EUROPEAN CENTRAL BANK

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**OPINION OF THE EUROPEAN CENTRAL BANK**

**of 8 July 2019**

**on national legislation to be adopted for the purpose of establishing close cooperation between the European Central Bank and Hrvatska narodna banka**

**(CON/2019/25)**

## Introduction and legal basis

On 27 May 2019 the European Central Bank (ECB) received a request from Hrvatska narodna banka (HNB), on behalf of the Croatian Minister for Finance, for an opinion on a draft law on amendments to 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[1], as the draft law relates to HNB and rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets, and the ECB's tasks 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 was prepared in the broader context of the request filed on 27 May 2019 by the Republic of Croatia to establish close cooperation between the ECB and HNB, in line with the existing procedures established under Article 7 of Council Regulation (EU) No 1024/2013 (hereinafter the 'SSM Regulation')[2] and under Decision ECB/2014/5 of the European Central Bank[3]. The draft law ensures the implementation of the SSM Regulation and Regulation (EU) No 468/2014 of the European Central Bank (hereinafter the 'SSM Framework Regulation')[4]. In this respect, the draft law introduces changes to the Law on Credit institutions[5] to comply with 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 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).

3 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).

4 Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

5 Zakon o kreditnim institucijama (Narodne novine no 159/13, 19/15, 102/15 and 15/18).

prerequisites for the establishment of close cooperation between the ECB and the national competent authority (NCA) of a Member State whose currency is not the euro, in order to allow the ECB to carry out its tasks concerning the prudential supervision of credit institutions established in that Member State. The draft law focuses on two main issues: (a) ensuring that the NCA will abide by any guidelines or requests issued by the ECB; and (b) ensuring that all credit institutions established in Croatia will provide all information that the ECB may require for the purpose of carrying out a comprehensive assessment of those credit institutions.

1.2 *Role of the ECB and HNB once close cooperation is established*

1.2.1 For the purposes of close cooperation, the draft law includes definitions set out in the SSM Framework Regulation, in particular definitions for: (a) an NCA in close cooperation; (b) a supervised entity and significant supervised entity; (c) a supervised group and significant supervised group; and (d) a less significant supervised entity and less significant supervised group. The draft law also includes a definition for legal acts of the ECB.

1.2.2 Furthermore, the draft law puts an obligation on HNB to abide by any guidelines or requests issued by the ECB, and to adopt any measure in relation to credit institutions requested by the ECB. The draft law further provides that legal acts adopted by the ECB pursuant to the SSM Regulation shall be directly applicable in the Republic of Croatia. Additionally, the draft law specifies that whenever the ECB exercises its supervisory powers and performs its supervisory tasks referred to in Articles 4 and 5 of the SSM Regulation, in performing its supervisory tasks and exercising its supervisory powers or the powers of the designated authority, HNB shall adopt decisions in accordance with the instructions, requests or guidelines issued by the ECB. The draft law further specifies the following. Whenever the ECB exercises its supervisory powers and performs its supervisory tasks as referred to in Article 4(1) and (2) of the SSM Regulation in relation to significant supervised entities or significant supervised groups, in performing its supervisory tasks and exercising its supervisory powers, HNB shall adopt decisions only upon the request of and in accordance with the ECB's specific instructions, guidelines, requests and measures. In addition, whenever the ECB exercises its supervisory powers and performs its supervisory tasks referred to in Article 4(1)(a) and (c) of the SSM Regulation in relation to less significant supervised entities or less significant supervised groups, in performing its supervisory tasks and exercising its supervisory powers, HNB shall adopt decisions only upon the request of and in accordance with the ECB's specific instructions, guidelines, requests and measures. Finally, whenever the ECB exercises its supervisory powers and performs its supervisory tasks referred to in Article 4(1)(b), (d) to (g), and (i) of the SSM Regulation in relation to less significant supervised entities or less significant supervised groups, in performing its supervisory tasks and exercising its supervisory powers, HNB shall adopt decisions upon the request of and in accordance with the ECB’s instructions, guidelines, requests and measures.

1.2.3 The draft law also refers to the exercise of macroprudential tasks under Article 5 of the SSM Regulation and specifies that whenever the ECB exercises its supervisory powers and performs its supervisory tasks referred to in that Article, in exercising its powers as macroprudential authority, HNB shall adopt decisions in accordance with the instructions, requests or guidelines issued by the ECB. Additionally, where HNB acts as designated authority for the purposes of Article 458(1) of

Regulation (EU) No 575/2013 of the European Parliament and of the Council[6] or adopts any other measures aimed at addressing systemic or other macroprudential risks, whenever the ECB exercises its supervisory powers and performs its supervisory tasks referred to in Article 5 of the SSM Regulation, in accordance with Article 7 of the SSM Regulation, HNB shall act in accordance with the instructions issued by the ECB.

1.2.4 The draft law further specifies a termination procedure in the event that termination is initiated under Article 7(8) of the SSM Regulation, whereby a Member State whose currency is not the euro disagrees with a decision of the ECB and may request the ECB to terminate the close cooperation with immediate effect. The draft law provides that in the event of termination of close cooperation, the legal acts of the ECB adopted pursuant to the SSM Regulation shall cease to be applicable in the Republic of Croatia.

1.3 *Provision of information for the purpose of conducting a comprehensive assessment of credit institutions established in the Republic of Croatia*

With regard to the comprehensive assessment of the credit institutions established in the Republic of Croatia to be carried out by the ECB pursuant to Article 7(2)(b) of the SSM Regulation, the draft law provides that the ECB or any person empowered by the ECB shall be directly provided with all necessary information, and that such provision of information shall not be considered a disclosure of a business or banking secret. Additionally, for the purposes of the comprehensive assessment, the ECB or any person empowered by the ECB may: (a) request credit institutions to submit documentation; (b) carry out a review of books and documentation of credit institutions, including obtaining copies of such documentation; (c) request written and oral explanations from credit institutions and from their employees; and (d) for the purpose of collecting information, interview any person it considers as having relevant information, provided such person provides their explicit consent.

1.4 *Termination of close cooperation*

The draft law provides that the close cooperation provisions of the Law on credit institutions will cease to apply either: (a) from the date of termination of close cooperation pursuant to Article 7 of the SSM Regulation, or (b) from the date on which the derogation pursuant to Article 139 of the Treaty is abrogated in respect of the Republic of Croatia in accordance with Article 140(2) of the Treaty.

## 2. General observations

2.1 The ECB welcomes the draft law as part of the process leading to the establishment of close cooperation between the ECB and HNB pursuant to Article 7 of the SSM Regulation. The ECB notes that the request for and adoption of this opinion are necessary on the basis of Article 2 and Article 3(2)(b) of Decision ECB/2014/5.

6 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).

2.2 It is important to emphasise that, pursuant to Article 7(2) of the SSM Regulation and Article 3(2)(b) of Decision ECB/2014/5, the scope of this opinion pertains to the national legislation to be adopted by the Republic of Croatia to ensure that legal acts adopted by the ECB pursuant to the SSM Regulation are binding and enforceable in the Republic of Croatia and to ensure that HNB is obliged to adopt any measure requested by the ECB in relation to the supervised entities in accordance with Article 7(4) of the SSM Regulation.

2.3 The ECB notes that 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.

## 3. Observations regarding close cooperation between ECB and HNB

3.1 *Establishment and termination of close cooperation*

3.1.1 The ECB welcomes the introduction of new provisions into the Law on credit institutions aimed at addressing in a cohesive manner several aspects related to the establishment and operation of close cooperation with the ECB. The ECB understands that the new provisions will be read in accordance with the other provisions of the Law on credit institutions, so that the exercise of prudential supervision over credit institutions established in the Republic of Croatia will take place under the framework provided for in the SSM Regulation.

3.1.2 The ECB also welcomes that the application of the new provisions of the Law on credit institutions will be linked to the duration of the close cooperation between the ECB and HNB, starting from the date on which close cooperation will begin as indicated in the ECB decision establishing close cooperation, until termination of close cooperation either under Article 7 of the SSM Regulation or from the date on which the derogation pursuant to Article 139 of the Treaty is abrogated in respect of the Republic of Croatia in accordance with Article 140(2) of the Treaty. This approach will facilitate the transition from one system to the other and will ensure clarity with respect to the applicable legal framework before, during and after close cooperation.

3.1.3 With respect to the request to terminate close cooperation, the ECB understands that the draft law[7] regulates the coordination between the HNB and the Government of the Republic of Croatia, and does not affect the application of Article 7(6), (7) and (8) of the SSM Regulation. In this respect, it is noted that the draft law[8] mirrors the scope of Article 7(7) of the SSM Regulation, which nevertheless remains the relevant applicable legal basis regulating the reasoned disagreement procedure.

3.2 *Role of the ECB and HNB once close cooperation is established*

3.2.1 In order to ensure that supervised entities and groups established in a Member State in close cooperation will be in a position comparable to supervised entities and groups established in euro area Member States, Article 7 of the SSM Regulation states as a precondition for the establishment of close cooperation that the requesting Member State ensures that its NCA abides by any

7 Article 3 of the draft law (introducing Articles 11a(9), (10) and (13) of the Law on credit institutions).

8 Article 3 of the draft law (introducing Article 11a(12) of the Law on credit institutions).

guidelines or requests issued by the ECB and that it adopts the relevant national legislation to ensure that its NCA will be obliged to adopt any measure in relation to credit institutions requested by the ECB. This requirement is further specified under Article 3(2)(a) of Decision ECB/2014/5, which provides that the relevant national legislation has to ensure that acts adopted by the ECB under the SSM Regulation are binding and enforceable[9].

3.2.2 Against this background, the ECB welcomes the provisions of the draft law that ensure that HNB will abide by any guidelines or requests issued by the ECB, and will adopt any measure in relation to credit institutions requested by the ECB, including adopting decisions in accordance with the instructions, requests or guidelines issued by the ECB. In particular, the ECB understands that the provisions of the draft law aim to ensure compliance with the abovementioned requirements and that the ECB is able to exercise its supervisory powers and perform its supervisory tasks under the framework of close cooperation. In this respect, the ECB highlights the importance of having in place a legal framework providing HNB with all necessary powers to comply with all instructions which the ECB may adopt under the SSM Regulation.

3.2.3 Lastly, the ECB welcomes the clarification in the draft law on the exercise of its supervisory powers and the performance of its supervisory tasks in respect of significant and less significant credit institutions, in particular that HNB will act only upon the ECB's request for the supervision of significant credit institutions and in the context of common procedures.

3.3 *Applicability of ECB legal acts*

3.3.1 The ECB notes that the draft law[10] provides that ECB legal acts adopted pursuant to the SSM Regulation will be binding and enforceable in the Republic of Croatia. The ECB therefore understands that such cross-reference will be sufficient to ensure applicability of ECB legal acts and that no additional primary or secondary provision will need to be adopted for each individual legal act.

3.3.2 The ECB also notes that the definition of "legal acts of the ECB" included in the draft law[11] refers to "regulations, decisions, recommendations and opinions that European Central Bank adopts in accordance with Article 34 of the Statute of the European System of Central Banks and of the European Central Bank". This definition would exclude from the scope of application of the draft law[12] other legal acts which the ECB could adopt under the SSM Regulation, most importantly guidelines. For this reason, the ECB is of the view that, for the purpose of the draft law[13], it would be more opportune to either: (a) use in the definition the same wording as Article 3(2)(a) of the ECB decision establishing close cooperation, which refers to "legal acts adopted by the ECB pursuant to Regulation (EU) No 1024/2013", in which case the reference to Regulation (EU) No 1024/2013 in Article 3 of the draft law, introducing Article 11a(2) of the Law on credit institutions, should be omitted; or (b) delete the definition of "legal acts of the ECB" in Article 2 of the draft law, introducing item (103) in Article 3 of the Law on credit institutions, since the legal acts that the ECB

9 See paragraph 3.2.1 of Opinion CON/2018/49.

10 Article 3 of the draft law (introducing Article 11a(2) of the Law on credit institutions).

11 Article 2 of the draft law (introducing item (103) in Article 3 of the Law on credit institutions).

12 See new Article 11a(2) of the Law on credit institutions.

13 In particular for the purpose of new Article 11a(2) of the Law on credit institutions.

may adopt pursuant to the SSM Regulation are already referred to in Article 3, introducing Article 11a(2) of the Law on credit institutions.

3.4 *Provision of information for the purpose of a conducting comprehensive assessment of credit institutions established in the Republic of Croatia*

3.4.1 The ECB understands that the draft law aims to ensure compliance with the undertaking of the Republic of Croatia to provide the ECB with all information on credit institutions established in Croatia that the ECB may require for the purpose of carrying out a comprehensive assessment of those credit institutions, in line with Article 7(2)(b) of the SSM Regulation. In particular, it is understood that HNB, as the consulting authority, is fulfilling this undertaking by imposing obligations directly upon credit institutions.

3.4.2 Nonetheless, it is stressed that this approach should not be read as affecting the position of the ECB in relation to Croatian credit institutions or as conferring powers on the ECB which may go beyond what is provided for under the SSM Regulation. It is emphasised that even after the establishment of close cooperation, HNB will remain the authority responsible for adopting decisions addressed to Croatian credit institutions. It is understood that this will also be the case for the purpose of the assessments necessary to establish close cooperation, in line with the Treaty and the SSM Regulation.

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

Done at Frankfurt am Main, 8 July 2019.

[signed]

*The President of the ECB*

Mario DRAGHI