EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 1 September 2008

at the request of the Polish Minister for Finance

on a draft law on the Financial Stability Committee

(CON/2008/39)

Introduction and legal basis

On 10 July 2008 the European Central Bank (ECB) received a request from the Polish Minister for Finance for an opinion on a draft law on the Financial Stability Committee (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 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 Narodowy Bank Polski (NBP) and to 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 will establish the Financial Stability Committee (hereinafter the 'Committee') in the following composition: (i) the Minister for Finance (as Chairman); (ii) the NBP President; and (iii) the Chairman of the Financial Supervision Commission (FSC)[2]. The Committee is to pursue the objective defined in the draft law as 'fostering and protection of the stability of the national financial system through the exchange of information, opinions and assessments of the situation in the financial system in the country and abroad and the coordination of activities in this area'[3]. Acting unanimously, the Committee may adopt 'positions' and 'conclusions'[4]. The Committee may also establish working groups, composed of staff from the Ministry of Finance, NBP and the FSC (hereinafter the 'three represented institutions') as well as invited external experts[5]. The Committee

1 OJ L 189, 3.7.1998, p. 42.

2 All members are required to participate in person in meetings of the Committee, with the possibility to indicate an alternate in the event that participation in person is impossible. Any member may also invite other persons to participate in the meetings, in an advisory capacity (see Articles 3-4 of the draft law). The draft law will supersede as the legal basis for the establishment of the Committee the Memorandum of Understanding of 21 December 2007, in which the abovementioned parties agreed on the establishment of the Financial Stability Committee (see press releases of 27 December 2007 and 8 February 2008, as published on the NBP website, www.nbp.pl).

3 See Article 1(2) of the draft law.

4 See Article 6 of the draft law. 'Conclusions' are not formal administrative decisions.

5 See Article 7 of the draft law.

meetings are convened by the Minister for Finance, at least once every 6 months, and are prepared by Ministry of Finance staff[6].

1.2 Specifically, the Committee's tasks will include:

(i) *Analytical activity*, i.e. producing assessments of the situation in the national financial system and on international markets, and ensuring a proper flow of information between members of the Committee regarding major events and trends which could constitute a threat to the stability of the national financial system[7];

(ii) *Development of crisis management procedures* to be applied in the event of a threat to the stability of the national financial system. After adoption, the crisis management procedures are submitted by the Committee to the three represented institutions for implementation[8];

(iii) *Crisis management coordination* in situations where an immediate threat to the stability of the national financial system materialises. In such cases, the FSC Chairman submits to the Committee an opinion on the solvency of the threatened entities, the NBP President submits an opinion on the liquidity of the banking sector and the Minister for Finance submits an opinion on the possibility of support for the threatened entities from public funds. Furthermore, the NBP President and the FSC Chairman submit opinions on the systemic significance of the threatened entities[9]; and

(iv) *International cooperation*, as the draft law provides that the members of the Committee may, for the purpose of strengthening international cooperation in support of financial stability, conclude agreements with institutions carrying out tasks in this area in the member states of the European Economic Area and in particular with the ECB, national central banks within the European System of Central Banks (ESCB), the relevant ministries and supervisory agencies[10].

2. Central bank participation in the Financial Stability Committee

2.1 *Central bank independence*

In one of its previous opinions[11], the ECB advocated the creation of the Committee and NBP's participation in it as one possible measure to ensure that NBP can continue to provide the necessary contribution to financial stability, following the implementation of the supervisory reform in Poland transferring the banking supervision responsibilities from NBP to a newly-created separate

6 See Article 5 of the draft law.

7 See Article 2(1)(1) of the draft law.

8 See Article 2(1)(2) and Article 2(2) of the draft law.

9 See Article 2(1)(3) and Article 2(3)-(4) of the draft law.

10 Such agreements must describe the principles of cooperation, the extent of the exchange of information and the principles for the protection of such information. See Article 10 of the draft law.

11 See paragraphs 3.1.2 and 3.4 of ECB Opinion CON/2006/15 of 9 March 2006 at the request of the Polish Minister of Finance on a draft law on the supervision of financial institutions; cf. paragraph 7 of ECB Opinion CON/2001/10 of 25 May 2001 at the request of the Austrian Ministry of Finance on a draft Article of the Federal law establishing and organising the financial market supervisory authority [title shortened].

authority (the current FSC). Therefore the ECB welcomes the establishment of the Committee, as it responds to the need to take coordinated action in financial crisis situations. However, in line with another of its previous opinions, the ECB recommends that: (i) the tasks attributed to the Committee must not compromise NBP's independence with regard to its central bank tasks; and (ii) the legal framework of the Committee should be precisely formulated to ensure that the effectiveness of the coordination process is not affected by possible uncertainties regarding the role of the Committee and its participating bodies[12]. The ECB recommends that such principles are followed, *inter alia*, in internal regulations of the Committee, to be adopted under the draft law[13].

2.2 *Financial stability role of the central bank*

The ECB acknowledges that under the draft law, certain specific responsibilities in the field of financial stability will be assigned to NBP. In particular, the draft law amends the Law on Narodowy Bank Polski[14] by including among NBP's tasks the 'task in support of the stability of the national financial system referred to in Article 1(4) of the [draft law]', i.e. preparation of opinions addressed to the Committee on the systemic significance of the threatened entities[15]. Additionally, it will become one of the tasks of NBP's Management Board to produce analyses of the stability of the financial system[16]. Moreover, NBP will be empowered to request credit institutions to provide information relevant to the assessment of the banking system's financial stability[17], in addition to the current obligation of credit institutions to report on data relevant to the assessment of their financial condition and the banking sector risk[18]. Such new powers are welcomed as they would facilitate NBP's effective performance of its financial stability role. However, all the abovementioned amendments fall short of introducing an explicit financial stability function for NBP, encompassing the broad range of central bank contributions to financial stability[19]. Therefore, the ECB reiterates its previous recommendation[20] that the Law on NBP should be amended to specify that NBP has formal responsibility for contributing to financial stability by monitoring and assessing the financial system as a whole, as a separate function from hands-on supervision and financial regulation.

---

12 See paragraph 3.1 of the ECB Opinion CON/2007/31 of 9 October 2007 at the request of the Polish Minister for Finance on a draft law amending the Law on the supervision of financial markets; cf. paragraph 11 of ECB Opinion CON/2002/13 of 24 April 2002 at the request of the Belgian Ministry of Finance on a draft proposal for a law on prudential supervision of the financial sector and financial services.

13 See Article 8 of the draft law.

14 Law on Narodowy Bank Polski of 29 August 1997 (consolidated text: Dz.U. of 1 April 2005 No 1, item 2, as amended; hereinafter, the 'Law on NBP').

15 See point 6a inserted in Article 3(2) of the Law on NBP by Article 13(1) of the draft law.

16 See point 5a inserted in Article 17(4) of the Law on NBP by Article 13(2) of the draft law.

17 Details of such reporting obligations are to be further specified by NBP. See Article 23(3) of the Law on NBP, as amended by Article 13(4)(a) of the draft law.

18 See the current wording of Article 23(3) of the Law on NBP.

19 See the ECB's Financial Stability Review, December 2004, p. 7.

20 See paragraph 2.2 of ECB Opinion CON/2006/15 and paragraph 3.1 of ECB Opinion CON/2007/31; see also paragraph 4.2 of Opinion CON/2006/39 of 2 August 2006 at the request of Poland's Sejm Marshall on a draft law amending the Law on Narodowy Bank Polski and paragraph 3.3 of ECB Opinion CON/2008/32 of 23 July 2008 at the request of the Polish Minister for Finance on a draft law amending the Law on the Bank Guarantee Fund.

3. Rules on exchange of information

3.1 The draft law provides that all persons participating in Committee meetings, or in working groups established by the Committee, may exchange information necessary for the proper functioning of the Committee, while being obliged to keep such information confidential[21]. The Committee may also publish public statements on its work, including as regards its 'findings'. Committee members' legal liability for information published in this way is excluded[22]. Furthermore, the draft law provisions amending the Law on NBP define more precisely the exclusions from NBP's confidentiality obligations, as contained, *inter alia*, in the Law on NBP and the Law on banking[23]. In particular, NBP will be entitled to provide the Minister for Finance and the FSC with information obtained from individual credit institutions, as relevant to the work of the Committee[24]. Reciprocally, the FSC Chairman will be entitled to provide information to NBP and the Minister for Finance[25].

3.2 The ECB welcomes the aim of ensuring effective exchange of information between members of the Committee with a view to allowing the Committee to be an efficient means of communication and coordination while respecting each institution's responsibility. Furthermore, in line with its earlier opinion[26], the ECB notes that provisions relating to information-sharing within the Committee should be: (i) consistent with Community law regulating the exchange of supervisory and statistical information and professional secrecy[27], as well as with the Law on NBP; and (ii) capable of facilitating the operation of relevant EU Memoranda of Understanding to which the Polish authorities are signatories[28]. The ECB considers in particular that, as part of the proposed amendments relating to exchange of information, appropriate procedures and amendments to the Law on the NBP should be considered ensuring that correctness and accuracy of information submitted by individual credit institutions could be verified by NBP. This would allow NBP to exercise its powers in the field of financial stability effectively and safeguard the high quality of

---

21 Such confidentiality obligations are protected by criminal sanctions. See Article 9(1) of the draft law.

22 See Articles 11-12 of the draft law.

23 Law on banking of 29 August 1997 (consolidated text: Dz.U. of 12 June 2002 No 72, item 665, as amended).

24 See paragraphs 8-9 added to Article 23 of the Law on NBP by Article 13(4)(d) of the draft law.

25 See Article 17a of the Law on supervision of financial market (Dz.U. of 4 September 2006 No 157, item 1119, as amended, hereinafter, the 'Law on supervision of financial market'), as inserted by Article 14 of the draft law.

26 See paragraph 3.2 of ECB Opinion CON/2007/31.

27 In particular, Articles 44 - 52 of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (Text with EEA relevance), OJ L 177, 30.6.2006, p. 1 (hereinafter, the 'Banking Directive'). Directive as last amended by Directive 2008/24/EC of the European Parliament and of the Council (OJ L 81, 20.3.2008, p. 38); Article 13 of Council Regulation (EC) No 322/97 of 17 February 1997 on Community Statistics (OJ L 52, 22.2.1997, p. 1). Regulation as last amended by Regulation (EC) No 1882/2003 of the European Parliament and the Council (OJ L 284, 31.10.2003, p. 1); Article 8 of Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8); and Article 3 of Council Regulation (Euratom, EEC) No 1588/90 of 11 June 1990 on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities (OJ L 151, 15.6.1990, p. 1). Regulation as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1); Guideline ECB/1998/NP28 of 22 December 1998 concerning the common rules and minimum standards to protect the confidentiality of the individual statistical information collected by the European Central Bank assisted by the national central banks (OJ L 55, 24.2.2001, p. 72).

28 In particular, the 'Memorandum of understanding on cooperation between the financial supervisory authorities, central banks and finance ministries of the European Union on cross-border financial stability' of 1 June 2008, as published on the ECB website, www.ecb.europa.eu (the 'June 2008 MoU').

information exchanged within the Committee[29]. In this respect the ECB also points to the published draft amendments to the Banking Directive, which may result in the introduction of an obligation for the supervisory authorities of the Member States to alert the relevant national central banks of arising crisis situations and to provide them with relevant information[30].

3.3 The ECB notes that the draft law stipulates explicitly that information exchanged within the Committee may be disclosed to members of the FSC who are not represented on the Committee[31]. Should this provision be maintained in the draft law, equivalent access rights will need to be safeguarded for members of NBP's governing bodies and staff who perform financial stability tasks but do not directly participate in the work of the Committee.

3.4 Finally, the ECB notes that separate amendments to the Law on NBP will allow NBP to disclose data collected from individual credit institutions, *inter alia*, to: (i) the ECB, in connection with NBP's obligations stemming from its participation in the ESCB; (ii) foreign entities, in performance of Poland's international obligations; (iii) the Minister for Finance, for the purposes of management of the public debt; and (iv) other entities, as specified in separate provisions[32]. As stated in paragraph 3.2 of this opinion, the ECB would underline the fact that Community law provisions not only apply to NBP's provision of information to the ECB but also to other listed instances of exchange of supervisory and statistical information. It could be advisable to define such other allowed instances of information disclosure by NBP more precisely in the draft law including a reference to compliance with Community law in this respect.

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

Done at Frankfurt am Main, 1 September 2008.

[signed]

The President of the ECB

Jean-Claude TRICHET

---

29 See paragraphs 5.1, 5.2 and 5.7 of the June 2008 MoU, together with Paragraph 1(5) of Annex 1 (Common Practical Guidelines) to the June 2008 MoU as well as Annex B (Content of the common database) to the Voluntary Specific Cooperation Agreement attached to the June 2008 MoU.

30 See amendments to Articles 49 and 130 of the Banking Directive, as proposed in the Commission's consultation document 'Public consultation on possible changes to the Capital Requirements Directive (CRD, consisting of Directives 2006/48/EC and 2006/49/EC' of 30 June 2008 (available at http://ec.europa.eu/internal_market/bank/docs/regcapital/consultation_en.pdf).

31 I.e. the members of the FSC appointed by the President of the Republic, the Minister for Finance, the Minister responsible for the state pension system and the NBP President (see Article 7 of the draft law and Article 5(2) of the Law of 21 July 2006 on supervision of financial market).

32 See Article 23(7) of the Law on NBP, as amended by Article 13(4)(c) of the draft law.