



OPINION OF THE EUROPEAN CENTRAL BANK
of 5 December 2013
on the Financial Supervisory Authority's governance
(CON/2013/83)

Introduction and legal basis

On 6 November 2013, the European Central Bank (ECB) received a request from the Danish Financial Supervisory Authority (FSA) (*Finanstilsynet*) for an opinion on a draft law amending the Law on financial business, the Law on securities trading, the Law on mortgage credit loans and mortgage credit bonds, the Law on managers of alternative investment funds and various other laws¹ (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/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions², as the draft law relates 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 The draft law addresses the FSA's governance and management structure by establishing a governing board tasked with providing technical, organisational and managerial assistance to the FSA's management and with taking supervisory decisions³. The Financial Council, which is the FSA's current decision-making body, will be dissolved once this governing board has been established. According to the draft law, the purpose of the amendment is to provide an efficient organisational set-up for the FSA to strengthen its supervisory powers⁴.

¹ The draft law implements the requirements with regard to liquidity coverage, capital buffers and systemically important financial institutions in 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 (OJ L 176, 27.6.2013, p. 338) and contains the amendments made necessary by 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 (OJ L 176, 27.6.2013, p. 1).

² OJ L 189, 3.7.1998, p. 42.

³ See Section 1(10) of the draft law amending Section 345 of the Law on financial business.

⁴ See Section 2.4 of the explanatory memorandum to the draft law.

- 1.2 In accordance with the draft law, the FSA will be managed by the governing board and a managing director who will between them have legal, economic and financial expertise. The governing board will be responsible for the following tasks: (a) approving the organisation of supervisory activities; (b) laying down the strategic targets for the FSA's supervisory activities; (c) approving the FSA's annual report; (d) deciding on supervisory matters of a fundamental nature and those having significant consequences; (e) deciding to transfer cases for criminal investigation; and (f) approving executive orders and guidelines in areas where the FSA is authorised to issue regulations⁵. The governing board may delegate some of its powers to the FSA's managing director by issuing an instruction⁶.
- 1.3 The Minister for Business and Growth will appoint seven members of the governing board: three with an academic background in law, economics or finance; two with management experience in the financial sector; one with management experience in the general business community; and one member from Danmarks Nationalbank. The Minister for Business and Growth will appoint a chairperson and a deputy chairperson from among the board members⁷. A representative from the Ministry of Business and Growth will hold a seat as an observer on the board. The governing board will adopt decisions based on a simple majority voting procedure. In the event of an equal number of votes, the chairperson will cast the deciding vote⁸.
- 1.4 Furthermore, a panel of experts will be appointed. They will between them possess broad technical knowledge of the financial sector, e.g. banking business, mortgage-credit business, insurance and pension business, securities trading, stockbroking business, etc., as well as of financial consumer-related matters. As required, the governing board may request assistance from such panel in conjunction with the discussion of specific supervisory matters⁹.

2. General observations

- 2.1 The ECB welcomes the establishment of the governing board, which should provide an efficient organisational set-up for the FSA in order to strengthen its supervisory powers. Such a governing board will ensure the FSA's operational independence from political authorities¹⁰, which is in line with essential and internationally recognised standards for financial market supervision¹¹.

⁵ See amended Section 345(7) of the draft law.

⁶ See amended Section 345(14) of the draft law.

⁷ See amended Section 345(1)-(4) of the draft law.

⁸ See amended Section 345(12) of the draft law.

⁹ See amended Section 345(8) of the draft law.

¹⁰ See the explanatory memorandum in relation to Section 345(1) of the draft law.

¹¹ See Principle 2 of the Basel Committee on Banking Supervision's Core Principles for Effective Banking Supervision, available on the Bank for International Settlements' website at www.bis.org.

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- 2.2 With regard to the composition of the governing board, the ECB welcomes the fact that Danmarks Nationalbank will provide one member of the governing board¹², which is in line with the current practice for nominating Financial Council members.
- 2.3 Finally, the minimum term of office for governing board members is set at two years. Currently, Financial Council board members serve a four-year term. For the sake of continuity and stability, the ECB suggests considering a longer duration for such term of office, in line with international practice, with a possible limitation on the number of reappointments.

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

Done at Frankfurt am Main, 5 December 2013.

[signed]

The President of the ECB

Mario DRAGHI

¹² The existing legislation provides that Danmarks Nationalbank may nominate a member of the Financial Council, see the current Section 345(1), point 1 of the Law on financial business.