

**OPINION OF THE EUROPEAN CENTRAL BANK**

**of 19 November 2018**

**on the macroprudential mandate of Българска народна банка (Bulgarian National Bank) and the governance of credit institutions  
(CON/2018/52)**

**Introduction and legal basis**

On 19 October 2018 the European Central Bank (ECB) received a request from the Minister for Finance for an opinion on a draft law amending the Law on credit institutions (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<sup>1</sup>, as the draft law relates to Българска народна банка (Bulgarian National Bank (BNB)), rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets and the tasks conferred upon 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**

**1.1 *Introduction***

The draft law amends the Law on credit institutions<sup>2</sup> with two main objectives. First, it aims to supplement the mandate of BNB to conduct the macroprudential supervision of credit institutions. Second, it aims to ensure that national legislation in the field of corporate governance of credit institutions better complies with internationally accepted practices.

**1.2 *BNB's macroprudential mandate***

The draft law proposes to expand the macroprudential toolkit of BNB. To this end the draft law proposes to supplement the existing general macroprudential mandate of BNB<sup>3</sup> with a number of specific macroprudential tools, including the following competences: (i) to collect information for macroprudential purposes; (ii) to monitor, identify and assess systemic risks; (iii) to develop and implement national measures to mitigate macroprudential or systemic risk identified at the level of a Member State under Article 458 of Regulation (EU) No 575/2013 of the European Parliament and

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<sup>1</sup> 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).

<sup>2</sup> Published in *Darjaven Vestnik* No 59, 21 July 2006.

<sup>3</sup> See Article 79(2) of the Law on credit institutions.

of the Council<sup>4</sup>; (iv) to develop and implement measures to limit systemic risks stemming from the accumulation of excessive credit growth (i.e. borrower-based measures); (v) to develop and implement measures to limit the risk of concentration to certain economic sectors and industries; (vi) to develop and implement additional minimal requirements in respect of liquidity; and (vii) to carry out any other actions necessary to achieve BNB's macroprudential objectives.

### 1.3 *Fit and proper assessments and governance of credit institutions*

The draft law revises the requirements for the governance arrangements to be adopted and updated by credit institutions<sup>5</sup>. A new draft provision introduces the requirement that the members of management bodies of credit institutions should collectively have sufficient knowledge, skills and experience to ensure the risk associated with business is managed in a way that guarantees the stable management of the credit institution. Another proposed provision seeks to ensure that at least one of the members of the management body of a credit institution is independent, while for significant credit institutions and credit institutions whose shares have been admitted to trading on a regulated market, the independent members must be no less than a third of the total number. The draft law specifies that only significant credit institutions are required to establish a nomination committee. Significant credit institutions are defined in the draft law as those designated as significant by BNB due to their size and internal organisation, as well as in view of the nature, scale and complexity of the business they conduct<sup>6</sup>.

The draft law introduces requirements for key function holders and sets out the procedure for ex-post authorisation of key functions holders by BNB. Key function holders comprise *inter alia* the chief financial officer and the heads of the internal audit, regulatory compliance and risk management units<sup>7</sup>.

The draft law specifies the powers of BNB with regard to the approval of the appointment of members of the management bodies and procurators<sup>8</sup> and provides that BNB would issue an ordinance to specify the internal procedure for credit institutions to report breaches<sup>9</sup>.

## 2. General observations

- 2.1 The ECB understands that the part of the draft law which relates to the macroprudential mandate of BNB is proposed to be adopted as a result of the commitments made by the Republic of Bulgaria in policy areas which are of high relevance for a smooth transition to, and participation in, the European Exchange Rate Mechanism<sup>10</sup>.

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<sup>4</sup> 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).

<sup>5</sup> See proposed amendment to Article 73 of the Law on credit institutions.

<sup>6</sup> See proposed new points 50 and 51 in paragraph 1 of the additional provisions of the Law on credit institutions.

<sup>7</sup> See proposed new Article 11a of the Law on credit institutions.

<sup>8</sup> See proposed amendment to Article 11 of the Law on credit institutions.

<sup>9</sup> See proposed amendment to Article 74(4) of the Law on credit institutions.

<sup>10</sup> See press release, 'Statement on Bulgaria's path towards ERM II participation', 12 July 2018, available at [www.consilium.europa.eu](http://www.consilium.europa.eu).

- 2.2 The draft law does not extend the current macroprudential mandate of BNB. As a national macroprudential authority, BNB is already responsible for the macroprudential supervision of credit institutions in order to maintain the stability of the banking system and to ensure the prevention or reduction of both systemic risks resulting from the activity of credit institutions and the identification and limitation of the incidence of macroeconomic factors threatening the stability of the banking system<sup>11</sup>. The draft law does not confer genuinely new tasks on BNB, but rather specifies certain new macroprudential tools that BNB may use when discharging its macroprudential responsibilities. Consequently, it is not necessary to assess whether the conferral of new tasks on a national central bank complies with the prohibition of monetary financing.
- 2.3 The ECB understands that the draft law seeks to supplement the implementation in Bulgarian law of the governance provisions in Sub-section 3, Section II, Chapter 2, Title VII of Directive 2013/36/EU of the European Parliament and of the Council<sup>12</sup> with additional elements derived from internationally accepted practices, notably the respective guidelines by the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA)<sup>13</sup>. In this regard, the ECB understands that pursuant to Article 74a of the Law on credit institutions, credit institutions established in Bulgaria already have to apply the EBA guidelines, recommendations and other measures concerning them to the extent of BNB's compliance with such guidelines, recommendations or other measures.
- 2.4 The ECB notes that the governance requirements for credit institutions are set out in the Law on credit institutions and may be further specified in BNB ordinances<sup>14</sup>. The ECB therefore understands that the draft law may in the future be supplemented by provisions on the governance of credit institutions adopted by means of BNB ordinances.
- 2.5 The ECB also notes that on 18 July 2018 the Republic of Bulgaria filed a request to establish close cooperation between the ECB and BNB, in line with the existing procedures established under Article 7 of Council Regulation (EU) No 1024/2013<sup>15</sup> and under Decision ECB/2014/5 of the European Central Bank on close cooperation<sup>16</sup>. This opinion is without prejudice to the assessment to be conducted by the ECB in accordance with Article 4 of Decision ECB/2014/5, which will include a broader assessment of the relevant national legislation, also taking into account the practical implementation of such legislation.

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<sup>11</sup> See Article 79(2) of the Law on credit institutions.

<sup>12</sup> 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).

<sup>13</sup> EBA Guidelines on internal governance under Directive 2013/36/EU (EBA/GL/2017/11) and Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU (EBA/GL/2017/12). BNB has indicated that it intends to comply with both guidelines as of 1 January 2019. See compliance tables on the EBA's website.

<sup>14</sup> See for example Ordinance No. 7 of 24 April 2014 on organisation and risk management of banks (*Darjaven Vestnik* No 40, 13 May 2014), Ordinance No. 10 on the Internal Control in Banks (*Darjaven Vestnik* No 108, 12 December 2003) and Ordinance No. 20 of 28 April 2009 on the Issuance of Approvals to the Members of the Management Board (Board of Directors) and Supervisory Board of a Credit Institution and Requirements for Performing their Duties (*Darjaven Vestnik* No 36, 15 May 2009).

<sup>15</sup> 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).

<sup>16</sup> 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).

### 3. Specific observations

#### 3.1 *Observations regarding BNB's macroprudential mandate*

The ECB welcomes the clarification of the details of BNB's macroprudential toolkit. The objectives of the draft law are also in line with the principles set out in the Recommendation ESRB/2013/1 of the European Systemic Risk Board<sup>17</sup> on intermediate objectives and instruments of macroprudential policy, in particular with regard to the objective to mitigate and prevent excessive credit growth and leverage<sup>18</sup>.

From a financial stability perspective, the ECB welcomes the implementation of a legislative framework for borrower-based measures<sup>19</sup>. The ECB takes positive note of the fact that BNB may activate part or all of the abovementioned tools, thereby responding in a flexible and proportionate way to potential risks to financial stability. A thorough quantitative impact assessment is, however, important to verify the effect and appropriateness of the new tools when they are activated<sup>20</sup>.

#### 3.2 *Observations regarding fit and proper assessments and governance of credit institutions*

The ECB welcomes the proposed changes in the draft law and understands that the draft law may in the future be supplemented by provisions regarding fit and proper assessments and the governance of credit institutions adopted by means of BNB ordinances, also with a view to ensuring compliance of the Bulgarian legal framework with the relevant Union rules.

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

Done at Frankfurt am Main, 19 November 2018.



*The President of the ECB*

Mario DRAGHI

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<sup>17</sup> Recommendation ESRB/2013/1 of the European Systemic Risk Board of 4 April 2013 on intermediate objectives and instruments of macro-prudential policy (OJ C 170, 15.6.2013, p. 1).

<sup>18</sup> See paragraph 2.2 of Opinion CON/2017/11, paragraph 2.3 of Opinion CON/2017/21, paragraph 3.1 of Opinion CON/2018/9.

<sup>19</sup> See press release, 'Governing Council statement on macroprudential policies', 15 December 2016, at [www.ecb.europa.eu](http://www.ecb.europa.eu). See also, paragraph 2.3 of Opinion CON/2017/11, paragraph 2.4 of Opinion CON/2017/21 and paragraph 3.2 of Opinion CON/2018/9.

<sup>20</sup> See paragraph 3.2 of Opinion CON/2018/9.