



OPINION OF THE EUROPEAN CENTRAL BANK
of 10 November 2022
on building societies
(CON/2022/38)

Introduction and legal basis

On 21 July 2022 the European Central Bank (ECB) received a request from the Marshal of the Polish Parliament for an opinion on a draft law on building societies (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 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

1.1 The draft law provides a legal framework for the establishment and operation of building societies (*kasy oszczędnościowo-budowlane*) in Poland, enabling them to operate in one of two different legal forms², either as (i) banks³ in the form of joint-stock companies to which the provisions of the Polish Law on banking⁴ would apply, to the extent not regulated in the draft law; or (ii) cooperatives⁵ to which the provisions of the Polish Law on cooperatives⁶ would apply, to the extent not regulated in the draft law.

1.2 As noted in the explanatory memorandum, the draft law represents an attempt to re-establish the system of building societies that was first introduced in Polish law in 1997⁷ but was never put into practice.

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 Article 2(1) of the draft law.

3 Banks do not include credit unions. The term 'credit institutions', under Polish law, only refers to credit institutions registered in Member States of the European Economic Area (EEA) other than Poland. Non-EEA credit institutions are referred to under Polish law as 'foreign banks' (Article 2, Article 4(3) and Article 4(1)(17) to (20) of the Law of 29 August 1997 on banking (Ustawa z dnia 29 sierpnia 1997 r. – Prawo bankowe, consolidated text: Dziennik Ustaw z 2021 r., poz. 2439)).

4 Law of 29 August 1997 on banking (Ustawa z dnia 29 sierpnia 1997 r. – Prawo bankowe (consolidated text: Dziennik Ustaw z 2021 r., poz. 2439)).

5 Pursuant to the definition contained in Article 1(1) of the Law on cooperatives, a cooperative is a voluntary association comprising an unlimited number of persons, with variable membership and variable share fund, which conducts joint economic activity in the interests of its members.

6 Law of 16 September 1982 on cooperatives (Ustawa z dnia 16 września 1982 r. Prawo spółdzielcze (consolidated text: Dziennik Ustaw z 2021 r., poz. 648)).

7 See the Law of 5 June 1997 on building societies and State support for home savings schemes (Ustawa z dnia 5 czerwca 1997 r. o kasach oszczędnościowo-budowlanych i wspieraniu przez państwo oszczędzania na cele mieszkaniowe (Dziennik Ustaw z 1997 r., Nr 85, poz. 538)), repealed on 1 January 2002.

The legal framework for the operation of building societies is based on similar solutions already in place in other Member States⁸.

1.3 The draft law requires building societies to operate on the basis of an authorisation granted by *Komisja Nadzoru Finansowego* (KNF, Polish Financial Supervision Authority), which would also supervise building societies⁹. The draft law specifies the conditions for obtaining such authorisation. These include, inter alia, possession of share capital or own funds in an amount not lower than the Polish zloty (PLN) equivalent of EUR 5 million, and adoption, in order to define the basic principles of a building society's activity, of the general terms and conditions of business, general terms and conditions of targeted savings agreements, as well as appropriate internal regulations and instruments for the management, supervision and control of risks related to the activities of a building society. Moreover, the draft law empowers KNF to issue resolutions specifying detailed rules regarding the size of a building society's share capital or own funds, precise liquidity and risk requirements as regards its activity and specific reporting requirements¹⁰. It also authorises and obliges KNF to issue orders and recommendations to ensure that the activity of building societies complies with the general terms and conditions of targeted savings agreements¹¹. The draft law obliges building societies to allocate at least 3 % of the total savings deposits (or an increased amount as indicated by KNF) to a reserve fund. Funds from the reserve would only be invested in safe assets specified in the draft law and would only be drawn upon if mortgage loans could not be paid out from the building society's available funds within the timescales specified in the mortgage loan agreements¹².

1.4 The activities of building societies comprise, in particular, accepting savings deposits from natural persons to an interest-bearing account and granting mortgage loans to such savers, from funds so collected, with the aim of financing housing-related investments specifically enumerated in the draft law¹³. For these purposes, building societies will conclude with savers targeted savings agreements that conform with the general terms of business and the general terms of targeted savings agreements, defining, inter alia, the housing purpose, the targeted savings agreement amount, the period of saving, the amounts and timescales of savings deposits, the interest payable on the savings deposit, a building society's obligation to enter into a mortgage loan agreement with a description of the terms and rules for issuing the loan, the amount of the mortgage loan and the interest payable, along with the manner and timescale in which it would be paid out¹⁴. The saving period may not be less than four years¹⁵ and the amount of the loan may not exceed the sum of the savings deposits with due interest and the housing bonus¹⁶. The loan interest rate may not exceed the interest rate of the savings deposit by more than three nominal percentage points and would remain unchanged throughout the loan repayment period¹⁷. A housing loan granted to a saver by a building society is to be secured with a mortgage, and its amount may not exceed 80 % of the value

⁸ See the explanatory memorandum accompanying the draft law, p. 15.

⁹ Articles 3 and 4 of the draft law.

¹⁰ Article 4(2) of the draft law.

¹¹ Article 4(3) of the draft law.

¹² Articles 7(5) and 7(6) of the draft law.

¹³ Articles 6 and 12 of the draft law.

¹⁴ Article 9 of the draft law.

¹⁵ Article 9(5) of the draft law.

¹⁶ Article 9(6) of the draft law.

¹⁷ Article 11 of the draft law.

of the real estate securing the loan¹⁸. To fund their activities building societies are entitled to take out loans with a term of up to one year and issue bank securities with a maturity of no more than one year¹⁹.

1.5 In the event that a building society needs to suspend its obligations due to temporary financial difficulties, the draft law empowers KNF to order the building society to suspend payments for a period of three months with the exception of payments of reasonable costs for day-to-day operations.²⁰ If the building society's financial situation does not improve within this period, KNF may decide to merge the building society with another building society or to liquidate it. With regard to such a decision, the draft law refers to the application of the provisions of the Law on banking²¹.

1.6 KNF, after seeking the opinion of the building society, may appoint a trustee and a deputy trustee for the building society. The functions of a trustee include continuously monitoring the observance by the building society of the targeted savings agreements concluded between the building society and savers for housing purposes, and in particular of the order of issuing loans²².

1.7 The draft law also establishes the principles of saving for housing purposes. In this respect, the draft law amends the Polish Law on social forms of housing development²³ by introducing an entitlement for natural persons with full legal capacity and with savings in building societies and who are subject to unlimited tax obligations in the Republic of Poland to receive a savings bonus, granted annually from the State budget, for the amount of 20 % of the cash deposits accumulated in a given year (or PLN 12,000 if the cash deposits would exceed this level)²⁴. Should the sum of savings accumulated on the savings account in a given year exceed this sum, then the surplus savings would be the basis for obtaining a savings bonus in the following years, up to that amount. If the saver concludes more agreements with building societies and the accumulated savings deposits exceed the amount in question, the saver would be obliged to indicate under which agreement he wants to receive the savings bonus. However, the bonus would be applied in the first instance to savings made under the earliest dated agreements.

1.8 The draft law proposes an arrangement under which the minimum reserves referred to in the Law on Narodowy Bank Polski²⁵ (hereinafter the 'Law on NBP') is paid from savings deposits collected in building societies in accordance with targeted savings agreements for housing purposes²⁶.

2. Observations

2.1 The ECB recalls its opinion on an earlier draft law aimed at regulating the legal framework of building societies in Poland, which was, however, not adopted²⁷. In that opinion the ECB made observations on the

18 Article 14(1) of the draft law.

19 Article 6(2) of the draft law.

20 Article 13(1) of the draft law.

21 Article 13(2) of the draft law.

22 Article 16 of the draft law.

23 Ustawa z dnia 26 października 1995 r. o społecznych formach rozwoju mieszkalnictwa (consolidated text: Dziennik Ustaw z 2021 r., poz. 2224). In the draft law, this law is referred to as the Law on certain forms of support for housing construction, as the name of the law was changed after the draft law was prepared, on August 10, 2022, under the law of July 7, 2022.

24 Article 18 of the draft law.

25 Ustawa z dnia 29 sierpnia 1997 r. o Narodowym Banku Polskim (consolidated text: Dziennik Ustaw z 2022 r., poz. 492).

26 Article 21 of the draft law.

27 See Opinion CON/2010/81. All ECB Opinions are available on EUR-Lex.

proposed exclusion, under the earlier draft law, of building societies from the obligation to maintain minimum reserves with Narodowy Bank Polski (NBP), as well as on the calculation of the building societies' proposed contributions to the Polish deposit guarantee scheme²⁸. This draft law does, however, not replicate the solutions provided for in the earlier draft law.

2.2 The ECB understands that under the draft law building societies qualify as credit institutions within the meaning of Article 4(1), point (1), of Regulation (EU) No 575/2013 of the European Parliament and of the Council²⁹. There credit institutions are defined as undertakings the business of which consists of, inter alia, taking deposits or other repayable funds from the public and granting credits for its own account. Building societies would fulfil both of these functional criteria of a 'credit institution', as they would: (i) receive deposits from natural persons, i.e. deposits 'from the public'; and (ii) grant credit for their own account. In this respect the ECB notes that the only entities in Poland that fulfil the functional criteria of credit institutions but are exempted from the scope of both Regulation (EU) No 575/2013 as well as Directive 2013/36/EU of the European Parliament and of the Council³⁰ are cooperative savings and credit unions (*spółdzielcze kasy oszczędnościowo – kredytowe*)³¹. As a result, Regulation (EU) No 575/2013, which applies directly in Poland without transposition, would be applicable to building societies operating either as banks in the form of joint-stock companies or as cooperatives.

2.3 The ECB notes that the draft law³² would authorise KNF to issue specific resolutions that only apply to building societies. However, as Regulation (EU) No 575/2013³³ largely harmonises capital, liquidity and reporting at Union level, it is not clear what specific requirements are meant, and how they would interact with Union ones. In addition, the requirement that building societies set aside 3 % of their savings deposits as a reserve³⁴ provides a specific example where the interaction between the draft law and Union law requirements is complex. Moreover, the draft law allows building societies to invest that reserve in specific high-quality assets³⁵. This might interfere with the leverage, risk-weighted capital, liquidity and funding requirements laid down in Regulation (EU) No 575/2013³⁶. The ECB invites the Polish legislator to reflect on how this matter can be clarified in the draft law.

2.4 In the context of liquidity, the ECB notes that the draft law restricts the ability of building societies to issue debt securities, by imposing a maximum original maturity of one year on any such external debt used to fund mortgage loans³⁷. From a financial stability perspective, such a restriction may not be desirable as mortgage loans tend to have long maturities and this restriction may unduly limit the scope for managing the funding liquidity risks.

28 See paragraphs 2.1 and 2.2. of ECB Opinion CON/2010/81.

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

30 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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

31 See Article 1 of Regulation (EU) No 575/2013 in conjunction with Article 2(5), point (19), of Directive 2013/36/EU.

32 See Article 4(2) of the draft law.

33 See Parts Three and Six and Part Seven A of Regulation (EU) No 575/2013.

34 Article 7(5) of the draft law.

35 Article 7(3) of the draft law.

36 See Parts Two, Six and Seven of Regulation (EU) No 575/2013.

37 Article 6(2) of the draft law.

2.5 Moreover, given that Directive 2014/59/EU of the European Parliament and of the Council³⁸, regulating the recovery and resolution of credit institutions, applies to credit institutions within the meaning of Article 4(1), point (1), of Regulation (EU) No 575/2013, the possible implications of the application of such a framework to building societies need to be taken into account. In this context, for example, the draft law's restrictions on the ability of building societies to issue debt securities, imposing a maximum original maturity of one year on any such external debt used to fund mortgage loans³⁹, might have an impact on building societies' capacity to comply with the minimum requirements for own funds and eligible liabilities (MREL), as only eligible liabilities instruments with a residual maturity of at least one year qualify fully as MREL⁴⁰.

2.6 In earlier opinions⁴¹ the ECB noted that Member States whose currency is not the euro retain their powers in the field of monetary policy according to national law. As and when the euro is introduced, Poland's monetary policy will need to be consistent with the Eurosystem's operational framework. Therefore, credit institutions should be familiar with the requirements that would apply to them once the single monetary policy is implemented in Poland. In view of the foregoing, the ECB notes that the Eurosystem's minimum reserves obligations apply to entities that fulfil the functional criteria of 'credit institution' according to the definition contained in the Eurosystem's minimum reserves rules⁴², which cross-refers to the definition in Article 4(1), point (1) of Regulation (EU) No 575/2013. As building societies would fulfil both of the functional criteria of 'credit institution', they would be subject to the Eurosystem's minimum reserves requirements when Poland adopts the euro. Such requirements, and the sanctions related to them⁴³, would apply directly under Union law.

2.7 The draft law appears to propose an arrangement under which building societies would be obliged to hold minimum reserves with NBP⁴⁴. However, the wording of the draft law is not fully clear in this respect and does not exclude an interpretation whereby building societies operating in the form of cooperatives would be excluded from the obligation to maintain minimum reserves. This is because the draft law's provision refers to the Law on NBP, which only regulates minimum reserve requirements in relation to banks and cooperative savings and credit unions, but does not explicitly impose minimum reserve requirements on cooperatives. The ECB suggests that, to ensure legal certainty, the Polish legislator clarifies this matter including, eventually, through an appropriate amendment to the Law on NBP.

2.8 Based on Directive 2014/49/EU of the European Parliament and of the Council⁴⁵, it seems that

³⁸ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

³⁹ Article 6(2) of the draft law.

⁴⁰ See Article 45b(1), point (c), of Directive 2014/59/EU.

⁴¹ See, e.g., paragraph 2 of Opinion CON/2016/40, paragraph 2.2 of Opinion CON/2018/48 and paragraph 3.1 of Opinion CON/2021/17.

⁴² See Article 2(4) of Regulation (EU) 2021/378 of the European Central Bank of 22 January 2021 on the application of minimum reserve requirements (ECB/2021/1) (OJ L 73, 3.3.2021, p. 1).

⁴³ See Article 7 of Council Regulation (EC) No 2531/98 of 23 November 1998 concerning the application of minimum reserves by the European Central Bank (OJ L 318, 27.11.1998, p. 1) and European Central Bank Regulation (EC) No 2157/1999 of 23 September 1999 on the powers of the European Central Bank to impose sanctions (ECB/1999/4) (OJ L 264, 12.10.1999, p. 21).

⁴⁴ Article 21 of the draft law.

⁴⁵ Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149).

savings deposits in building societies would be covered by the national deposit guarantee scheme, as building societies fulfil the criteria of 'credit institution' under Union law⁴⁶. This would be the case for both building societies operating in the form of banks, as well as in the form of cooperatives, as the latter also receive deposits from the public and grant credit for their own account. The ECB understands, however, that this interpretation may be questioned under Polish law⁴⁷, as the matter is not regulated in the draft law, and the entities covered by the Law on the Bank Guarantee Fund⁴⁸ comprise banks established in the territory of the Republic of Poland (except for mortgage banks), branches of foreign banks based outside the Union and cooperative savings and credit unions. Therefore, while it would seem that the deposit guarantee scheme covers building societies operating in the form of banks, it is more difficult to conclude that this scheme covers building societies operating in the form of cooperatives. For this reason, the draft law could be amended in order to bring it in line with Union law. The merger, liquidation and bankruptcy regimes of banks in the form of joint-stock companies and cooperatives are different⁴⁹. The possibility of building societies conducting business activities under two such different legal forms may make it impossible in practice to apply the solutions provided for in the draft law concerning, e.g., the takeover of a building society that is a cooperative by another building society as a result of a decision of KNF, issued in connection with the poor financial situation of the acquired building society. This is because, as concerns decisions of KNF, the draft law only refers to the application of certain provisions of the Law on banking, while the Law on cooperatives contains separate provisions regarding the merger of cooperatives⁵⁰. To ensure legal certainty, the ECB suggests that these issues be remedied in the draft law.

This opinion will be published on EUR-Lex.

Done at Frankfurt am Main, 10 November 2022.

[signed]

The President of the ECB

Christine LAGARDE

⁴⁶ See Article 4(1), point (1), of Regulation (EU) No 575/2013.

⁴⁷ See the letter from the Governor of NBP addressed to the head of the chancellery of the Sejm of 8 July 2022, p. 5.

⁴⁸ See Article 2(41) and Articles 17 and 18 of the Law on the Bank Guarantee Fund, the deposit guarantee scheme and resolution (Ustawa z dnia 10 czerwca 2016 r. o Bankowym Funduszu Gwarancyjnym, systemie gwarantowania depozytów oraz przymusowej restrukturyzacji (consolidated text: Dziennik Ustaw z 2022 r., poz. 793)).

⁴⁹ See Article 124 and Articles 146b-169 of the Law on banking and Articles 96-102 and 113-137 of the Law on cooperatives.

⁵⁰ See Articles 96-102 of the Law on cooperatives.