EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 16 February 2009

at the request of the Bulgarian Ministry of Justice

on a draft law supplementing the Law on Administration

(CON/2009/13)

Introduction and legal basis

On 19 January 2009 the European Central Bank (ECB) received a request from the Bulgarian Minister for Justice for an opinion on a draft law supplementing the Law on Administration and amending, *inter alia*, the Law on the prevention and disclosure of conflicts of interests (hereinafter the 'Law on conflicts of interests')[1] and the Law on Българска народна банка (Bulgarian National Bank) (BNB) (hereinafter the 'Law on BNB')[2] (hereinafter the 'draft law').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the third indent 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[3], 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. Purpose of the draft law

1.1 The draft law supplements the Law on Administration and brings all relevant Bulgarian legislation in line with the Law on conflicts of interests. In this latter regard, the draft law amends, *inter alia*, the Law on the BNB by (i) introducing additional eligibility criteria for membership in BNB's Governing Council, and (ii) providing details as to the competent authority to which information to be disclosed under Article 12(1) to (4) of the Law on conflicts of interests should be provided.

1.2 According to the provisions of the draft law amending the Law on conflicts of interests, BNB's Governor, Deputy Governors and Governing Council members are exempt from the prohibition on entering into an employment or any other agreement with certain business entities or cooperatives or becoming a partner in, holding interests or shares in, and acting as a manager or

1 Published in *Darjaven vestnik* No 94, 31.10.2008 (in force as of 1.1.2009).

2 Published in *Darjaven vestnik* No 46, 10.6.1997.

3 OJ L 189, 3.7.1998, p. 42.

management/supervisory body member of such business entities and cooperatives for a period of one year following their tenure of office[4].

2. General observations

2.1 The ECB welcomes the Bulgarian authorities' efforts to align the Law on BNB and the Law on conflicts of interests with the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'ESCB Statute') and with the conclusions contained in the ECB's May 2008 Convergence Report[5].

2.2 However, it is important to note that the Bulgarian authorities failed to comply with their obligation to consult the ECB prior to adopting the Law on conflicts of interests on 16 October 2008. The ECB should have been consulted on the Law on conflicts of interests, since it sets additional grounds for the dismissal of BNB's Governing Council members and, therefore, clearly falls within the scope of the third indent of Article 2(1) of Decision 98/415/EC as it relates to national central banks, which is expressly listed among the areas in which the ECB is competent.

3. Specific observations

Law on conflicts of interests

3.1 The Law on conflicts of interests provides a definition of 'conflicts of interests' and regulates the prevention and disclosure of conflicts of interests of public office holders. It also establishes a procedure for identifying the existence of conflicts of interests and the consequences resulting from such situations. Under the Law on conflicts of interests, non-compliance with its provisions and the fact that a conflict of interests exists are sufficient grounds for dismissal and could lead to the termination of the affected person's appointment/mandate. According to Article 3(13) of the Law on conflicts of interests, BNB's Governor, Deputy Governors and Governing Council members fall within the definition of public office holders. As a result, the Law on conflicts of interests specifies grounds for their dismissal that are in addition to the two grounds contained in the ESCB Statute.

3.2 Governors and other members of the NCBs' decision-making bodies who are involved in the performance of ESCB-related tasks may not be dismissed for reasons other than those mentioned in Article 14.2 of the ESCB Statute[6]. The draft law does not remove these additional grounds of dismissal. Therefore, the Law on conflicts of interests is still incompatible with ESCB Statute and Treaty requirements on central bank independence. The ECB urges the Bulgarian authorities to

4 See § 47 of the draft law proposing amendments to Article 21(1) of the Law on conflicts of interests.

5 Available on the ECB's website at www.ecb.europa.eu.

6 See the ECB's Convergence Report of May 2008, p. 19, which specifies that 'NCB statutes must ensure that Governors may not be dismissed for reasons other than those mentioned in Article 14.2 of the Statute. The purpose of this requirement is to prevent the authorities involved in the appointment of Governors, particularly the government or parliament, from exercising their discretion to dismiss them as Governor. The NCB statutes should either contain grounds for dismissal which are compatible with those laid down in Article 14.2 of the Statute, or omit any mention of grounds for dismissal (since Article 14.2 is directly applicable).'

fully align the provisions of Article 33(1) of the Law on conflicts of interests with Article 14.2 of the ESCB Statute.

Law on BNB

3.3 The proposed amendment to Article 11(4) of the Law on BNB sets out additional eligibility criteria related to the appointment and election of BNB's Governing Council members. Specifically, a person may not be appointed or elected as a member of BNB's Governing Council if, at the time of their appointment or election they (i) are pursuing a business activity under any legal form whatsoever or are acting as a manager, procurator, liquidator, receiver or member of the management or a supervisory body of a company or cooperative[7], or (ii) are a spouse of, are living with, are a relative in direct lineage or lateral lineage up to and including fourth degree, or are connected by marriage up to the and including the second degree to a member of BNB's Governing Council[8].

3.4 The ECB notes that the first ground for removal in Article 14.2 of the ESCB Statute states that a Governor may be relieved from office only if he no longer fulfils the conditions required for the performance of his duties. The ECB acknowledges that Member States are free to set the conditions required for the appointment of the NCB Governing Council members. However, Article 14(1) of the Law on BNB, which regulates the grounds for dismissal for appointed or elected members of the BNB's Governing Council, contains grounds for dismissal in addition to Article 14.2 of the ESCB Statute by cross-referencing to the appointment and election conditions set out in Article 11(4) of the Law on BNB[9]. Article 14(1) of the Law on BNB should, therefore, be fully aligned with the wording of Article 14.2 of the ESCB Statute.

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

Done at Frankfurt am Main, 16 February 2009.

[signed]

The President of the ECB

Jean-Claude TRICHET

7 See paragraph 1 of § 13 of the draft law proposing the insertion of subparagraph 4 in Article 11(4) of the Law on BNB.

8 See paragraph 1 of § 13 of the draft law proposing the insertion of subparagraph 5 in Article 11(4) of the Law on BNB.

9 See the ECB's Convergence Report of May 2008, p. 229, paragraph 3.2 of ECB Opinion CON/2008/73 of 21 November 2008 at the request of Българска народна банка (Bulgarian National Bank) on a draft law amending the Law on Българска народна банка (Bulgarian National Bank), and paragraph 3.2.1 of ECB Opinion CON/2008/21 of 21 May 2008 at the request of Česká národní banka on a draft law on Česká národní banka.