EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 2 December 2013

on the prudential supervision of credit institutions and on macro-prudential oversight

(CON/2013/82)

Introduction and legal basis

On 11 October 2013, the European Central Bank (ECB) received a request from the Finnish Ministry of Finance for an opinion on a draft law amending the Law on credit institutions and certain other related laws (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, fifth and sixth indents 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 Suomen Pankki, payment and settlement systems and rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets. 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 aims to implement Directive 2013/36/EU of the European Parliament and of the Council (hereinafter the 'Capital Requirements Directive')[2] into Finnish law, as well as effecting changes and clarifications to Finnish law made necessary by Regulation (EU) No 575/2013 of the European Parliament and of the Council[3]. The draft law proposes replacing the Law on credit institutions with a new law under the same name and amending its content with regard to, *inter alia*, capital buffers, risk management, corporate governance and administrative sanctions, as required by the Capital Requirements Directive. It also proposes amendments to several related laws, such as the Law on the Financial Supervisory Authority and the Law on investment services.

1.2 The draft law further aims to clarify that the Financial Supervisory Authority (FSA) would only be responsible for those statutory tasks that have not been conferred on the ECB under Council

1 OJ L 189, 3.7.1998, p. 42.

2 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 (OJ L 176, 27.6.2013, p. 338).

3 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 (OJ L 176, 27.6.2013, p. 1).

Regulation (EU) No 1024/2013 (hereinafter the 'Single Supervisory Mechanism (SSM) Regulation')[4].

1.3 The draft law also assigns the task of macro-prudential oversight of the financial system to the FSA. The FSA's Board will make decisions concerning the institution-specific countercyclical buffer, minimum risk weights and loss given default (LGD) floors on exposures secured by mortgages, as well as concerning the classification of credit institutions for the purposes of the G-SII[5] and O-SII[6] buffers.

1.4 The draft law would slightly amend the rules on information exchange contained in Section 26(4) of the Law on Suomen Pankki. Other confidentiality provisions notwithstanding, Suomen Pankki would be obliged to immediately notify various other authorities, such as the FSA, the Ministry of Finance, the Ministry of Social Affairs and Health, any authorities responsible for the smooth functioning of the financial markets of other European Economic Area Member States, the European Supervisory Authorities and the European Systemic Risk Board (ESRB) of emergency situations referred to in Article 18 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[7].

2. General observations

2.1 The proposed changes relate largely to implementation of the Capital Requirements Directive. It is important that the transposition and application into national law of the Capital Requirements Directive's micro- and macro-prudential tools and the requirements that fall under the remit of the SSM Regulation are implemented precisely. This will also increase the consistency in the application of these tools and processes across all participating Member States, thereby helping to ensure a level playing field and lowering the risk of regulatory arbitrage.

3. Implementation of the Capital Requirements Directive

3.1 The ECB notes that the draft law proposes implementing the Capital Requirements Directive into Finnish law in accordance with the minimum requirements of that Directive.

The capital conservation buffer, which is referred to in the draft law as 'fixed additional own funds', would be 2.5 % according to Section 3 of Chapter 10 of the draft law. The institution-specific countercyclical buffer, which is referred to in the draft law as 'variable additional own funds', would be determined by the FSA's Board, in accordance with the criteria in Section 5 of Chapter 10 of the same law.

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4 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).

5 G-SII stands for global systemically important institutions.

6 O-SII stands for other systemically important institutions.

7 Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority (OJ L 331, 15.12.2010, p. 12).

3.2 The draft law contains provisions relating to four macro-prudential tools, namely the countercyclical capital buffer, minimum risk weights and LGD floors on exposures secured by mortgages[8], the G-SII buffer and the O-SII buffer. However, it does not contain provisions on the systemic risk buffer. The ECB acknowledges that the systemic risk buffer is optional and understands that the decision not to implement the systemic risk buffer into Finnish law is based on an analysis of the current state of the Finnish financial sector and the possible consequences for the real economy of its activation over the course of the current economic cycle. The systemic risk buffer, if implemented in national law, would fall under the scope of Article 5 of the SSM Regulation as one of the capital buffers provided for by relevant Union law. Due to the importance of both the ECB and national competent authorities or designated authorities having the broadest possible range of macro-prudential tools at their disposal, the ECB would welcome the implementation of a systemic risk buffer in order to ensure consistency of the available macro-prudential tools and lowering the risk of regulatory arbitrage.

3.3 The draft law should at all times be compatible with the guidelines of the European Banking Authority (EBA)[9] on the criteria, e.g. size for identifying O-SIIs. At the same time, from a financial stability and level playing field perspective, this will ensure that similar criteria apply across all Union Member States in the identification of G-SIIs and O-SIIs.

4. Macro-prudential oversight

4.1 The draft law proposes assigning the task of macro-prudential oversight to the FSA. Decisions on the institution-specific countercyclical buffer will be made by the FSA's Board. The Board is composed of five members, three of whom are appointed on the basis of proposals by Suomen Pankki, the Ministry of Finance and the Ministry of Social Affairs and Health, respectively. The FSA will be required to prepare decisions relating to the institution-specific countercyclical buffer in cooperation with Suomen Pankki and the Ministry of Finance, and also to consult them and the Ministry of Social Affairs and Health before any decision-making.

4.2 The ECB supports the design of effective macro-prudential policy frameworks within Member States, in line with the guiding principles set out in Recommendation ESRB/2011/3 of the European Systemic Risk Board[10]. Moreover, the ECB considers that the ECB and the national central banks should play a leading role in macro-prudential oversight, given their expertise and existing responsibilities in the area of financial stability[11].

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8 Articles 124 and 164 of Regulation (EU) No 575/2013.

9 Available on the EBA's website at www.eba.europa.eu.

10 Recommendation ESRB/2011/3 of the European Systemic Risk Board of 22 December 2011 on the macro-prudential mandate of national authorities (OJ C 41, 14.2.2012, p.1).

11 See paragraph 2.1 of Opinion CON/2013/30 and paragraph 2.1 of Opinion CON/2013/45. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

4.3 This opinion is without prejudice to the conclusions of the ESRB's follow-up assessment, which will be prepared pursuant to Article 17 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council[12].

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

Done at Frankfurt am Main, 02 December 2013.

[signed]

The President of the ECB

Mario DRAGHI

12 Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).