



EUROPEAN CENTRAL BANK
EUROSYSTEM

EN

ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 30 January 2020

on the sanctioning powers of BNB within close cooperation and the official exchange rate of the Bulgarian lev
(CON/2020/5)

Introduction and legal basis

On 21 January 2020 the European Central Bank (ECB) received a request from Българска народна банка (Bulgarian National Bank, BNB), following correspondence exchanged between BNB and the Bulgarian Minister of Finance, for an opinion on a draft law amending the Law on credit institutions and the Law on BNB (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 first and third indents of Article 2(1) of Council Decision 98/415/EC¹, as the draft law relates to currency matters, BNB and the tasks conferred on the ECB concerning the prudential supervision of credit institutions pursuant to Article 127(6) of the Treaty. 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

As explained in the consultation letter, the draft law serves a two-fold purpose in relation to the Republic of Bulgaria's intention to join the Single Supervisory Mechanism (SSM) and the Exchange Rate Mechanism (ERM II).

1.1 Draft provisions relating to sanctions in the context of banking supervision

The draft law proposes to amend the Law on credit institutions² in relation to BNB's sanctioning powers, both in general terms as well as in relation to ECB instructions in the context of close cooperation.

1.1.1 Proposed changes to the general sanctioning provisions

The draft law extends the list of breaches which may be subject to sanctions, as set out in Article 152(1) of the Law on credit institutions, to also include breaches of other relevant directly applicable acts of the European Union, in addition to the existing list of breaches of certain specific

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 Law on credit institutions (Закон за кредитните институции, обн. ДВ, бр. 59 от 21.07.2006 г.).

Union legal acts³, of the Law on credit institutions, and of normative acts issued for their application.

1.1.2 *Proposed BNB sanctioning powers when acting upon an ECB instruction pursuant to Article 18(1), (5) and (7) of Council Regulation (EU) No 1024/2013*

The draft law proposes to amend Article 121d of the Law on credit institutions, which is contained in Chapter 11a on close cooperation with the ECB, in order to provide explicitly for the different scenarios in which BNB is required to follow ECB requests in relation to administrative penalties in the context of close cooperation.

On the one hand, in the event of requests issued by the ECB, BNB is required to impose a financial penalty for a breach of Regulation (EU) No 575/2013 or other directly applicable Union acts by a credit institution, financial holding company or mixed financial holding company or for a breach or non-compliance by a credit institution, financial holding company or mixed financial holding company with an administrative act issued under Article 121b.

On the other hand, in the event of requests issued by the ECB in accordance with Article 18(5) of Council Regulation (EU) No 1024/2013⁴, BNB is required to begin a procedure for the imposition of administrative sanctions. Also, if BNB establishes a breach of specific Union legal acts⁵, of other relevant directly applicable Union legal acts, or of a normative act issued for their application, or of an individual administrative act issued under the Law on credit institution, the person committing such breach shall be subject to a financial penalty or fine to the amount specified in Article 152(1) to (3) of the Law on credit institutions.

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), Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1), Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p. 1), 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) and Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community (OJ L 302, 18.11.2010, p. 1).

⁴ See 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). Under Article 18(5) of Regulation (EU) No 1024/2013, in the cases not covered by Article 18(1) of Regulation (EU) No 1024/2013, where necessary for the purpose of carrying out the tasks conferred on it by that Regulation, the ECB may require national competent authorities to open proceedings with a view to taking action in order to ensure that appropriate penalties are imposed in accordance with the acts referred to in the first subparagraph of Article 4(3) and any relevant national legislation which confers specific powers which are currently not required by Union law. The penalties applied by national competent authorities shall be effective, proportionate and dissuasive. This provision shall be applicable in particular to pecuniary penalties to be imposed on credit institutions, financial holding companies or mixed financial holding companies for breaches of national law transposing relevant Directives, and to any administrative penalties or measures to be imposed on members of the management board of a credit institution, financial holding company or mixed financial holding company or any other individuals who under national law are responsible for a breach by a credit institution, financial holding company or mixed financial holding company.

⁵ Regulation (EU) No 575/2013, Regulation (EU) No 648/2012, Regulation (EU) 2015/2365, Regulation (EU) No 909/2014 or Commission Regulation (EU) No 1031/2010.

Furthermore, the draft law expands the duty of BNB to adopt a sanction on the basis of Article 152(6) of the Law on credit institutions in response to requests made by the ECB in relation to all possible tasks listed in Article 121b, namely in relation to significant institutions, less significant institutions and macro-prudential tasks.

1.1.3 *Statute of limitations for opening a sanctioning proceeding*

Finally, the draft law specifies that statements of objections shall be drawn up by officials authorised by the Deputy Governor of BNB heading the Banking Supervision Department within five years of the date of the breach and, in case of continued infringement, within five years of the date on which the infringement ceased.

1.2 *Draft provision relating to ERM II*

1.2.1 *Current framework for the exchange rate between the lev and the euro*

The Republic of Bulgaria has in place a currency board arrangement with a fixed exchange rate between the lev and the euro. In particular, Article 29 of the Law on BNB⁶, currently in force, provides that the official exchange rate of the lev shall be 1 lev per 1 Deutsche Mark, and that once the euro becomes legal tender in the Federal Republic of Germany, the official exchange rate of the lev to the euro shall be determined by multiplying that exchange rate by the official exchange rate of conversion of the Deutsche Mark to the euro⁷.

1.2.2 *Proposed amendments to the current framework for the exchange rate between the lev and the euro*

The draft law proposes to supplement the existing provision on the exchange rate between the lev and the euro with a provision establishing that from the date of participation of the Republic of Bulgaria in ERM II, the official exchange rate of the lev to the euro shall be equal to the central rate between the lev and the euro, as agreed per paragraph 2.3 of the Resolution of the European Council on the establishment of an exchange-rate mechanism in the third stage of economic and monetary union Amsterdam, 16 June 1997⁸ (Resolution on ERM II) and Articles 1.1 and 17.1 of the Agreement of 16 March 2006 between the ECB and the national central banks of the Member States outside the euro area laying down the operating procedures for an exchange rate mechanism in stage three of Economic and Monetary Union⁹ (ERM II Central Bank Agreement).

2. **General observations**

2.1 The draft law seeks to ensure that BNB will be able to adopt any measure requested by the ECB in relation to supervised entities, as required under the legal framework regulating close cooperation between the ECB and BNB.

⁶ Law on BNB (Закон за Българската народна банка, обн. ДВ, бр. 46 от 10.06.1997 г.).

⁷ See Council Regulation (EC) No 2866/98 of 31 December 1998 on the conversion rates between the euro and the currencies of the Member States adopting the euro (OJ L 359, 31.12.1998, p.1).

⁸ Resolution of the European Council on the establishment of an exchange-rate mechanism in the third stage of economic and monetary union Amsterdam, 16 June 1997 (OJ C 236 2.8. 1997, p. 5).

⁹ Agreement of 16 March 2006 between the European Central Bank and the national central banks of the Member States outside the euro area laying down the operating procedures for an exchange rate mechanism in stage three of Economic and Monetary Union (OJ C 073 25.3.2006, p. 21).

2.2 In this regard it is highlighted that this opinion is without prejudice to the overall assessment of the request filed on 18 July 2018 by the Republic of Bulgaria to establish close cooperation between the ECB and BNB, which is taking place in line with the existing procedures established under Article 7 of Regulation (EU) No 1024/2013 and under Decision ECB/2014/5 of the European Central Bank¹⁰. In particular, this opinion remains without prejudice to the assessment being conducted by the ECB in accordance with Article 4 of Decision ECB/2014/5, which includes a broader assessment of the relevant national legislation, also taking into account the practical implementation of such legislation¹¹.

3. Specific observations

3.1 *Draft provisions relating to the sanctions in the context of banking supervision*

3.1.1 The ECB welcomes that the draft law further refines the sanctioning powers for BNB in order to fully align Bulgarian national law with the scope of the ECB's sanctioning power under Article 18 of Regulation (EU) No 1024/2013.

3.1.2 In particular the ECB welcomes that the draft law requires BNB to comply with all ECB requests for the sanctioning of breaches of BNB administrative acts issued pursuant to ECB requests mentioned in paragraphs 1 to 4 of Article 121b of the Law on credit institutions.

3.1.3 In addition the ECB welcomes that the draft law explicitly mentions that BNB shall open proceedings for the imposition of administrative penalties when so requested by the ECB on the basis of Article 18(5) of Regulation (EU) No 1024/2013, in line with the obligations set forth under Article 121b of the Law on credit institutions. Moreover, the ECB welcomes that the draft law clarifies by means of cross-reference which administrative penalties may be imposed by BNB when it is acting upon an ECB request made on the basis of Article 18(5) of Regulation (EU) No 1024/2013.

3.1.4 The ECB welcomes that the draft law aligns the statute of limitations when BNB acts upon a request from the ECB with the time limits set out in Article 4c of Council Regulation (EU) No 2532/98 and Article 130 of Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17)¹², namely five years after the breach occurred or, in case of a continued infringement, five years after the infringement ceased.

¹⁰ Decision ECB/2014/5 of the European Central Bank of 31 January 2014 on the close cooperation with the national competent authorities of participating Member States whose currency is not the euro (OJ L 198, 5.7.2014, p. 7).

¹¹ See paragraph 2.3 of Opinion CON/2018/49. All ECB Opinions are published on the ECB's website at www.ecb.europa.eu.

¹² Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 45).

3.2 *Draft provision relating to ERM II*

The ECB welcomes the new provision of Article 29(3) of the Law on BNB, which is in line with the procedures under the ERM II Resolution and the ERM II Central Bank Agreement.

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

Done at Frankfurt am Main, 30 January 2020.

[signed]

The President of the ECB

Christine LAGARDE