OPINION OF THE EUROPEAN CENTRAL BANK

of 27 November 2017

on amendments to the decision making framework of Българска народна банка (Bulgarian National Bank)

(CON/2017/51)

Introduction and legal basis

On 22 November 2017 the European Central Bank (ECB) received a request from the National Assembly of the Republic of Bulgaria for an opinion on a draft law amending the Law on credit institutions (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 indent of Article 2(1) of Council Decision 98/415/EC[1], as the draft law relates to Българска народна банка (Bulgarian National Bank (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. Current decision-making framework of Българска народна банка (Bulgarian National Bank)

1.1. In accordance with the Law on Bulgarian National Bank (hereinafter the 'Law on BNB')[2] the decision-making bodies of BNB are the Governing Council, the Governor and the three Deputy Governors heading the Issue Department, the Banking Department and the Banking Supervision Department[3]. The BNB Governing Council comprises seven members – the Governor and the three Deputy Governors who are appointed by the National Assembly and three other members appointed by the President of the Republic[4].

1.2. The term of office of the members of the BNB Governing Council is six years[5]. A member of the BNB Governing Council may be relieved from office by the appointing authority only if he no longer fulfils the conditions required for the performance of his duties, if he is practically unable to perform his duties for more than six months, or if he has been guilty of serious misconduct[6]. When exercising their competences and carrying out their duties under the Law on BNB, the Governor

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 Published in *Darjaven Vestnik* No 46, 10 June 1997.

3 See Article 10(1) of the Law on BNB.

4 See Article 11(1) and Article 12(1) to (3) of the Law on BNB.

5 See Article 12(4) of the Law on BNB.

6 See Article 14(1) of the Law on BNB.

and the members of the BNB Governing Council must be independent and neither BNB, nor the Governor, nor the members of the BNB Governing Council shall seek or take any instructions from the Council of Ministers or from any other bodies and institutions[7].

1.3. The competences of the BNB Governing Council cover a broad range of matters, including powers to adopt legislative acts concerning BNB's activities, to set rules and requirements regulating bank activities and to grant, refuse to grant, and withdraw licenses of banks, payment system operators, payment institutions and electronic money institutions under terms and procedures provided for by law[8].

1.4. The BNB Governor organises, directs and supervises the activities of the BNB, other than those delegated by law exclusively to the Deputy Governors[9]. The Deputy Governors organise, direct and are responsible for the activities of the departments which they head, acting within the competencies vested in them by law or by a regulation adopted by the BNB Governing Council[10]. In particular, the Deputy Governor heading the Banking Supervision Department exercises supervision over the banking system in accordance with the rules provided for by law and the regulations thereunder[11], while the Deputy Governor heading the Banking Department exercises supervision over payment system operators, payment institutions and electronic money institutions in accordance with the rules provided for by law and the regulations thereunder[12]. In exercising these supervisory competences the Deputy Governors apply, separately and at their own discretion, the respective measures, enforcement actions and sanctions as provided by law[13].

2. Purpose of the draft law

2.1. The draft law amends multiple provisions in the Law on credit institutions[14] as well as other laws (the Law on BNB[15], the Law on the recovery and resolution of credit institutions and investment firms[16], the Law on consumer credit related to immovable property[17], and the Law on payment services and payment systems[18]) which relate to BNB's decision-making framework. The proposed amendments aim to expand the existing decision-making competences of the BNB Governing Council by assigning to it some of the decision-making competences which, under currently applicable legislation[19], are exercised autonomously by either the Deputy Governor heading the

7 See Article 44 of the Law on BNB.
8 See Article 16(1) of the Law on BNB.
9 See Article 18(1) of the Law on BNB.
10 See Article 19(3) of the Law on BNB.
11 See Article 20(3) of the Law on BNB.
12 See Article 20(4) of the Law on BNB.
13 See Article 20(3) and (4) of the Law on BNB
14 Published in *Darjaven Vestnik* No 59, 21 July 2006.
15 Published in *Darjaven Vestnik* No 46, 10 June 1997.
16 Published in *Darjaven Vestnik* No 62, 14 August 2015.
17 Published in *Darjaven Vestnik* No 59, 29 July 2016.
18 Published in *Darjaven Vestnik* No 23, 27 March 2009.
19 For example, under the currently applicable Law on credit institutions, these competences relate to the adoption of supervisory measures, such as the imposition of requirements in respect of capital, risk, bank policies and operations, the prohibition of certain activities and transactions, including in relation to certain persons, the appointment of conservators in all cases envisaged by law, and the imposition of specific liquidity requirements. Under the currently applicable Law on payment services and payment systems, these competences relate for

Banking Supervision Department or the Deputy Governor heading the Banking Department[20].

2.2. The consulting authority explains that the draft law aims to improve the supervisory process, to protect financial services consumers and to minimise the risks for the financial system as a whole.

2.3. The consulting authority highlights several provisions of the draft law which aim to guarantee the autonomy and independence of the supervisory function from other BNB functions. Pursuant to the draft law, the decisions for which competence is transferred to the BNB Governing Council may only be adopted upon a proposal from the respective Deputy Governor. Moreover the draft amendments to the Law on BNB provide that the Deputy Governors must exercise their supervisory powers separately and independently from other BNB functions[21].

3. General observations

3.1. The ECB welcomes the intra-institutional transfer of decision-making authority from the Deputy Governor heading the Banking Supervision Department and the Deputy Governor heading the Banking Department to the BNB Governing Council. In this regard, the ECB would like to make three general points.

3.2. *Firstly*, the simplification of the current, somewhat complex, governance structure of the BNB, consisting of several independent decision-making bodies located within the legal personality of the BNB, enhances the BNB's institutional integrity. Crucially, this simplification addresses potential legal risks for BNB arising from the fact that BNB as a whole could be held accountable and liable for acts performed by its constituent parts, which are outside the control of the BNB's supreme decision-making body (the BNB Governing Council)[22].

3.3. *Secondly*, BNB's new decision-making framework reinforces the role of the BNB Governing Council which becomes the sole decision-making body competent to issue binding acts in different policy areas[23] on behalf of BNB. This change also supports the institutional dimension of BNB's independence, since under the draft law BNB will only be bound by supervisory acts and other acts addressed to third parties that were agreed by the BNB Governing Council, and not by a Deputy Governor in the exercise of his/her independent competences as attributed by the relevant national laws.

3.4. *Thirdly*, it has been widespread practice throughout the Union for decision-making bodies to act with collegiality as regards supervisory matters[24]. Therefore, the introduction of a collegiate decision-making process in key supervisory areas in relation to financial market participants operating in Bulgaria is likely to strengthen the quality of BNB internal deliberations with respect to

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example to the adoption of supervisory measures applicable to payment institutions, other suppliers of payment services, payment systems and electronic money institutions, the power to enter or refuse to enter, or delete the entry of, credit intermediaries in or from the register kept by the BNB. Other competences include the power to adopt early intervention measures in respect of credit institutions, as well as the powers to grant various permissions, approvals and consents.

20 In some cases these decisions may also be adopted by an official authorised by the respective Deputy Governor.

21 These comprise amendments to Article 20(3) and (4) of the Law on BNB.

22 See paragraph 6 of Opinion CON/2002/16. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

23 Notably the supervision of credit institutions and the supervision of payment systems and payment services.

24 See paragraph 14 of Opinion CON/2005/34, paragraph 3.2.3 of Opinion CON/2006/15 and paragraph 3.5 of Opinion CON/2010/94.

the exercise of its supervisory tasks. To ensure that BNB monetary and supervisory policy functions are effectively separated, while at the same time allowing the new overall decision-making structure to benefit from synergies[25], it could be considered that the BNB Governing Council adopts the draft acts proposed by the respective Deputy Governor following a decision-making procedure based on non-objection (see e.g. the non-objection procedure applicable to the ECB with regard to the ECB's prudential supervisory tasks[26]).

4. Specific observations

4.1 The attribution of new competences to the BNB Governing Council may present a challenge to the effectiveness and efficiency of BNB's decision-making process, given the potentially high number of individual supervisory decisions that would need to be taken. Whilst preserving the collegiate nature of the decision-making process, the legislator may wish to consider including an appropriate mechanism[27] in the draft law to ensure the operational efficiency of BNB's decision-making process in relation to the adoption of routine executive supervisory decisions. Since the principle of good administration requires that units of public administration carry out their tasks with a duty of care, it is also important that the BNB Governing Council in the exercise of these new responsibilities is supported by adequate financial and human resources.

4.2 The ECB would also recommend that the draft law provides for a transitional period (of at least one year) that would allow BNB to develop the appropriate institutional capacities necessary to ensure that BNB's supervisory function is able to smoothly incorporate the new decision-making framework.

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

Done at Frankfurt am Main, 27 November 2017.

[signed]

The President of the ECB

Mario DRAGHI

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25 See paragraph 1.8 of Opinion CON/2012/96.

26 See Article 26(8) of 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). See also Article 13g of the Decision ECB/2004/2 of the European Central Bank of 19 February 2004 adopting the Rules of Procedure of the European Central Bank (OJ L 80, 18.3.2004, p. 33).

27 For example, an enabling clause allowing for the delegation of limited and clearly defined executive powers, the exercise of which is subject to strict review in the light of objective criteria established by the BNB Governing Council. On the principles of delegation applicable in the context of Union administration, see, for example, *Meroni & Co., Industrie Metallurghiche SpA v High Authority of the European Coal and Steel Community*, C-9/56 ECLI:EU:C:1958:7, and C-10/56, ECLI:EU:C:1958:4, *Carmine Salvatore Tralli v European Central Bank* C-301/02,ECLI:EU:C:2005:306, *AKZO Chemie BV and AKSO Chemie UK Ltd v Commission of the European Communities,* C-5/85, ECLI:EU:C:1986:328, *United Kingdom v Parliament and Council*, C-270/12 ECLI:EU:C:2014:18.