EUROPEAN CENTRAL BANK

EUROSYSTEM

EN **ECB-PUBLIC**

OPINION OF THE EUROPEAN CENTRAL BANK

of 11 April 2019

on lobbying

(CON/2019/15)

Introduction and legal basis

On 28 February 2019 the European Central Bank (ECB) received a request from the Minister of Justice of the Czech Republic for an opinion on a draft law on the regulation of lobbying (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 on the third indent of Article 2(1) of Council Decision 98/415/EC[1], as the draft law relates to Česká národní banka (ČNB). 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 purpose of the draft law is to regulate lobbying in the Czech Republic. The draft law defines the activity of lobbying, the persons understood to be lobbyists (hereinafter 'lobbyists') and the public officials exposed to lobbying (hereinafter 'lobbied persons'). It also defines the competences of public authorities in relation to such activity and the rights and obligations of lobbyists and lobbied persons. In addition, the draft law establishes the Transparency Register as a public information system to be maintained by the *Úřad pro dohled nad hospodařením politických stran a politických hnutí* (ÚDHPSH, the Oversight Office for Political Parties and Political Movements). Lobbyists and lobbied persons must register with the Transparency Register and report on a quarterly basis on their lobbying activities and relevant contacts during that period. The Transparency Register and the periodic reports are made available to the public on the ÚDHPSH's website.

1.2. A member of the Bank Board of ČNB would be regarded as a lobbied person according to the draft law if he or she is lobbied in order to influence a decision on the preparation, negotiation or passage of a draft legislation or regulation that is within the competence of ČNB. In that case, ČNB would be required to enter the member's details as prescribed in the draft law in the Transparency Register, and the member would be required to submit quarterly reports with information on his or her respective contacts with lobbyists during that period. The reports are to be submitted electronically and are made available to the public on the ÚDHPSH's website.

1.3. The explanatory memorandum[2] accompanying the draft law states that this provision takes into account the special status of the members of the Bank Board of ČNB. In this respect, the

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 https://apps.odok.cz/veklep-detail?pid=KORNB4B9CNQE

explanatory memorandum notes that, pursuant to Article 98 of the Constitution of the Czech Republic[3], ČNB's core responsibilities are price stability and monetary policy[4]. The draft law does not interfere with the areas in which ČNB is completely independent. Such interference is prohibited under Law No 6/1993 on ČNB[5]. Therefore, members of the Bank Board of CNB only fall within the scope of the draft law if they are involved in legal drafting within ČNB's competence. Members of the Bank Board of CNB that are not involved in legal drafting within ČNB's competence are not subject to the draft law. The consulting authority has informed the ECB that the ECB's opinion from 2005 on the Slovak regulation of lobbying has been taken into account in drafting this provision[6].

2. Observations

2.1 This opinion addresses the provisions of the draft law relating to the members of the Bank Board of ČNB.

2.2 The ECB understands that a draft regulation within ČNB's competence with respect to which a member of the Bank Board of ČNB could be lobbied would cover draft legislation on the currency and the circulation of money, and draft legislation concerning the status, competence, organisation and activities of ČNB (where ČNB co-submits the draft law, together with the Ministry of Finance, to the Government[7]) as well as draft ČNB decrees issued pursuant to Law No 6/1993 on ČNB, including decrees on required minimum reserves, and other laws under which ČNB has regulatory competences. This includes the areas of banking and financial supervision[8], market infrastructures[9], the circulation of banknotes and coins[10], consumer credit[11] and anti-money laundering[12]. Accordingly, any lobbying of a member of the Bank Board of CNB during a legislative process on decisions concerning a draft legal act outside the regulatory competence of ČNB would not fall under the draft law.

2.3 Article 130 of the Treaty requires that, when exercising the powers and carrying out the tasks and duties conferred upon them by the Treaty, the Treaty on European Union and the Statute, neither the ECB nor an NCB nor any member of their decision-making bodies shall seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body. The aim of Article 130 of the Treaty is to shield central banks from political pressure

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3 Article 98 of Constitutional Law No. 1/1993 Coll. Ústava České republiky.

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5 See Article 9(1) of Law No. 6/1993 Coll. on Česká národní banka (*zákon o České národní bance)*, as amended.

6 See ECB Opinion CON/2005/25. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

7 See Article 37(1) of the Law No. 6/1993 Coll. on Česká národní banka, as amended.

8 See Law No 21/1992 Coll. on banks (*zákon o bankách*); Law No 277/2009 Coll. on insurance (zákon o pojišťovnictví); Law No 87/1995 Coll. on credit unions (zákon o spořitelních a úvěrních družstvech); Law No 277/2013 Coll. on currency exchange (zákon o směnárenské činnosti); Law No 15/1998 Coll. on supervision in the capital market area (zákon o dohledu v oblasti kapitálového trhu); Law No 256/2004 Coll. on capital market undertakings (zákon o podnikání na kapitálovém trhu); Law No 190/2004 Coll. on bonds (zákon o dluhopisech); and various laws on pension insurance and savings (mainly Laws No. 42/1994 and No. 427/2011 (zákon o penzijním připojištění se státním příspěvkem a zákon o doplňkovém penzijním spoření).

9 See Law No 370/2017 Coll. on the payment system (zákon o platebním styku).

10 See Law No 136/2011 Coll. on the circulation of banknotes and coins (zákon o oběhu bankovek a mincí) and provisions on counterfeiting etc. in the Criminal Code, Law No. 40/2009 Coll. (t*restní zákoník*).

11 See Law No 257/2016 Coll. on consumer credit (zákon o spotřebitelském úvěru).

12 See Law No 253/2008 Coll. on selected measures against legitimisation of proceeds of crime and financing of terrorism (zákon o některých opatřeních proti legalizaci výnosů z trestné činnosti a financování terorismu).

to enable them to effectively pursue the objectives attributed to their tasks through the independent exercise of the specific powers conferred on them for that purpose. However, the recognition that central banks have such independence does not have the consequence of exempting them from every rule of law and to shield them from any kind of legislation[13].

2.4 The ECB considers that regular contacts and interaction with external stakeholders provide relevant input and information that help to understand the dynamics of the economy, the financial markets and the banking sector, and the broader societal context. Members of the ECB's decision-making bodies and other high level officials are required upon their appointment to sign a declaration of adherence to the ECB's Code of Conduct for High Level ECB Officials[14], which provides good governance safeguards for relations with interest groups and also includes guiding principles regarding communication with external parties. The members of high-level ECB bodies commit to safeguard confidential information in accordance with their obligations and to avoid any appearance that potentially market-sensitive information may not be available to the widest possible public audience at the same time. To enhance transparency and accountability, they shall, as a general rule, include information on their meetings with external parties in their published meeting calendars, to the extent such information relates to their role as members of high-level ECB bodies.

2.5 In view of the above considerations, the ECB considers that the draft law, including the proposed transparency-related obligations for members of the Bank Board of ČNB aimed at combating corruption and increasing transparency in the specific context of lobbying during the legislative process in the Czech Republic, would not impair the independent performance of ČNB's ESCB-related tasks.

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

Done at Frankfurt am Main, 11 April 2019.

[signed]

The President of the ECB

Mario DRAGHI

13 See judgement of the Court of Justice of 10 July, Commission v ECB, C-11/00, ECLI:EU:C:2003:395, paragraphs 134 to 136.

14 See Code of Conduct for High Level ECB Officials of December 2018 https://www.ecb.europa.eu/ecb/legal/pdf/en_single_code_conduct_for_high_level_ecb_officials_f_sign.pdf