EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 19 November 2012

on a stabilisation fund for banks

(CON/2012/91)

Introduction and legal basis

On 23 October 2012, the European Central Bank (ECB) received a request from the Polish Minister for Finance for an opinion on a draft law amending the Law on the Bank Guarantee Fund and certain other 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 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 the Narodowy Bank Polski 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 is an updated version of a draft law on which the ECB has previously been consulted[2] (hereinafter the 'earlier draft law'). The overall purpose of the draft law remains unchanged, that is to enhance the Polish framework for crisis management in the financial sector by establishing an industry-funded stabilisation fund for credit institutions, formed as a sub-fund under the management of the Bank Guarantee Fund (BFG), the operator of the Polish deposit guarantee scheme. To that end, the draft law amends: (a) the Law of 14 December 1994 on the Bank Guarantee Fund[3] (hereinafter the 'Law on BFG'); and (b) the Law of 12 February 2010 on the recapitalisation of certain financial institutions[4] (hereinafter 'the Law on recapitalisation').

1.2 As compared to the earlier draft law, the draft law redefines the sources of financing of the stabilisation fund to include, in addition to a one-off payment to be made in the year of the law's entry into force, a prudential fee to be paid on an annual basis by the institutions covered by the obligatory deposit guarantee scheme.

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1 OJ L 189, 3.7.1998, p. 42.

2 See the draft law amending the Law on Bank Guarantee Fund and certain other laws, version dated 30 May 2012, as opined on in Opinion CON/2012/58. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

3 Consolidated text published in *Dziennik Ustaw* (Dz. U.) of 2009 No 84, item 711.

4 Dz. U. of 2010 No 40, item 226.

1.3 The earlier draft law allowed the transfer of resources from the newly established stabilisation fund to the existing assistance fund, both managed by the BFG. This is supplemented in the draft law, which allows temporary transfers from the assistance fund to the stabilisation fund, subject to the approval of the Minister for Finance[5]. At the same time, the draft law lays down appropriate safeguards to ensure that, following such a transfer, sufficient funds are made available to the assistance fund by the Minister for Finance for the pay-out of guaranteed deposits, if necessary[6].

2. General observations

The ECB's observations are in principle limited to the relevant provisions of the draft law which have been changed as compared with the earlier draft law.

3. Specific observations

Financing of the stabilisation fund

3.1 The ECB welcomes the introduction of an independent financing mechanism for the stabilisation fund in the form of a self-standing annual prudential fee as it will enhance the clarity and transparency of the system. It will also allow more flexibility in setting the appropriate level of industry participation in the costs of providing support to distressed financial institutions and in adjusting it to the changing market conditions to achieve the expected anti-cyclical effect of the new prudential fee[7].

3.2 The proposed arrangements, allowing the temporary transfer of resources from the assistance fund to the stabilisation fund, will further increase flexibility in the application of the measures available under the Law on BFG and the Law on recapitalisation. In this respect, the ECB notes the need to ensure that the financial resources of funds used for the resolution or stabilisation of credit institutions are adequate and that the contributions to such funds raised from credit institutions are set at a level which is appropriately calibrated to ensure financial stability.

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

Done at Frankfurt am Main, 19 November 2012.

[signed]

The President of the ECB

Mario DRAGHI

5 See proposed Articles 20c(2) and 20c(3) of the Law on BFG as inserted by Article 1(10) of the draft law.

6 See proposed Article 16b of the Law on BFG as inserted by Article 1(8) of the draft law.

7 See the explanatory memorandum to the draft law, p. 11.