EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 2 August 2006

at the request of Poland's Sejm Marshall on

a draft law amending the Law on Narodowy Bank Polski

(CON/2006/39)

Introduction and legal basis

On 14 June 2006, the European Central Bank (ECB) received a request from Poland's Sejm Marshall for an opinion on a draft law (hereinafter the 'draft law') amending the Law on Narodowy Bank Polski of 29 August 1997[1] (hereinafter the 'Law on NBP').

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[2], as the draft law relates to a national central bank, namely 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

The draft law proposes to amend the Law on NBP by modifying the composition of the Banking Supervision Commission, currently a seven-member body chaired by the President of NBP and supported by NBP staff[3]. Following the draft law:

(i) the membership of the Commission would be expanded to include, in addition to the current members, three representatives of Sejm (one of the two Parliamentary chambers) and a representative of the Council of Ministers' President (the Prime Minister); and

(ii) the chair of that Commission would be re-allocated from NBP's President to a representative of the Prime Minister[4].

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1 Consolidated text: Dz. U. of 2005, No 1, Item 2, as amended.

2 OJ L 189, 3.7.1998, p. 42.

3 Current membership of the Banking Supervision Commission: (i) the NBP's President as Chair; and (ii) the Minister for Finance or the appointed Secretary/Undersecretary of State in the Ministry of Finance (as deputy Chair); and (iii) the representative of Poland's President; and (iv) the Bank Guarantee Fund's Chair; and (v) the Securities and Exchange Commission Chair or Deputy; and (vi) the representative of the Minister for Finance; and (vii) the General Inspector of Banking Supervision (Article 26(1) of the Law on NBP).

4 Article 1 of the draft law, modifying Article 26(1) of the Law on NBP.

2. General observations

2.1 The draft law was proposed in parallel with another legislative proposal aiming at a broader modification of the institutional set-up for banking supervision in Poland, i.e. the draft law on the supervision of the financial market[5], on whose earlier version the ECB commented in ECB Opinion CON/2006/15[6]. In its current version, the draft law on the supervision of the financial market foresees the taking over of the banking supervision responsibilities from 1 January 2008 by a consolidated financial supervisor under the name of the Financial Supervision Commission (FSC)[7]. In the temporary period before 1 January 2008, the Banking Supervision Commission would be chaired by the Financial Supervision Commission's Chair, appointed by the Prime Minister[8].

2.2 The ECB understands that only one of the legislative proposals in question – i.e. either the draft law subject to current consultation or the draft law on the supervision of the financial market – would be subject to further legislative work. Whatever the Polish legislator's final decision, the ECB would like to reaffirm its very positive assessment of the current institutional model for the prudential supervision of credit institutions in Poland, which ensures effective synergies between the Banking Supervision Commission and NBP. In concurrence with the recent comments by international bodies[9], the ECB notes that any modification to the current arrangements will need to safeguard the effectiveness of the Polish supervisory system and smooth interaction between the relevant authorities. The on-going implementation of the recast Capital Requirements Directive[10] is one area where there is a particular need to ensure the continuity of supervisory activities and macro-prudential monitoring.

2.3 In general, the ECB has consistently favoured the involvement of central banks in prudential supervision. As already noted in the ECB Opinion CON/2006/15 and previous ECB opinions[11],

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5 The draft law on supervision of financial market, as adopted by Sejm on 21 July 2006 (Sejm ref. No 802) and provided to Senat for review.

6 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.

7 The FSC is to be composed of: (i) the FSC Chair, appointed by the Prime Minister for a five-year term in office; and (ii) the two FSC Deputy Chairs, appointed and dismissed by the Prime Minister on a motion by the FSC Chair; and (iii) the Minister responsible for financial institutions or representative thereof; and (iv) the Minister responsible for social security or representative thereof; and (v) NBP's President or the delegated Vice-President; and (vi) a representative of Poland's President (Article 5(1) in conjunction with Article 3(1), Article 68 and Article 69(2) of the draft law on the supervision of the financial market).

8 Article 80(2) of the draft law on the supervision of the financial market. Additionally, as a result of winding-up the Securities and Exchange Commission its Chair will cease to be a member of the Banking Supervision Commission.

9 See International Monetary Fund, 'Concluding Statement of the 2006 Article IV Consultation Mission', 22 May 2006, paragraph 13, as published on the IMF website (www.imf.org); Organisation for Economic Co-operation and Development, 'Economic Survey of Poland, 2006', 28 June 2006, p. 4, as published on the OECD website (www.oecd.org).

10 Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast) (OJ L 177, 30.6.2006, p. 201). See paragraph 6.1 of Opinion CON/2006/15.

11 Paragraph 2.1.2 of the Opinion CON/2006/15; cf. paragraph 4 of ECB Opinion CON/2001/10 of 25 May 2001 at the request of the Austrian Ministry of Finance on a draft Federal law establishing and organising the financial market supervisory authority [title shortened]; paragraph 5 of ECB Opinion CON/2001/35 of 8 November 2001 at the request of the German Ministry of Finance on a draft law establishing an integrated financial services supervision.

maintaining close involvement of NCBs in prudential supervision is an important condition for allowing the Eurosystem to contribute adequately to monitoring the risks to financial stability in the euro area, in accordance with Article 105(5) of the Treaty, and to safeguard smooth cooperation between the central bank functions exercised at the Eurosystem's level and the supervisory functions carried out at national level.

3. The banking supervisor's operational independence

3.1 In the composition of the Banking Supervision Commission proposed by the draft law, only a minority of the members would exercise their function *ex officio*, i.e. as a result of a nomination for a specified public office (those include: NBP's President[12], the General Inspector of Banking Supervision[13], the Chair of the Bank Guarantee Fund[14], the Chair of the Securities and Exchange Commission[15] and the Minister for Finance, if he chooses to participate directly in the Commission's work). The remaining six members, including the Chair, would be representatives of the appointing institutions, subject to recalling of their mandate at any time[16]. Moreover, the ECB notes that the draft law provides neither for such members' appropriate technical expertise nor for adequate safeguards against conflicts of interest.

3.2 The ECB recommends that any legislative provisions setting out an institutional framework for prudential supervision foresee for the members of the supervisory authority the appropriate criteria for technical expertise and for the avoidance of any conflict of interests, as well as adequate safeguards for decision-making autonomy in pursuance of the supervisory mandate. The adopted legislative rules should ensure the supervisory authority's operational independence, in compliance with international standards for the operational independence of banking supervisors[17].

4. The central bank's financial stability role

4.1 Under the current provisions of the Law on NBP, NBP's President acts both as the Chair of the Banking Supervision Commission and supervisor of the General Inspectorate of Banking

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12 NBP's President is appointed and dismissed by Sejm, at the request of Poland's President, for a term of six years (Article 9(1) of the Law on NBP).

13 NBP's President appoints and dismisses the General Inspector of Banking Supervision, acting in agreement with the Minister for Finance (Article 29(3) of the Law on NBP).

14 The Fund's Council appoints and dismisses the Bank Guarantee Fund's Chair for the three-year term in office (while the Prime Minister, the Minister for Finance, NBP's President and the Polish Bank Association are involved in appointing members to the Fund's Council; Article 9(1) and (3) to (5), Article 6(1) to (3) of the Law on the Bank Guarantee Fund of 14 December 1994, consolidated text: Dz.U. of 2000, No 9, Item 131, as amended).

15 The Prime Minister appoints the Chair of the Securities and Exchange Commission, for a five-year term in office, acting on a motion he Minister responsible for financial institutions presented in agreement with NBP's President (Article 8(2) of the Law of 29 July 2005 on supervision of the capital market, Dz. U. 2005 No 183, Item 1537).

16 Such would be the status of the following members: a representative of the Prime Minister in their capacity as the Commission's Chair, a representative of Poland's President, three Sejm representatives and a representative(s) of the Minister for Finance.

17 See Bank for International Settlements, Core Principles for Effective Banking Supervision, September 1997, Principle 1; see the Consultative Document on the Core Principles for Effective Banking Supervision, April 2006, Principle 1; documents available on the BIS website (www.bis.org).

Supervision, which is an organisational unit within NBP's structure, functioning as the Banking Supervision Commission's executive arm[18] and closely cooperating with other relevant NBP departments. As already noted in ECB Opinion CON/2006/15, this current structure allows NBP to properly fulfill its financial stability role and, from a more specific Eurosystem perspective, is particularly well-designed to facilitate NBP's contribution to the prudential supervision of credit institutions and the financial system's stability, as required, also in the future euro accession context, under Article 105(5) of the Treaty[19].

4.2 It is noted in this context that NBP's financial stability role – as currently exercised on the basis of the abovementioned institutional arrangements – lacks specific legislative definition in the Law on NBP[20]. Assuming the implementation of a supervisory reform weakening the existing institutional relationship between NBP and the banking supervisory authority, the ECB recommends amending the Law on NBP, so as to specify that NBP has a 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[21].

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

Done at Frankfurt am Main, 2 August 2006.

[signed]

The President of the ECB

Jean-Claude TRICHET

18 Articles 29(1) and 25(1) of the Law on NBP.

19 See paragraph 3.1.1 of Opinion CON/2006/15.

20 The closest legislative provision which may currently imply NBP's financial stability role is its statutory objective to 'establish the necessary conditions for the development of the banking system' (Article 3(2)(6) of the Law on NBP). See paragraph 2.2.1 of Opinion CON/2006/15.

21 See paragraph 2.2.2 of Opinion CON/2006/15.