EUROPEAN CENTRAL BANK

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OPINION OF THE EUROPEAN CENTRAL BANK

of 28 July 2026

on the Polish Defence Investment Fund

(CON/2026/23)

Introduction and legal basis

On 15 April 2026 the European Central Bank (ECB) received a request from the Marshal of the Polish Parliament for an opinion on two alternative draft laws on the Polish Defence Investment Fund[1]: a draft law submitted by the President of Poland on 10 March 2026 (hereinafter the 'presidential draft law'), and a draft law submitted by a group of Members of the Polish Parliament on 24 March 2026 (hereinafter the 'parliamentary draft law', and together with the presidential draft law, the 'draft laws'). On 14 July 2026 the Marshal confirmed to the ECB that he maintains his request of 15 April 2026 for an opinion on the draft laws.

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 Article 2(1), third indent, of Council Decision 98/415/EC[2], as the draft laws concern Narodowy Bank Polski (NBP). In accordance with Article 17.5, first sentence, of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. Purpose of the draft laws

1.1 The draft laws establish the Polish Defence Investment Fund (hereinafter the 'Fund') as a special-purpose public fund administered by Bank Gospodarstwa Krajowego (BGK), Poland's wholly State-owned development bank. As noted in the explanatory memoranda accompanying the draft laws (hereinafter the 'explanatory memoranda'), BGK was selected due to its experience in managing statutory funds and its operational capacity in areas such as cash pooling, accounting, debt servicing and liquidity management.

1.2 The Fund's primary purpose is to finance the technical modernisation of the Polish Armed Forces and other tasks aimed at strengthening national security. Expenditure is to be governed by a multiannual defence investment programme (hereinafter the 'Multiannual Programme') prepared by the Minister for National Defence and adopted by the Fund's governing bodies. The Multiannual Programme is to cover a period of at least three years and set out the timetable, priorities and expenditure limits for all tasks financed from the Fund.

1.3 The draft laws provide that the Fund is to be financed from: (a) payments from NBP's annual profit

1 Ustawa o Polskim Funduszu Inwestycji Obronnych.

2 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, ELI: http://data.europa.eu/eli/dec/1998/415/oj).

pursuant to the amended Article 69(4) of the Law on NBP[3]; (b) loans and bonds issued by BGK on domestic and foreign markets; (c) interest on the Fund's deposited cash resources; and (d) other sources. The draft laws provide that if the amount of the payment made by NBP to the Fund in a given financial year is lower than the amount provided for that year in the Multiannual Programme, BGK is to grant the Fund a loan reflecting the difference between these amounts, which is to be repaid from funds of the Fund derived from payments of the profits of NBP made in subsequent financial years.

1.4 The context for the NBP profit distribution mechanism is set out in both explanatory memoranda, noting that, according to a concept jointly presented by the President of Poland and the Governor of NBP on 4 March 2026, NBP's profit resulting from, inter alia, the rising market valuation of Poland's gold reserves is to be directed to the Fund. Both memoranda further note that NBP has increased its gold reserves to over 550 tonnes in recent years and that the sharp rise in global gold prices means that Poland holds substantial reserve assets that could support defence modernisation.

1.5 The draft laws are broadly similar in structure and share the same underlying objective, but differ on (a) the minimum level of the NBP profit payment to the Fund; (b) the composition and voting rules of the Fund's governing bodies; and (c) the degree of presidential control over the Fund's strategic decisions.

1.6 In particular, the presidential draft law replaces Article 69(4) of the Law on NBP with a requirement that part of NBP's annual profit is to be transferred to the Fund within 14 days of the date of approval of NBP's annual accounts, without specifying any minimum proportion. The parliamentary draft law replaces Article 69(4) of the Law on NBP with a requirement that part of NBP's annual profit is to be transferred to the Fund and explicitly stipulates that, for the years 2026 to 2035, the amount of the transfer may not be less than nine-tenths of the annual profit.

1.7 Both draft laws address the scenario in which NBP profits are insufficient to meet the financing needs under the Multiannual Programme. In such cases, BGK would be required to grant the Fund a loan equivalent to the shortfall, guaranteed by the State Treasury and to be repaid from funds of the Fund derived from payments of the profits of NBP. A similar mechanism would apply in the period between the entry into force of the draft laws and the first NBP profit payment for 2026.

1.8 The regulatory impact assessment attached to the parliamentary draft law identifies several elements that depart from the standard model of State financial management, including the statutory earmarking of NBP profit for the Fund, the possibility of incurring significant multiannual liabilities, the bridging loan and BGK loan mechanisms, and the State Treasury guarantee. The regulatory impact assessment also highlights a constitutional risk in the light of Article 227 of the Polish Constitution, which governs NBP's institutional position and independence as the State's central bank, as well as a material economic risk arising from the reliance of a significant portion of the Fund's financing on NBP profits, which are inherently volatile and not fully predictable.

1.9 Both explanatory memoranda present the Fund as an option vis-à-vis the Union's Security Action for

3 Ustawa z dnia 29 sierpnia 1997 r. o Narodowym Banku Polskim (consolidated text: Dziennik Ustaw z 2022 r., poz. 2025). Article 69(4) of the Law on NBP provides that within 14 days from the date of approval of the annual financial statements of NBP, part of NBP's annual profit (payment from NBP's profit) is transferred to the State budget.

Europe ('SAFE') programme, though the presidential draft law frames it as a full sovereign substitute, while the parliamentary draft law treats it as complementary to SAFE.

2. General observations

2.1 This opinion examines the provisions of the draft laws in the light of their context, specifically the scheme established for financing the Fund, which involves an amendment of the Law on NBP concerning NBP's finances.

2.2 *Background context of the draft laws*

On 4 March 2026 the President of the Republic of Poland and the Governor of NBP issued a joint statement on a concrete, Polish, secure and sovereign alternative to SAFE that would entail no financial interest costs whatsoever. The ECB notes the Governor of NBP's statement to the effect that NBP had developed a concept to support Poland's defence efforts[4] and the Governor of NBP's further statement, on 5 March 2026, that NBP would generate a very large profit using standard methods, without depleting the reserves, ensuring that the initiative serves solely to strengthen Poland's defence[5].

2.3 *Source of NBP's profits to be transferred to the Fund*

2.3.1 The ECB notes that in line with the prevailing European System of Central Banks (ESCB) accounting standards established in Guideline (EU) 2024/2941 of the European Central Bank (ECB/2024/31)[6], to which NBP accounting principles should conform pursuant to the Law on NBP[7], the rising market valuation of NBP's gold reserves has resulted in an increase in NBP's revaluation accounts. In these circumstances, sales of gold would result in realised gains, impacting on NBP's profit and loss account for the relevant financial year. At the same time, the transfer of these gains to the Fund would reduce NBP's net equity, which currently benefits from the unrealised gains generated by the increase in the market price of gold.

2.3.2 The ECB also notes that NBP has reported losses, not profits, since 2022. The amount of these accumulated losses[8] is such that NBP would have to make significant sales of gold to offset them[9].

3. Specific observations

3.1 *Principle of central bank independence*

3.1.1 As reflected in the case-law of the Court of Justice of the European Union, the authors of the Treaty intended to ensure that the ESCB should be in a position to carry out independently the tasks

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4 Office of the President of the Republic of Poland, Conference on the 'Polish SAFE 0%', 4 March 2026, available on the official website of the President of the Republic of Poland at www.president.pl.

5 National Bank of Poland, Press conference of NBP Governor Adam Glapiński on the financing of defence needs and the 'Polish SAFE 0%' initiative, video transmission, 11 March 2026, available on NBP's website at www.nbp.pl.

6 Guideline (EU) 2024/2941 of the European Central Bank of 14 November 2024 on the legal framework for accounting and financial reporting in the European System of Central Banks (ECB/2024/31) (OJ L, 2024/2941, 11.12.2024, ELI: http://data.europa.eu/eli/guideline/2024/2941/oj).

7 Article 67 of the Law on NBP.

8 Uncovered losses of previous financial years amounted to PLN -97,2 billion of which PLN -35,7 billion occurred in 2025.

9 Gold revaluation gains as at end-2025 stood at PLN 139,7 billion.

conferred upon it[10]. The main evidence of that intention is set out in Article 130 of the Treaty, which expressly prohibits the ECB, the national central banks (NCBs), and the members of their decision-making bodies from seeking or taking instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body, on the one hand, and prohibits those Union institutions, bodies, offices or agencies and any government of a Member State from seeking to influence the members of the decision-making bodies of the ECB and the NCBs in the performance of their tasks, on the other.

3.1.2 Taking into account the NCBs' hybrid status, the Court of Justice clarified that the principle of central bank independence does not necessarily apply in the same way when NCBs carry out tasks within the scope of the ESCB compared to when they perform tasks outside that scope[11]. Specifically, this includes tasks assigned to them under national law which, in the case of Member States with a derogation, have not yet been conferred on the Union, such as the management of foreign reserves. However, as highlighted by the Court of Justice, the national rules established for that purpose cannot, without infringing Article 130 of the Treaty, place the NCB concerned in a situation which in any way undermines its ability to carry out independently tasks within the scope of the ESCB[12].

3.1.3 Based on the reference in the explanatory memoranda to operations involving NBP's gold reserves for the purpose of supporting defence modernisation, the ECB understands that such operations would not be driven by considerations relating to NBP's task of managing foreign reserves. These gold operations are rather aimed at generating profits to finance the Fund.

3.1.4 Considering the functional nature of Article 130 of the Treaty, the ECB notes that to ensure that NBP is in a position to act independently in pursuit of its objectives and in performing its tasks within the scope of the ESCB, the members of NBP's decision-making bodies must not seek instructions from the government or from any other body to undertake operations involving NBP's gold reserves for the purpose of financing the Fund. Likewise, the government must respect the principle of central bank independence and not seek to influence the members of NBP's decision-making bodies to undertake operations involving NBP's gold reserves for the purpose of financing the Fund.

3.1.5 Member States may not hamper NCBs from building up their reserve capital to the level necessary for a member of the ESCB to fulfil its tasks[13]. Such obstruction would occur if NBP was required to transfer to the Fund the profits generated from realised gains on gold sales without first covering its accumulated losses and creating adequate financial provisions to safeguard the real value of its capital and assets. In respect of the allocation of profits, the ECB has consistently held that profits may be distributed to the State budget only after any accumulated losses from previous years have been covered and financial provisions deemed necessary to safeguard the real value of the NCB's

10 Judgment of 26 February 2019, *Rimšēvičs and ECB* v *Latvia*, C-202/18 and C-238/18, ECLI:EU:C:2019:139, paragraph 46; Judgment of 13 September 2022, *Banka Slovenije*, C-45/21, ECLI:EU:C:2022:670, paragraph 93.

11 Judgment of 13 September 2022, *Banka Slovenije*, C-45/21, ECLI:EU:C:2022:670, paragraph 95.

12 Judgment of 13 September 2022, *Banka Slovenije*, C-45/21, ECLI:EU:C:2022:670, paragraph 97.

13 See, for example, paragraph 2.1 of Opinion CON/2012/69, paragraph 3.3.1 of Opinion CON/2012/73, paragraph 2.1.3 of Opinion CON/2019/21, paragraph 2.6 of Opinion CON/2020/7 and paragraph 13.3.6 of Opinion CON/2020/13. All ECB opinions are published on EUR-Lex.

capital and assets have been created[14]. Hence, a transfer of profits to the Fund without first covering NBP's accumulated losses would not be in line with the financial dimension of the principle of central bank independence.

3.1.6 In addition, the requirement under the draft laws for repayment of BGK's loan from funds of the Fund derived from payments of the profits of NBP could – particularly where NBP profits were insufficient to meet the financing needs under the Multiannual Programme – further hinder NBP from building up its reserve capital to the level necessary to fulfil its tasks within the scope of the ESCB.

3.2 *Monetary financing prohibition*

3.2.1 As reflected in the case-law of the Court of Justice, Article 131 of the Treaty expressly requires each Member State to ensure that its national legislation, including its NCB's statutes, is compatible with the Treaties. The standards which are binding on the Member States on that basis include, in particular, Article 123 of the Treaty[15]. Article 123 of the Treaty prohibits the central banks of the Member States from granting any type of credit facility to public authorities and bodies of the Member States. Based on Council Regulation (EC) No 3603/93[16], which seeks to define the scope of the monetary financing prohibition, this includes the central bank assuming obligations vis-à-vis third parties which could potentially be incumbent on other public authorities and bodies[17]. Considering the objective of Article 123 of the Treaty, the central bank could thus not validly be responsible, in place of the other public authorities and bodies, for the effective financing of obligations vis-à-vis third parties which might result from the economic policy choices made by those public authorities[18].

3.2.2 It is apparent from the above that, with a view to maintaining the impetus for a sound budgetary policy, the monetary financing prohibition does not allow an NCB to assume the financing of public expenditure, such as expenditure for defence policy.

3.2.3 While gains resulting from the central bank's management of gold reserves may generally have a positive impact on the financial result to be distributed to the State budget through the ordinary profit distribution mechanism, the relevant provisions on NBP finances must be compatible with Article 123 of the Treaty[19].

3.2.4 The draft laws, which include an amendment to Article 69(4) of the Law on NBP, provide for the Fund to be primarily financed from transfers from the annual profit of NBP. NBP would therefore in effect be primarily responsible for the financing of the Fund and therefore assume – contrary to the objective of the monetary financing prohibition – responsibility for the financing of economic policy choices made by public authorities and bodies relating to the technical modernisation of the Polish Armed

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14 See paragraph 4.3 of Opinion CON/2009/85, paragraph 3.2.5 of Opinion CON/2017/17 and paragraph 3.8 of Opinion CON/2023/24.

15 Judgment of 13 September 2022, *Banka Slovenije*, C-45/21, ECLI:EU:C:2022:670, paragraphs 58 and 59.

16 Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b (1) of the Treaty (OJ L 332, 31.12.1993, p. 1, ELI: http://data.europa.eu/eli/reg/1993/3603/oj).

17 Judgment of 13 September 2022, *Banka Slovenije*, C-45/21, ECLI:EU:C:2022:670, paragraph 67.

18 Judgment of 13 September 2022, *Banka Slovenije*, C-45/21, ECLI:EU:C:2022:670, paragraphs 72 to 75.

19 See paragraph 3.6 of Opinion CON/2019/23 and paragraph 2.8 of Opinion CON/2025/39.

Forces and other tasks aimed at strengthening national security. Sales of NBP's gold reserves aimed at generating profits to be transferred to the Fund would constitute a circumvention of the prohibition under Article 123 of the Treaty which precludes central bank financing of public expenditure.

This opinion will be published on EUR-Lex.

Done at Frankfurt am Main, 28 July 2026.

[signed]

The President of the ECB

Christine LAGARDE