



OPINION OF THE EUROPEAN CENTRAL BANK
of 23 July 2013
on savings banks and banking foundations
(CON/2013/52)

Introduction and legal basis

On 2 July 2013, the European Central Bank (ECB) received a request from the Spanish Secretary of State for Economic Affairs and Business Support for an opinion on a draft law on savings banks and banking foundations (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/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions¹, as the draft law relates to the Banco de España and 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 General scheme and content of the draft law

1.1.1 The draft law regulates redefines the composition of the savings banks sector and regulates the governance of the institutions which form part of it. In particular, ‘savings banks’ will be strictly limited in terms of geography and size. If a savings bank exceeds these limits: (a) it will have to transfer all equity allocated to its financial activity to another credit institution in exchange for shares therein; and (b) it will be converted into a ‘banking foundation’ if its stake in that other credit institution is significant, otherwise it will be converted into an ‘ordinary foundation’. In either case, the foundations will lose their banking licence. The draft law provides a period of six months for the conversion of savings banks into foundations. As regards the savings banks that are already acting indirectly through a commercial bank, they will be transformed into a banking or ordinary foundation, as applicable, within one year from the entry into force of the law. Finally, it is noted that the draft law states the basic regime for savings banks, without prejudice to the regime applying to them by the region (*Comunidad Autónoma*) in which they are established.

1.1.2 Under the Memorandum of Understanding on Financial-Sector Policy Conditionality² (hereinafter the ‘MoU’) between Spain and the European Commission of 23 July 2012, the Spanish authorities

¹ OJ L 189, 3.7.1998, p. 42.

² Available on the Commission’s website at www.ec.europa.eu.

committed to: (a) strengthen fit and proper rules for the governing bodies of savings banks and introduce incompatibility requirements regarding the governing bodies of the savings banks and the commercial banks controlled by them; and (b) clarify the role of savings banks in their capacity as shareholders of credit institutions with a view to eventually reducing their stakes to non-controlling levels³.

1.1.3 In accordance with the commitments of the Spanish authorities under the MoU, the draft law increases the levels of independence and required experience of the members of the governing bodies of both savings banks and banking foundations, including in some instances the requirement of professionalism. Members of these governing bodies may not hold executive positions in political parties, trade unions and employers' associations or be elected representatives or senior officials of government. Also in accordance with the MoU, the draft law lays down a set of negative incentives for the eventual reduction of banking foundations' stakes in credit institutions to non-controlling levels.

1.2 *Savings banks*

The draft law imposes constraints on the savings bank business model. In order to avoid a savings bank reaching a systemic size, the following limitations are imposed: (a) they may only operate in the territory of an autonomous region or a maximum of 10 neighbouring provinces; (b) they will not be authorised to exceed a certain volume of activity, i.e. the total assets must not exceed EUR 10 billion or its share of the deposits market must not exceed 35 % of the market in which it operates. Corporate governance is reinforced, as only 25 % of the members of the General Assembly may be appointed by government authorities and public-law entities and corporations, and the majority of the members of the Board of Directors will be independent.

1.3 *Ordinary foundations*

Savings banks that exceed the limits for savings banks laid down in the draft law but do not have a stake in a credit institution of at least 10 % of its capital, nor voting rights that allow them to appoint or remove a member of its governing body, will have to be converted into ordinary foundations. Conversely, an ordinary foundation acquiring such a stake in a credit institution will have to be converted into a banking foundation. Ordinary foundations will be governed in accordance with the legislation on foundations.

1.4 *Banking foundations*

1.4.1 This is a new concept introduced by the draft law. A banking foundation is a foundation that has a stake in a credit institution of at least 10 % of its capital or voting rights which allow the appointment or removal of a member of its governing body. Its purpose is to carry out its charitable and community work and to manage its stake in the credit institution under the strengthened regime laid down in the draft law. As for corporate governance, only 25 % of the members of the Board of Directors of a banking foundation (*patronos*) may be designated by government authorities and public-law entities and corporations. Banking foundations must submit an annual corporate governance report to their supervisor.

³ MoU, Annex 2, measures 18 and 20.

- 1.4.2 The draft law limits the influence of a banking foundation in the relevant credit institution by making membership of the governing body of the banking foundation incompatible with the holding of an equivalent position in the credit institution; by subjecting dividend distributions in the controlled credit institution to increased quorum and majority requirements, and by depriving banking foundations with a controlling stake of voting rights in some special cases.
- 1.4.3 Under the draft law, holding a highly significant stake (at least 30%) in a credit institution will carry with it significant burdens, e.g. obligations to prepare a stake management protocol and an annual financial plan, and submit them to Banco de España.
- 1.4.4 Likewise, holding controlling stakes (at least 50% or effective control) in a credit institution will be costly because of the obligation to prepare, further to the financial plan, an investment diversification and risk management plan and to create a reserve fund to provide for possible capital shortfalls of the controlled credit institution. The financial plan will specify the minimum contributions needed in order to reach the target level determined by the Banco de España; taking into account, *inter alia*, the capital needs of the credit institution as laid down in the financial plan, the risk-weighted assets of the credit institution and the stake held by the banking foundation in that credit institution. The banking foundations with controlling stakes will not be able to exercise the voting rights corresponding to the part of the acquired capital allowing them to maintain a stake of at least 50 % or effective control.
- 1.4.5 The Banco de España will monitor compliance with the obligations regarding the stake management protocol, the financial plan, the investment diversification and risk management plan and the reserve fund. Non-compliance with these obligations will be treated as a serious or very serious breach.

2. ECB assessment

2.1 General consideration

The ECB welcomes the Spanish Government's initiative to reform the Spanish savings bank sector, which also complies with the commitments made by the Spanish authorities under the MoU. The reform addresses several shortcomings of the governance of Spanish savings banks, which, among several other factors, contributed to some extent to the financial sector crisis in Spain, and is therefore an important pillar of the overall effort to rebuild financial stability in Spain. The ECB considers the period of one year given to the saving banks which currently exercise their activity indirectly, through a commercial bank, as adequate to the purpose. Given the importance and complexity of the reform, the ECB is of the opinion that the relevant authorities will need to closely monitor the effectiveness of the reform once it is implemented and be ready to consider a review if needed.

2.2 Savings banks

The ECB welcomes the Spanish Government's initiative to revert to a traditional savings bank model by limiting the territorial scope and size of savings banks, as it also contributes to avoiding that they become systemic. In this direction, the ECB notes that the activity of savings banks will be focused mainly on

attracting reimbursable funds and providing banking services and investment services to retail clients and small and medium companies.

2.3 *Banking foundations*

The ECB also welcomes the new legal concept of banking foundation and the regulation thereof under the draft law, in line with the financial sector conditionality agreed in 2012 with the European partners and the International Monetary Fund. Time will be needed in order to confirm, in particular, how effective the structure of incentives laid down in the draft law is in terms of ultimately achieving the divestment by banking foundations of controlling stakes in credit institutions or, for banking foundations choosing to retain their controlling stakes, how effective the enhanced obligations provided for in the draft law are in order to guarantee sound and prudent management by banking foundations of credit institutions under their control. In this respect, the ECB observes that the draft law empowers the Banco de España to specify the minimum content of the management protocol, as well as relevant aspects of the investment diversification and risk management plan and of the reserve fund, including its target size. Regarding the latter, the ECB welcomes that the Banco de España's decision will be based on general criteria that take into account the situation of the individual institutions concerned, including: (a) the level of capital needs of the credit institution according to the financial plan; (b) the value of risk-weighted assets of the credit institution and the size of the banking foundation's stake in it; (c) whether the credit institution's shares are listed; (d) the level of concentration of the banking foundation's investments in the financial sector.

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

Done at Frankfurt am Main, 23 July 2013.

[signed]

The President of the ECB

Mario DRAGHI