EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 21 November 2008

at the request of Българска народна банка (Bulgarian National Bank)

on a draft law amending the Law on Българска народна банка (Bulgarian National Bank)

(CON/2008/73)

Introduction and legal basis

On 22 October 2008 the European Central Bank (ECB) received a request from the Governor of Българска народна банка (Bulgarian National Bank) (BNB) for an opinion on a draft law amending the Law on Българска народна банка **(**Bulgarian National Bank) (hereinafter the 'Law on BNB') and on 13 November 2008 the ECB received a revised version of this draft law amending the Law on BNB (hereinafter the 'draft law').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the third indent of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions[1], as the draft law relates to BNB. 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

The main purpose of the draft law is to address the observations in the ECB's Convergence Report of May 2008[2] on legal convergence and in the European Commission's Convergence Report of 2008[3]. In particular, the amendments aim to align the Law on BNB[4] with the requirements for institutional and personal independence, confidentiality and with the monetary financing prohibition laid down in Article 101 of the Treaty. Finally, the draft law contains other functional, conceptual and sanctioning provisions concerning BNB unconnected with the ECB's Convergence Report.

2. General observations

2.1 The ECB welcomes the Bulgarian authorities' efforts to achieve the required level of legal convergence by following the recommendations in the ECB's Convergence Report. Bulgaria is a

1 OJ L 189, 3.7.1998, p. 42.

2 See the ECB's Convergence Report of May 2008, pp. 229-231.

3 COM(2008) 248 final, available on the Commission's website at www.ec.europa.eu.

4 Law on BNB, published in *Darjaven Vestnik* No 46, 10.6.1997.

Member State with a derogation and must therefore comply with Article 109 of the Treaty[5]. In this respect, the ECB identified in its Convergence Report inconsistencies between Bulgarian legislation, on the one hand, and the Treaty and the Statute of the European System of Central Banks and the European Central Bank (hereinafter the 'ESCB Statute'), on the other hand. This opinion addresses the inconsistencies in the areas of central bank independence, confidentiality and the prohibition on monetary financing and privileged access.

2.2 This opinion does not address the other incompatibilities between Bulgarian law and Community law with regard to BNB's integration into the Eurosystem, relating to monetary policy, collection of statistics, official foreign reserve management, payment systems, issue of banknotes and coins, appointment of independent auditors, financial reporting, exchange rate policy and international cooperation, as they fall outside the scope of the draft law. In this respect, the Law on BNB would need further adaptation to ensure BNB's full integration into the Eurosystem.

3. Specific observations

3.1 Institutional independence

The proposed amendment to Article 44 brings this provision in line with Article 108 of the Treaty and Article 7 of the ESCB Statute regarding the principle of institutional independence.

3.2 Personal independence

Minimum term of office for Governing Council members

The proposed amendment to Article 14(2) removes the incompatibility with the ESCB Statute regarding the minimum term of office for the members of BNB's Governing Council and is in line with Article 14.2 of the ESCB Statute.

Grounds for dismissal of Governing Council members

Concerning the proposed amendment to Article 14(1) of the Law on BNB on the grounds for dismissal of a Governing Council member[6], the ECB recommends further amending this Article to fully mirror the grounds for dismissal laid down in Article 14.2 of the ESCB Statute. In particular, the words 'incompatible with the performance of his duties' should be deleted in Article 14(1) of the draft law.

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5 See the ECB's Convergence Report of May 2008, p. 26: 'To comply with Article 109 of the Treaty, national legislation had to be adjusted to ensure its compatibility by the date of establishment of the ESCB [European System of Central Banks] (as regards Sweden) and by 1 May 2004 or 1 January 2007 (as regards the Member States which joined the EU on these dates). Nevertheless, statutory requirements relating to the full legal integration of an NCB [national central bank] into the Eurosystem need only enter into force at the moment that full integration becomes effective, i.e. the date on which the Member State with a derogation adopts the euro'.

6 In particular, this draft law provision provides for the following: 'The competent authority under Article 12 may only remove a member of the Governing Council from office if they no longer fulfil the conditions required for the performance of his duties or if he has been guilty for serious misconduct incompatible with the performance of his duties'.

Right of judicial review

Article 14(3) of the draft law grants jurisdiction to the Bulgarian Supreme Administrative Court (SAC) over decisions dismissing any Governing Council member including BNB's Governor. The ECB welcomes this proposed amendment, which will confirm that, for the Governing Council members other then the Governor, a national court has jurisdiction over dismissal decisions[7]. Moreover, concerning the Governor, the ECB notes that the proposed jurisdiction of SAC under Article 14(3) of the Law on BNB should be without prejudice to the jurisdiction of the Court of Justice of the European Communities under Article 14.2 of the ESCB Statute and Article 14(4) of the Law on BNB.

3.3. Confidentiality

The draft law amends Articles 4(2), 13(1) and 23(2) of the Law on BNB and introduces the obligation of professional secrecy for BNB staff and the members of BNB's Governing Council, which is in line with Article 38 of the ESCB Statute.

3.4 Monetary financing and privileged access

The proposed amendment to Article 45(1) of the Law on BNB removes the inconsistency with Article 101(1) of the Treaty regarding the range of public sector entities covered by the prohibition on monetary financing. Moreover, acknowledging the particularities arising from the currency-board regime, i.e. prohibition on BNB extending credit to credit institutions other than in the context of emergency liquidity operations, the ECB reiterates[8] the need to bring Article 45(2) of the Law on BNB into line with Article 101(2) of the Treaty. Such alignment would certainly be mandatory on the introduction of the euro in Bulgaria.

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

Done at Frankfurt am Main, 21 November 2008.

[signed]

The President of the ECB

Jean-Claude TRICHET

7 The ECB's Convergence Report of May 2008, p. 20: 'National legislation should also provide for a right of review by the national courts of a decision to dismiss any other member of the decision-making bodies of the NCB involved in the performance of ESCB-related tasks. This right can either be a matter of general law or can take the form of a specific provision. Even though it may be said that this right is available under the general law, for legal certainty reasons it could be advisable to provide specifically for such a right of review'.

8 See the ECB's Convergence report of May 2008, p. 230.