EUROPEAN CENTRAL BANK

EUROSYSTEM

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OPINION OF THE EUROPEAN CENTRAL BANK

of 5 September 2019

on the rules to be followed by financial undertakings when defining remuneration policies

(CON/2019/32)

Introduction and legal basis

On 11 July 2019 the European Central Bank (ECB) received a request from the Minister for Finance of the Netherlands for an opinion on a draft Law on remuneration measures for the financial sector (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 sixth indent of Article 2(1) of Council Decision 98/415/EC[1], as the draft law relates to 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 The draft law mainly encompasses two elements related to the remuneration of staff of financial undertakings[2], including credit institutions. The first element is an obligation for financial undertakings to take greater account of the relationship between the remuneration paid and the undertaking's function in the financial sector and its position in society. The second element is a mandatory retention period of at least five years for shares and other similar financial instruments that are part of the fixed remuneration of the board of directors and employees of a financial undertaking. The explanatory memorandum accompanying the draft law notes that the Netherlands currently has the strictest laws and regulations governing remuneration in the financial sector in Europe.

1.2 The first element is intended to ensure that a supervisory board or any other body in charge of determining remuneration takes greater account of the position of the undertaking in society prior to the realisation of the remuneration proposals and remuneration policies. The supervisory board shall account for this afterwards in the management report. This obligation should also reflect how the supervisory board or other similar body has considered the interests of all stakeholders, including employees and shareholders, in the creation of the remuneration proposals and remuneration policies.

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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 As referred to in Article 1:1 of the Dutch Financial Supervision Act.

1.3 Regarding the second element, the explanatory memorandum accompanying the draft law explains that shares and similar financial instruments could act as an incentive for short term gain related to stock prices. The mandatory retention period should promote a long term profit or growth perspective.

2. Observations

2.1 Within the framework of the single supervisory mechanism (SSM) established by Council Regulation (EU) No 1024/2013[3], the ECB is exclusively competent to carry out, for prudential supervisory purposes, specific tasks in relation to all credit institutions established in the participating Member States. One of these tasks is to ensure compliance with requirements imposed on credit institutions to have in place robust governance arrangements, including remuneration policies and practices, as set out in relevant Union law[4]. For the purpose of carrying out the tasks conferred on it by Regulation (EU) No 1024/2013, and with the objective of ensuring high standards of supervision, the ECB applies all relevant Union law, and where this is composed of directives, the national legislation transposing those directives[5]. In this respect, when carrying out its prudential supervision tasks, the ECB is the competent authority within the meaning of Directive 2013/36/EU of the European Parliament and of the Council[6]. Article 92(2) of Directive 2013/36/EU provides that competent authorities must ensure that, when establishing and applying the total remuneration policies for categories of staff, credit institutions comply with the principles set out in points (a) to (g) of that paragraph in a manner and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities[7].

2.2 The obligation to take greater account of how remuneration relates to the position of the undertaking in society and the mandatory retention period do not conflict with the provisions of Directive 2013/36/EU or affect the ECB's competence as the competent authority responsible for ensuring compliance with the abovementioned requirement for credit institutions to have in place robust governance arrangements, including remuneration policies and practices. As also noted in the explanatory memorandum accompanying the draft law, the competent authority has no duty to supervise the relationship between individual institutions' remuneration policies and position in society on its substance or merit, but must ensure that these remuneration policies include such an analysis and that this is accounted for in the management report afterwards. As previously noted by the ECB, banking legislation adopted by the Member States after the establishment of the SSM should facilitate the exercise by the ECB of its responsibilities within the SSM, including its capacity to enhance consistency of supervision across the euro area. As a result, Member States should

3 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).

4 Article 4(1)(e) of Regulation (EU) No 1024/2013.

5 Article 4(3) of Regulation (EU) No 1024/2013.

6 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

7 See also paragraph 2.1 of Opinion CON/2018/44. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

refrain from setting obstacles both to uniform supervisory practice and to the exercise of supervisory discretion by the ECB within the SSM[8].

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

Done at Frankfurt am Main, 5 September 2019.

[signed]

The President of the ECB

Mario DRAGHI

8 See paragraph 2.2 of Opinions CON/2018/44 and CON/2016/53.