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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 15 November 2010

on building societies

(CON/2010/81)

Introduction and legal basis

On 11 October 2010 the European Central Bank (ECB) received a request from the Polish Parliament for an opinion on a draft law on building societies and State support for home savings schemes (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, the sixth indent of Article 2(1) and Article 2(2) 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 rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets, as well as to instruments of monetary policy of Member States other than Member States whose currency is the euro. 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

The draft law provides for a legal framework for the operation of building societies (kasy oszczędnościowo-budowlane), classifying them as a sub-category of credit institutions (banks[2]), operating in the form of joint-stock companies[3]. The business of building societies will exclusively comprise receiving deposits from natural persons and granting mortgages to such persons with the aim of financing housing-related investments specifically enumerated in the draft law[4]. The draft law is an attempt to re-

1 OJ L 189, 3.7.1998, p. 42.

2 Credit institutions registered in Poland are legally referred to as 'banks' (this legal term does not cover credit unions) because the term 'credit institutions', under Polish law, only relates to European Economic Area (EEA) credit institutions from outside Poland. Non-EEA credit institutions are referred to under Polish law as 'foreign banks' (Article 2, Article 4(3) and Article 4(1)(17) to (20) of the Law on banking of 29 August 1997 (consolidated text: *Dziennik Ustaw* (Dz. U.) of 12 June 2002 No 72, Item 665, hereinafter, the 'Law on banking')).

3 Article 2 of the draft law.

4 Articles 4 and 8 of the draft law.

establish the system of building societies which had been first introduced in the legal provisions in 1997[5], but never realised in practice.

2. ECB comments

2.1 *Obligation to maintain minimum reserves with the central bank*

2.1.1 The draft law proposes an arrangement under which building societies are to be excluded from the obligation to hold minimum reserves with Narodowy Bank Polski (NBP).

2.1.2 In past opinions[6], the ECB has maintained that the Eurosystem's minimum reserves obligations apply to entities that fulfil the functional criteria of a 'credit institution' according to the definition contained in the Eurosystem's minimum reserves rules[7], which cross-refers to criteria defined in Article 4(1)(a) of Directive 2006/48/EC[8]. Such criteria define credit institutions as undertakings whose business is: (i) to receive deposits or other repayable funds from the public; and (ii) to grant credit for their own account. The ECB notes that building societies will fulfil both of the functional criteria of a 'credit institution', namely that they will: (i) receive deposits from natural persons, i.e. deposits 'from the public' within the meaning of the Directive 2006/48/EC; and (ii) grant credit for their own account[9]. Consequently, in line with its previous opinions[10], the ECB considers that building societies will be subject to the Eurosystem's minimum reserves requirements when Poland adopts the euro[11]. Such requirements, and the sanctions related to them[12], will apply directly by the operation of the Union law.

2.1.3 As regards the period before the adoption of the euro by Poland, the ECB would welcome the inclusion of building societies in NBP's minimum reserves regime as a measure facilitating the

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5 See the Law of 5 June 1997 on building societies and State support for home savings schemes (Dz. U. of 28 July 1997, No 85, Item 538), repealed on 1 January 2002.

6 See ECB Opinions on national legislation on credit unions, in particular paragraphs 10 to 14 of ECB Opinion CON/2005/8, paragraph 3.1 of ECB Opinion CON/2006/4), paragraphs 10 to 17 of ECB Opinion CON/2006/11 and paragraph 2.1 to 2.5 of ECB Opinion CON/2009/60. All ECB opinions are available on the ECB's website at www.ecb.europa.eu.

7 See Article 2(1) of Regulation ECB/2003/9 of 12 September 2003 on the application of minimum reserves (OJ L 250, 2.10.2003, p. 10).

8 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) (OJ L 177, 30.6.2006, p. 1).

9 Article 4 of the draft law. See also paragraph 2 of the Opinion of the European Monetary Institute CON/94/12.

10 See paragraph 14 of ECB Opinion CON/2005/8, paragraphs 10 and 17 of ECB Opinion CON/2006/11 and paragraph 2.3 of ECB Opinion CON/2009/60.

11 Further in this context, it should also be noted that being subject to the Eurosystem minimum reserves regime is one of the general criteria for eligibility to participate in Eurosystem monetary policy operations; the other general eligibility criteria include: (i) being financially sound and, in principle, being subject to at least one form of harmonised EU/EEA supervision by national authorities; and (ii) fulfilment of any operational criteria specified in the relevant contractual or regulatory arrangements applied by the respective national central bank (see Section 2.1 of Annex I to Guideline ECB/2000/7 of 31 August 2000 on monetary policy instruments and procedures of the Eurosystem, OJ L 310, 11.12.2000, p. 1).

12 See Article 7 of Council Regulation (EC) No 2531/98 of 23 November 1998 concerning the application of minimum reserves by the European Central Bank (OJ L 318, 27.11.1998, p. 1) and Regulation ECB/1999/4 of 23 September 1999 on the powers of the European Central Bank to impose sanctions (OJ L 264, 12.10.1999, p. 21).

harmonisation of Polish law with the Eurosystem requirements[13]. Moreover, since building societies are defined by the draft law as a sub-category of banks, they will be eligible to access central bank liquidity, i.e. refinancing credit from NBP[14], in accordance with the same rules as those applying to regular banks. This extension to building societies of the central bank's liquidity providing operations should be accompanied by the application of the minimum reserves obligations, which constitute a complementary monetary policy instrument, structurally linked to liquidity providing operations[15].

2.2 *Calculation of contributions to the deposit-guarantee scheme*

The draft law sets the maximum level of contributions to be paid by the building societies to the Polish deposit-guarantee scheme (Bank Guarantee Fund, the 'Fund') at 0.1% of the building societies' risk-weighted balance sheet assets and guarantees and endorsements[16]. First, the ECB notes that the draft law may need to be updated to refer to the method for calculating maximum contributions to the Fund specified in the currently binding provisions[17]. Second, the ECB understands that the intended effect of Article 18 of the draft law is to impose on the building societies a level of contributions to the Fund lower than that applicable to regular banks. In this context, the ECB draws the Polish authorities' attention to an advanced proposal by the European Parliament and Council to recast Directive 94/19/EC on Deposit Guarantee Schemes[18]. The amendments introduced in the proposed recast Directive aim, *inter alia*, at harmonising the calculation of contributions paid by all types of credit institutions to the deposit guarantee schemes[19]. The ECB recommends that the Polish authorities take due account of this ongoing legislative process when defining the building societies' contributions to the Fund.

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

Done at Frankfurt am Main, 15 November 2010. [signed]

The President of the ECB

Jean-Claude TRICHET

13 See paragraph 3.1 of ECB Opinion CON/2006/4 and paragraph 2.4 of ECB Opinion CON/2009/60. Compare paragraph 2.1 of ECB Opinion CON/2007/28.

14 Article 42 of the Law of 29 August 1997 on Narodowy Bank Polski (consolidated text: Dz. U. of 1 April 2005 No 1, Item 2).

15 See paragraph 2.4 of ECB Opinion CON/2009/60.

16 Article 18 of the draft law.

17 Under the rules currently in force, the amount of contributions is set as a percentage of the base amount defined by reference to applicable capital requirements, the maximum contribution being 0.3% of such base amount (see Article 13(1) to (1a) of the Law on the Bank Guarantee Fund, consolidated text Dz. U. of 4 June 2009 No 84 Item 711).

18 See 'Proposal for a Directive …/ …/ EU of the European Parliament and of the Council on Deposit Guarantee Schemes [recast] of 12 July 2010 (COM/2010/0368 final - COD 2010/0207, published on the European Commission's website at www.ec.europa.eu, hereinafter the 'proposed recast Directive 94/19/EC').

19 See Article 11 of the proposed recast Directive 94/9/EC.