrastructures, particularly Principle 11: 'A CSD should have appropriate rules and procedures to help ensure the integrity of securities issues and minimise and manage the risks associated with the safekeeping and transfer of securities. A CSD should maintain securities in an immobilised or dematerialised form for their transfer by book entry.'

909/2014¹⁰ on transferable securities and the recording of such securities in book-entry form in a CSD.

2.5 *Council of Financial Education Fund*

The draft law proposes that the Minister responsible for financial institutions appoints a representative of the NBP President to the FEF Council. In this respect, the ECB understands that the intention of the draft law is that the representative of the NBP President is to be first selected by NBP in accordance with its statutory rules and then only formally appointed by the relevant Minister. The ECB would recommend that the wording of the draft law is clarified accordingly in order to avoid any uncertainty. An ability of the Minister to select as well as appoint the representative of the NBP President could be considered as interfering with the institutional independence of NBP as laid down in Article 130 of the Treaty and Article 7 of the Statute of the ESCB and the ECB, according to which the governments of the Member States undertake not to seek to influence the members of the decision-making bodies of the national central banks in the performance of their tasks.

- 2.6 FEF will be administered by the Central Securities Depository of Poland, which will also perform FEF's tasks. By contrast, the role of the FEF Council – of which a representative of the NBP President will be a member – will be limited mainly to setting out FEF's strategy and ways of performing such tasks. On that basis, the ECB understands that no new task is proposed to be conferred on NBP.

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

Done at Frankfurt am Main, 9 November 2018.

[signed]

The President of the ECB

Mario DRAGHI

¹⁰ Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).