OPINION OF THE EUROPEAN CENTRAL BANK

of 10 June 2015

on the recovery and resolution of credit institutions and investment firms

(CON/2015/19)

Introduction and legal basis

On 13 May 2015 the European Central Bank (ECB) received a request from the Spanish Secretary of State for Economic Affairs and Business Support for an opinion on a draft law on the recovery and resolution of credit institutions and investment firms (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[1], as the draft law relates to the Banco de España and to the 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

The purpose of the draft law is to implement Directive 2014/59/EU of the European Parliament and of the Council[2] and Directive 2014/49/EU of the European Parliament and of the Council[3]. The draft law introduces provisions to establish a national resolution mechanism, as envisaged under Directive 2014/59, as well as for coordination of this national resolution mechanism with the Single Resolution Mechanism[4], which should be fully operational from 2016.

The draft law builds on Law 9/2012 on the restructuring and resolution of credit institutions[5], which took into account the preparatory work underlying Directive 2014/59/EU. The draft law is a recast of Law 9/2012 including the transposition of those aspects of Directive 2014/59/EU pending implementation. The draft law repeals Law 9/2012 for the sake of clarity.

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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 Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

3 Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149).

4 Established by Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).

5 Law 9/2012 of 14 November 2012 on the restructuring and resolution of credit institutions (BOE 275 of 15.11.2012).

2. Scope of this Opinion

This Opinion focuses on aspects of the draft law that have an impact on the Banco de España. It should be noted that the ECB had previously been consulted on the main elements of Law 9/2012[6].

3. The Banco de España's role

3.1 The ECB notes that the draft law provides for a separation of resolution powers into recovery and preparatory resolution powers (the so-called 'resolution prevention functions') including resolution planning, which are allocated to the Banco de España for credit institutions and to the National Securities Market Commission for investment firms[7], and executive resolution powers, such as applying resolution tools, which are allocated to the FROB.

3.2 While such separation of resolution powers is permitted under Directive 2014/59/EU on an exceptional basis, it needs to be ensured that such separation does not hamper the effectiveness of resolution action. Separation creates a need for close cooperation and adequate information sharing between the FROB and the Banco de España, and the FROB and the National Securities Market Commission, notably to ensure that timely resolution action can be taken. Given that the Banco de España will be in the lead for resolution planning and the FROB will be responsible for execution, it is essential that there is a common understanding on the resolution plan. The ECB welcomes the fact that the draft law, in this respect, has specific provisions on the cooperation and coordination between national authorities and with other authorities such as the Single Resolution Board, the ECB and foreign authorities assigned supervision or resolution tasks. Similarly, the ECB welcomes the provisions on functional and hierarchical separation between supervision on the one hand, and recovery and preparatory resolution powers on the other, as well as the legislator's stated purpose to review this institutional set-up in light of the experience gained from the Single Resolution Mechanism in order to increase its efficiency.

3.3 As mentioned above, the draft law assigns the Banco de España powers provided for in Directive 2014/59/EU which are viewed by the legislator as being closer in nature to the supervisory tasks of the Banco de España under Regulation (EU) No 1024/2013[8], such as preparing resolution plans and assessing resolvability for the purpose of opening a resolution process. In this respect, the ECB notes that Directive 2014/59/EU assigns the failing or likely to fail assessment to the respective supervisory authority, i.e. the ECB or national competent authorities, in line with the distribution of competences provided for in Regulation (EU) No 1024/2013. The ECB also notes that, pursuant to Article 9(1), subparagraph 2, Article 4(1)(e) and Article 4(3) of Council Regulation (EU) No 1024/2013, and Article 104(1)(b) of Directive 2013/36/EU of the European Parliament and

6 See ECB Opinion CON/2012/108, Opinion CON/2013/3 and Opinion CON/2013/25. All ECB Opinions are published on the ECB's website at www.ecb.europa.eu.

7 In line with Directive 2014/59/EU the scope of the draft law includes investment firms.

8 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 L287, 29.10.2013, p. 63).

of the Council[9], the ECB shall have all the powers of the competent and designated authorities under the applicable Union law to ensure compliance with regard to significant institutions[10].

3.4 The Banco de España is also entrusted with checking the financial resilience of the Deposit Guarantee Fund (DGF) at least every three years in view of its role as bank supervisor and its statutory function of promoting financial stability. The ECB understands that these stress tests to a large extent rely on the results of the stress tests the Banco de España is already required to perform on credit institutions. Hence, it does not constitute a substantive change in the supervisory and financial stability tasks carried out by the Banco de España and is expected to have a very small impact on the overall functions carried out by it. In addition to stress testing the financial condition of the DGF, the authorities should mandate the DGF to conduct regular testing of systems and other operational capabilities as required under Article 4(10) of Directive 2014/49/EU.

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

Done at Frankfurt am Main, 10 June 2015.

[signed]

The President of the ECB

Mario DRAGHI

9 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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

10 See ECB Opinion CON/2015/13.