EUROPEAN CENTRAL BANK

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OPINION OF THE EUROPEAN CENTRAL BANK

of 9 November 2018

on national legislation to be adopted for the purpose of establishing close cooperation between the European Central Bank and the Bulgarian National Bank

(CON/2018/49)

Introduction and legal basis

On 18 July 2018 the European Central Bank (ECB) received a first request from the Minister of Finance for an opinion on a draft law amending the Law on credit institutions, the Law on the Bulgarian National Bank and the Law on recovery and resolution. On 11 October 2018, the ECB received a second request from the Minister of Finance for an opinion on a revised draft law amending the Law on credit institutions and the Law on the Bulgarian National Bank (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 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 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 has been prepared in the broader context of the request filed on 18 July 2018 by the Republic of Bulgaria 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[2] (hereinafter the 'SSM Regulation') and under Decision ECB/2014/5 of the European Central Bank on close cooperation[3]. In this respect, the draft law introduces changes to national legislation to comply with the 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.

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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).

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

The draft law introduces a new Chapter 11a into the Law on credit institutions[4] in order to ensure that BNB will abide by guidelines or requests issued by the ECB, and will take the necessary measures to implement the ECB's legal acts adopted pursuant to the SSM Regulation, including by issuing the necessary administrative acts. The draft law further specifies that BNB will issue individual administrative acts only upon a request of the ECB, and in full compliance with such request, for the exercise of supervisory tasks with respect to significant credit institutions and in the context of common procedures, while for the exercise of supervisory tasks with respect to less significant credit institutions BNB will issue such administrative acts in compliance with ECB requests to the extent that the ECB has made such requests. The draft law requires BNB to notify the ECB of such administrative acts without undue delay.

The draft law also refers to the exercise of macroprudential tasks under Article 5 of the SSM Regulation, and specifies that BNB will comply with ECB requests for the application of higher requirements for capital buffers or the application of more stringent measures aimed at addressing systemic or macroprudential risks.

1.3 *Exchange of confidential information*

The draft law introduces amendments to both the Law on credit institutions and the Law on BNB[5] that aim to ensure that, for the purposes of the exchange of information within the framework of close cooperation established with the ECB under the SSM Regulation, BNB will provide the ECB with all necessary information for the performance of the ECB's tasks under the SSM Regulation, including information that is covered by bank and professional secrecy.

1.4 *Supervisory fees*

The draft law supplements the Law on BNB by introducing the obligation for BNB to collect annual fees in order to cover its own administrative expenses related to the supervision and resolution of credit institutions in accordance with a BNB ordinance.

1.5 *BNB governance*

The draft law replaces the current provision in the Law on BNB that provides for the Deputy Governor of BNB in charge of banking supervision to exercise supervision in accordance with the rules provided for by law and the regulations for its enactment[6], with a provision that supervision over the banking system will be exercised by the Deputy Governor under the terms and conditions of close cooperation with the ECB. The draft law amends the provisions in the Law on BNB concerning the BNB Governing Council's powers to clarify that the following powers, in respect of credit institutions, will be carried out in accordance with the close cooperation established with the ECB under Article 7 of the SSM Regulation: (i) to grant, refuse and withdraw the licences of credit institutions; (ii) to apply supervisory measures and early intervention measures; (iii) to grant approval, permission and consent in the cases provided for under national and Union law. In addition the draft law provides that once close cooperation is established, the rules on the

4 Published in *Darjaven Vestnik* No 59, 21 July 2006.

5 Published in *Darjaven Vestnik* No 46, 10 June 1997. See Article 4(2).

6 See Article 20(3) of the Law on BNB.

independence of BNB, the Governor and the members of the BNB Governing Council[7] do not apply to the ECB in carrying out its tasks pursuant to the SSM Regulation.

1.6 *Provision of information for the purpose of conducting comprehensive assessment of credit institutions established in the Republic of Bulgaria*

The draft law introduces a new paragraph 13a to the transitional and final provisions of the Law on credit institutions that creates an obligation for credit institutions established in the Republic of Bulgaria to provide the ECB, and any third parties that carry out activities on behalf of the ECB, with all necessary information in connection with ECB assessments that are required for participation in the Single Supervisory Mechanism. In particular, credit institutions will be obliged to provide information to the ECB and to allow the ECB to access their accounting registers and systems. Credit institutions will also be obliged to allow the ECB to access their premises, and those of consolidated entities, to conduct on-site examinations.

1.7 *Fines and penalties*

The draft law provides that the administrative penalty provisions of the Law on credit institutions will apply in respect of requests issued by the ECB for the imposition of pecuniary sanctions or fines in the context of close cooperation.

1.8 *Termination of close cooperation*

The draft law provides that the close cooperation provisions of the Law on credit institutions will cease to apply (1) from the date of termination of close cooperation pursuant to Article 7 of the SSM Regulation or (2) from the date on which the derogation pursuant to Article 139 of the Treaty is abrogated in respect of the Republic of Bulgaria 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 BNB pursuant to Article 7 of the SSM Regulation. The ECB notes that the request and adoption of this opinion are necessary on the basis of Article 2 and Article 3(2)(b) of Decision ECB/2014/5.

2.2 It is highlighted 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 Bulgaria to ensure that legal acts adopted by the ECB pursuant to the SSM Regulation are binding and enforceable in the Republic of Bulgaria and that BNB 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 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.

7 See Article 44 of the Law on BNB.

3. Observations regarding close cooperation between ECB and BNB

3.1 *Establishment and termination of close cooperation*

3.1.1 The ECB welcomes the introduction of a new Chapter 11a 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. In particular, it is understood that the new Chapter 11a 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 Bulgaria 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 Chapter 11a will be linked to the duration of the close cooperation between the ECB and BNB, 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 Bulgaria 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.

3.2 *Role of the ECB and BNB 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 sets as a precondition for the establishment of close cooperation that the requesting Member State ensures that its NCA abides by any 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 the 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.

3.2.2 Against this background, the ECB welcomes the provisions of the draft law that ensure that BNB will abide by guidelines or requests issued by the ECB, and will take the necessary measures, including issuing individual administrative acts, to implement the ECB's legal acts adopted pursuant to the SSM Regulation. 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 tasks under the framework of close cooperation.

3.2.3 In addition, the ECB welcomes the clarification in the draft law on the exercise of supervisory tasks in respect of significant and less significant credit institutions, especially that BNB will act only upon the ECB's request for the supervision of significant credit institutions and in the context of common procedures.

3.3 *BNB governance*

The provisions of the draft law relating to the governance of BNB enhance clarity and ensure consistency in BNB's governance, by providing that BNB's supervisory tasks will be performed under the framework of the established close cooperation with the ECB.

3.4 *Exchange of information*

The ECB welcomes the provisions of the draft law relating to the exchange of information under the framework established by the SSM Regulation which will ensure that no uncertainty will arise as to the regime applicable to the exchange of information in the context of close cooperation.

3.5 *Supervisory fees*

Regarding the possibility for BNB to collect annual fees from supervised entities, notably in relation to banking supervision, it is understood that this provision of the draft law falls under the scope of Article 30(5) of the SSM Regulation, namely the right of NCAs to levy fees in accordance with national law, to the extent that supervisory tasks have not been conferred on the ECB, or in respect of costs of cooperating with and assisting the ECB and acting on its instructions.

3.6 *Provision of information for the purpose of conducting comprehensive assessment of credit institutions established in the Republic of Bulgaria*

3.6.1 The ECB understands that the draft law aims to ensure compliance with the undertaking of the Republic of Bulgaria to provide the ECB with all information on credit institutions established in that Member State 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 the consulting authority is fulfilling this undertaking by imposing obligations directly upon credit institutions.

3.6.2 Nonetheless, it is stressed that this approach should not be read as affecting the position of the ECB in relation to Bulgarian credit institutions or as conferring powers on the ECB which may go beyond what is provided for under the SSM Regulation. As mentioned above, even after the establishment of close cooperation, BNB will remain the authority responsible for adopting decisions addressed to Bulgarian 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, 9 November 2018.

[signed]

The President of the ECB

Mario DRAGHI