EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 22 November 2013

on changes to decision-making powers at the Central Bank of Cyprus

(CON/2013/78)

Introduction and legal basis

On 30 September 2013, the European Central Bank (ECB) received a request from the President of the House of Representatives of the Republic of Cyprus (hereinafter the 'consulting authority') for an opinion on a proposed amendment (hereinafter the 'draft law') to the Central Bank of Cyprus Laws of 2002 to 2013[1] (hereinafter the 'Law on the CBC').

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 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[2], as the draft law relates to the Central Bank of Cyprus (CBC). 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 amends Article 15A of the Law on the CBC to extend the range of decisions that the Governor takes with the assent of the CBC's Board of Directors by including those decisions the CBC is assigned to take pursuant to the Law on credit institutions[3].

1.2 Article 15A of the Law on the CBC was originally introduced by Amending Law No 86(I)/2013 on 26 July 2013, and provided for decisions on the licencing of banks and on the exercise of banking business to be taken by the Governor with the assent of the Board of Directors. The same article was later amended by Amending Law No 103(I)/2013 on 9 September 2013, to provide that decisions on granting licences and on the exercise of business by credit institutions are to be taken by the Governor with the assent of the Board of Directors.

1.3 The Law on credit institutions sets out the CBC's competence in relation to credit institutions operating in Cyprus and their officials. This competence covers a wide range of matters, *inter alia*, in relation to (a) granting and revoking licences to credit institutions; (b) providing cross-border

1 Law 138(I)/2002.

2 OJ L 189, 3.7.1998, p. 42.

3 Law 66(I)/1997.

services; (c) foreign credit institutions setting up branches in Cyprus; and (d) Cypriot credit institutions setting up branches abroad.

2. General observations

The ECB notes that there is an overlap within the proposed amendment, as the powers that are assigned to the CBC pursuant to the Law on credit institutions include decisions concerning licencing and the exercise of business by credit institutions. Accordingly, the consulting authority may wish to reconsider the wording of the proposed amendment.

3. Decisions regarding licensing and supervision of credit institutions

3.1 With regard to Article 15A of the Law on the CBC, according to which the Governor is required to obtain the Board of Director's assent for decisions regarding the licencing and supervision of credit institutions, the ECB notes that, pursuant to Council Regulation (EU) No 1024/2013[4], the ECB has the exclusive competence to grant authorisations for taking up the business of a credit institution to be established in a participating Member State and to supervise the significant credit institutions in that participating Member State as of 4 November 2014. Therefore, the ECB understands that the Governor's decisions regarding licencing of credit institutions, as well as the supervision of significant credit institutions, constitute decisions regarding the CBC's contribution to these exclusive tasks of the ECB under Regulation (EU) No 1024/2013. The ECB is required to perform these tasks independently according to Article 130 of the Treaty and Article 7 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'). The NCBs' Governors, in their capacity as members of the Governing Council, are therefore required to exercise their duties with regard to the ECB's specific tasks concerning policies relating to the prudential supervision of credit institutions in full independence according to Article 130 of the Treaty and Article 7 of the Statute of the ESCB.

3.2 This implies that, without prejudice to the mandate of the members of the ECB's Supervisory Board, the NCBs' Governors should be responsible for the NCBs' contribution to the specific tasks conferred on the ECB by Regulation (EU) No 1024/2013. Any national law provisions assigning duties with regard to the ECB's specific tasks concerning policies relating to the prudential supervision of credit institutions to other members of an NCB's board who do not enjoy the same level of independence as the Governor for the performance of such duties, or requiring the approval of an NCB's board for decisions of the NCB's Governor in relation to such duties, raise concerns about the Governor's independence being hindered in the performance of functions related to those tasks. Article 15A of the Law on the CBC should be amended to address these concerns.

4 Council Regulation (EU) No 1024/2013 of October 15 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. CBC Governance

The ECB refers to its Opinion CON/2013/41 on changes to the governance of the CBC[5], which concerns previous amendments to the Law on the CBC. A number of observations made in that Opinion were not taken into account and the ECB invites the relevant Cypriot authorities to address them in this draft law. In Opinion CON/2013/41, the ECB noted that unless an NCB's executive directors and board members are subject to the same legal requirements as that NCB's Governor, any provisions assigning Eurosystem-related tasks (such as monetary policy, payment systems, statistics) to the executive directors and other members of the CBC's Board, or requiring the approval of the CBC's Board for the Governor's decisions, raise concerns about the Governor's ability to independently carry out the ESCB-related tasks assigned to the Governor. This would not be compatible with Article 130 of the Treaty and Article 7 of the Statute of the ESCB. From this perspective, as noted in Opinion CON/2013/41, the nature of the executive directors' powers as well as the interplay between the powers granted to the two executive directors and the governance structure's compliance with the requirement of central bank independence still need to be clarified[6].

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

Done at Frankfurt am Main, 22 November 2013.

[signed]

The President of the ECB

Mario DRAGHI

5 All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

6 See paragraphs 2.3 and 2.4 of Opinion CON/2013/41.