EUROPEAN CENTRAL BANK

EUROSYSTEM

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OPINION OF THE EUROPEAN CENTRAL BANK

of 18 March 2020

on Hrvatska narodna banka

(CON/2020/8)

Introduction and legal basis

On 29 January 2020 the European Central Bank (ECB) received from Hrvatska narodna banka (HNB) two requests for opinion on two draft laws, being (i) a draft Law amending the Law on HNB (hereinafter the 'draft law on HNB') and (ii) a draft law amending the Law on credit institutions (hereinafter the 'draft law on credit institutions') (together referred to hereinafter as the 'draft laws')[1].

The ECB's competence to deliver this opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and the second, third and sixth indents of Article 2(1) of Council Decision 98/415/EC[2], as the provisions of the draft laws addressed by this opinion[3] relate to means of payment, to HNB 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 laws

1.1 *HNB's institutional and personal independence and international cooperation*

The draft law on HNB clarifies that the institutions and bodies of the European Union (EU) and the governments, agencies, offices and other bodies of the EU Member States may not influence the members of HNB's decision-making bodies. The draft law also specifies that the competence of the HNB Council to decide on HNB's membership in international institutions and organisations shall be without prejudice to the powers of the ECB referred to in Article 6.1 of the Statute of the European System of Central Banks (ESCB) and of the ECB (the 'Statute')[4].

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1 HNB's authority to consult the ECB is based on Article 39(1) of the Law on HNB, whereby HNB may require the Government of the Republic of Croatia to propose the enactment of laws concerning HNB to the Croatian Parliament. The Ministry of Finance is the proponent of the draft laws, which were approved by the Croatian Government on 23 January 2020 and were delivered on the same day to the Croatian Parliament for the next steps in the legislative process.

2 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).

3 This opinion addresses those provisions of the draft laws that concern the institutional independence of HNB, the personal independence of its decision-making bodies, HNB's international cooperation, HNB's possible application of negative interest rates, the Republic of Croatia's foreign reserves, HNB's financial statements, general reserves, revaluation accounts, provisions for financial risks and profit and loss, HNB's planning for the euro cash changeover, HNB's anti-counterfeiting tasks, security checks of HNB employees and HNB's calculation of the national reference rate of the average cost of financing the Croatian banking sector. The remaining provisions of the draft laws are addressed in a separate opinion.

4 See Articles 20 and 28 of the draft law on HNB (amending Articles 71 and 104 of the Law on HNB).

1.2 *Possibility for HNB to apply negative interest rates*

The draft law on HNB provides that the interest rate for the funds that HNB has received as deposits may be negative[5].

1.3 *Foreign reserves of Republic of Croatia*

The draft law on HNB streamlines the existing provisions of the Law on HNB regarding the foreign reserves of the Republic of Croatia, providing that the foreign reserves comprise all types of foreign exchange assets and precious metals, including securities and all other assets in the convertible currency of a non-resident debtor or in units of account, in whatever form held, and that in order to manage the foreign reserves, HNB may buy and sell spot and forward or otherwise acquire these types of assets. Existing requirements relating to investment ratings by credit rating agencies are removed[6].

1.4 *Preparation of HNB financial statements in accordance with ECB Guideline (EU) 2016/2249*

The draft law on HNB requires HNB to prepare financial statements in accordance with ECB Guideline (EU) 2016/2249[7] (hereinafter the 'ECB Accounting Guideline'). Provided there is no contrary decision of the HNB Council, HNB shall, when reporting on transactions that are not regulated by the ECB Accounting Guideline, apply valuation principles in accordance with International Financial Reporting Standards (IFRS) accepted by the EU, which are significant for the operations and reports of HNB. HNB's financial statements are to be prepared according to these requirements for the financial year 2021[8].

1.5 *HNB's general reserves, revaluation accounts and provisions for financial risks*

Under the existing provisions of the Law on HNB, HNB's reserves comprise general reserves to cover general operational risks, the amount of which shall not be limited, and specific reserves to cover identified losses established pursuant to a decision of the HNB Council[9]. The draft law on HNB instead provides that HNB shall establish general reserves to cover general business risks, where the lower bound of general reserves shall be determined by a decision of the HNB Council. HNB shall establish revaluation accounts for the purpose of revaluation of assets and liabilities in accordance with the ECB Accounting Guideline. HNB shall also establish revaluation accounts whose establishment is not regulated by the ECB Accounting Guideline, in accordance with applicable IFRS established by the European Commission. Revaluation accounts are to be established from the part of general reserves as at 1 January 2021 related to unrealised gains on the revaluation of assets and liabilities in the previous years, in the amount to be determined by the HNB Council[10]. HNB may also establish provisions for financial risks in accordance with a decision

5 See Article 7 of the draft law on HNB (introducing Article 13(2) of the Law on HNB).

6 See Article 8 of the draft law on HNB (amending Article 18(2)-(3) of the Law on HNB).

7 Guideline (EU) 2016/2249 of the European Central Bank of 3 November 2016 on the legal framework for accounting and financial reporting in the European System of Central Banks (ECB/2016/34) (OJ L 347, 20.12.2016, p. 37).

8 See Articles 16 (amending Article 60 of the Law on HNB) and 35(3) of the draft law on HNB; see also Explanation accompanying the draft law on HNB, Article 16, p. 30.

9 See Article 55 of the Law on HNB.

10 See Article 35 of the draft law on HNB.

of the HNB Council. The provisions for risks are to be established from the part of general reserves as at 1 January 2021 in the amount to be determined by the HNB Council[11].

1.6 *Profit and loss of HNB*

The draft law on HNB provides that the profit (or loss) of HNB shall be calculated for each financial year as the difference between HNB's total income and total expenditures[12]. As noted in the explanatory memorandum accompanying the draft law on HNB, in accordance with the ECB Accounting Guideline, unrealised gains on exchange rate differences and changes in market prices are not recognised in the profit and loss account, i.e., they are not included in the calculation of the financial result. Therefore, the draft law shortens and simplifies the definition[13]. HNB profit reported in the financial year shall be allocated to general reserves and to the State budget in accordance with a decision of the HNB Council. As a general rule, the profit of HNB shall be allocated so that 20% of the profit is allocated to general reserves and 80% constitutes revenue to the State budget. However, if the amount of general reserves on the last day of the financial year is lower than the lower bound of general reserves determined by the HNB Council, the HNB Council shall allocate the required amount of profit to general reserves until their lower bound is reached. As far as coverage of loss is concerned, the loss of HNB shall firstly be covered from general reserves. If HNB's loss is higher than the general reserves, the excess shall be covered from the profit of the following years[14]. By contrast, under the existing Law on HNB, any shortfall between income and expenditures that cannot be covered from general reserves shall be covered from the State budget[15].

1.7 *HNB's planning for euro cash changeover*

The draft law on HNB provides that the location, structure and operations of HNB's treasury are of material importance for the financial, economic and security interests of the Republic of Croatia and its defence[16]. As noted in the explanatory memorandum accompanying the draft law, HNB requires new larger capacities for cash storage at a new location due to the fact that the current capacities of HNB, because of their spatial and security conditions, fail to meet the requirements for the conversion of the *kuna* into euro. This provision therefore serves as a basis for the adoption of subordinate legislation by HNB in order to more precisely define security, defence and other measures aimed at preventing situations that could prove to be damaging to economic and financial national interests, especially where the supply of information in procurement procedures could damage security interests[17].

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11 See Articles 12 and 13 (amending Article 55 and introducing Articles 55a and 55b of the Law on HNB) and Article 35(1)-(2) of the draft law on HNB.

12 See Article 14 of the draft law on HNB (amending Article 56 of the Law on HNB).

13 See Explanation accompanying the draft law on HNB, Article 14, p. 29. Under the existing provisions of the Law on HNB the surplus of income over expenditure or shortfall between income and expenditures of HNB shall be calculated for each financial year as the sum of net operating income (realised income) and net profit (or loss) from the value adjustment of balance sheet items to changes in the exchange rate or market prices (unrealised income), decreased by general administrative expenses and depreciation, as well as assets allocated to specific reserves. See Article 56 of the Law on HNB.

14 See Article 15 of the draft law on HNB (amending Article 57 of the Law on HNB).

15 See Article 57(5) of the law on HNB.

16 See Article 3 of the draft law on HNB (introducing Article 2(10) of the Law on HNB).

17 See Explanation accompanying the draft law on HNB, Article 3, p. 26.

1.8 *HNB's tasks concerning protection of* kuna*, euro and foreign banknotes and coins against counterfeiting*

The draft law on HNB provides that HNB shall have competence for the technical analysis of suspect samples of *kuna* and foreign banknotes and coins (including *lipa* coins) and combating the counterfeiting of these banknotes and coins[18]. HNB shall also be the competent national authority for the protection of the euro against counterfeiting as provided for in Council Regulation (EC) No 1338/2001 and Council Regulation (EC) No 1339/2001[19]. While performing activities related to the protection of euro banknotes and coins against counterfeiting, the HNB shall act entirely in accordance with EU rules. HNB shall have competence for the technical analysis of suspect samples of euro and banknotes and coins and for combating the counterfeiting of these banknotes and coins. To this effect, HNB shall cooperate with the competent national authorities and institutions in Croatia and abroad and adopt implementing acts providing for the direct application of EU rules that are fully in line with EU regulations[20].

1.9 *Security checks of specified HNB employees*

The draft law on HNB requires HNB to identify the employment positions with HNB that, due to their high degree of sensitivity, need to be subject to a basic security check of all applicants, with the basic security check to be carried out by the competent security and intelligence agency at HNB's request[21].

1.10 *HNB's new task concerning calculation of national reference rate of average cost of financing the Croatian banking sector*

The draft law on credit institutions provides that the national reference rate of the average cost of financing the Croatian banking sector (NRR) shall be calculated by HNB and published on its website. HNB shall calculate the NRR based on data available to HNB, collected from credit institutions for regulatory purposes. HNB shall publicly disclose the methodology for the calculation of the NRR and the NRR release calendar on its website[22]. As noted in the explanatory memorandum accompanying the draft law on credit institutions, the NRR is the only index calculated and published with the explicit aim of serving as an index to determine the variable portion of the variable interest rate on consumer loans. The NRRs (24 different indices) are currently not calculated by HNB as the holder of the aforementioned data, but are calculated and published as implicit weighted interest rates by the Croatian Banking Association based on the data on the cost of financing of credit institutions in Croatia published by HNB[23].

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18 See Article 22 (amending Article 76) and Article 23 (introducing Article 77b) of the draft law on HNB.

19 Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting (OJ L 181, 4.7.2001, p. 6); Council Regulation (EC) No 1339/2001 of 28 June 2001 extending the effects of Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting to those Member States which have not adopted the euro as their single currency (OJ L 181, 4.7.2001, p. 11).

20 See Article 23 of the draft law on HNB (introducing Articles 76a and 76b of the Law on HNB).

21 See Article 11 of the draft law on HNB introducing Article 52(5) of the Law on HNB.

22 See Article 59 of the draft law on credit institutions (amending Article 306 of the Law on credit institutions).

23 See Explanation accompanying the draft law on credit institutions, Article 59, p. 55.

2. Observations

2.1 *HNB's institutional and personal independence*

2.2 The ECB welcomes the clarification that the Croatian Government may not influence the members of the HNB's decision-making bodies. This amendment of the Law on HNB makes this provision fully consistent with Article 130 of the Treaty, in line with suggestions previously made by the ECB[24].

2.3 *Foreign reserves of Republic of Croatia*

The ECB notes that the new provisions regarding the Republic of Croatia's foreign reserves closely correspond to the wording of the second indent of Article 23 of the Statute.

2.4 *Preparation of HNB financial statements in accordance with ECB Guideline (EU) 2016/2249*

The ECB welcomes the amendment proposed by the draft law on HNB whereby HNB will prepare its financial statements in accordance with the ECB Accounting Guideline. Although the ECB Accounting Guideline does not lay down binding rules for the national reports and financial accounts of any national central bank (NCB), in order to achieve consistency and comparability between Eurosystem and national regimes, the ECB recommends that NCBs should, to the extent possible, follow the rules set out in this Guideline for their national reports and financial accounts[25].

2.5 *HNB's general reserves, revaluation accounts and provisions for financial risks*

Under the principle of financial independence provided for in Article 130 of the Treaty, an NCB, in the performance of its tasks, may independently assess financial risks involved in its operations, and has the power to take decisions on any necessary precautions. Consequently NCBs should be given the ability to safeguard the real value of their capital and assets by being free to independently create adequate financial buffers[26]. The ECB therefore welcomes the provisions of the draft law on HNB concerning HNB's general reserves, revaluation accounts and provisions for financial risks, which will contribute to the financial independence of HNB.

2.6 *Profit and loss of HNB*

With regard to profit allocation, an NCB's statute may prescribe how its profits are to be allocated[27], and the ECB welcomes the clarifications introduced in this respect. Furthermore, profits may be distributed to the State budget only after any accumulated losses from previous years have been covered[28]. The ECB therefore welcomes the fact that the draft law on HNB provides for this contingency. However, the draft law on HNB eliminates the existing provision whereby any shortfall between income and expenditures that cannot be covered from general reserves shall be covered from the State budget. Notwithstanding HNB's current financial position, the ECB cautions against any situation in which an NCB's net equity is below the level of its statutory capital (or is even

24 See ECB Convergence Report 2018, p. 177-178; ECB Convergence Report 2016, p. 169-170; see ECB Convergence Report 2014, p. 239-240.

25 See Article 2(2) of the ECB Accounting Guideline and paragraph 4 of Opinion CON/2005/61. All ECB Opinions are published on the ECB's website at www.ecb.europa.eu.

26 See paragraph 3.1.9 of Opinion CON/2018/23 and paragraph 3.1 of Opinion CON/2013/96.

27 See ECB Convergence Report 2016, p. 27.

28 See ECB Convergence Report 2018, p. 27; paragraph 4.3 of Opinion CON/2009/85 and paragraph 3.2.5 of Opinion CON/2017/17.

negative) for a prolonged period of time, including where losses beyond the level of capital and the reserves are carried over. Any such situation may not only negatively impact the NCB's ability to perform its ESCB-related tasks, but also its national tasks. Therefore, the event of an NCB's net equity becoming less than its statutory capital (or even negative) would require the respective Member State to provide the NCB with an appropriate amount of capital at least up to the level of the statutory capital within a reasonable period of time so as to comply with the principle of financial independence[29]. Against this backdrop, the ECB considers the existing mechanism whereby losses that cannot be covered from general reserves are automatically covered from the State budget to be a useful mechanism that serves to strengthen HNB's financial independence. The ECB regrets the fact that this mechanism is not maintained in the current draft law on HNB.

2.7 *HNB's tasks concerning protection of* kuna*, euro and foreign banknotes and coins against counterfeiting*

Under the existing Croatian legal framework, HNB is responsible for the handling of suspect *kuna* and foreign banknotes and coins (including *lipa* coins), as well as protecting euro banknotes and coins against counterfeiting and distribution[30]. Consequently, the draft law on HNB does not confer genuinely new tasks on HNB in this respect, and the issue of assessing whether the conferral of new tasks on an NCB complies with the prohibition of monetary financing does not arise in the case at hand. The ECB welcomes the fact that HNB will act entirely in accordance with EU rules while performing activities related to the protection of euro banknotes and coins against counterfeiting and distribution.

2.8 *HNB's new task concerning calculation of national reference rate of average cost of financing the Croatian banking sector*

The draft law on credit institutions confers on HNB the new task of calculating and publishing the NRR on its website. The ECB understands that the NRR is one of the most important reference interest rates in Croatia and has thus far been calculated and published by the Croatian Banking Association. The ECB understands that as at September 2019 a 29% share of loans with a variable interest rate referenced the NRR; this share amounted to HRK 46 billion of credit institutions' loans[31]. The ECB understands that due to the importance of the NRR for the domestic financial market, and in order to ensure the continuity and independence of the NRR's calculation and publication, the NRR and related calculation methodology will be published by HNB on its website for the first time in May 2020, and will continue to be published on a quarterly basis.

2.8.1 Where a new task is conferred on an ESCB central bank, that task must be assessed against the prohibition on monetary financing under Article 123 of the Treaty. For the purposes of that prohibition, Article 1(1)(b)(ii) of Council Regulation (EC) No 3603/93[32] defines 'other type of credit facility' as, inter alia, 'any financing of the public sector's obligations vis-à-vis third parties'.

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29 See ECB Convergence Report 2018, p. 25-26.

30 See Article 76 of the Law on HNB.

31 See HNB press release 'The Croatian National Bank to take over the calculation and publication of the national reference rate (NRR)', 13.1.2020, available at www.hnb.hr.

32 Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty (OJ L 332, 31.12.1993, p. 1).

2.8.2 Ensuring that Member States implement a sound budgetary policy is one of the key objectives of the monetary financing prohibition, which may not be circumvented[33]. In view of this, the task of financing measures, which are normally the responsibility of the Member States and funded from their budgetary sources rather than by the NCBs, must not be entrusted to NCBs. To decide what constitutes financing of the public sector's obligations vis-à-vis third parties, which can be understood as providing central bank financing outside the scope of central bank tasks, it is necessary to carry out a case-by-case assessment of whether the task to be undertaken by an NCB is a central bank task or a government task, i.e. a task within the responsibility of the Member State. In other words, adequate safeguards must be in place to ensure strict compliance with the prohibition of monetary financing and the maintenance of sound budgetary policy by each Member State.

2.8.3 As part of its discretion in the exercise of its duty, on the basis of Article 271(d) of the Treaty and Article 35.6 of the Statute, and in order to ensure that NCBs honour the obligations laid down by the Treaty, the Governing Council has endorsed safeguards of that kind in the form of criteria for determining what may be seen as falling within the scope of a public sector's obligation within the meaning of Article 1(1)(b)(ii) of Regulation (EC) No 3603/93 or, in other words, what constitutes a government task as follows:

First, central bank tasks are in particular those tasks that are related to the tasks that have been conferred upon the ECB and the NCBs by the Treaty and the Statute. These tasks are mainly defined in Article 127(2), (5) and (6) and Article 128(1) of the Treaty, as well as Article 22 and Article 25.1 of the Statute.

Second, as Article 14.4 of the Statute allows NCBs to perform 'other functions', new tasks – i.e. tasks that are not related to tasks that have been conferred upon the ECB and the NCBs – are not precluded per se. However, new tasks that are undertaken by an NCB and that are atypical of NCB tasks or are clearly discharged on behalf of, and in the exclusive interest of the government or of other public sector entities, should be considered government tasks.

Third, an important criterion for qualifying a new task as atypical of an NCB task or as being clearly on behalf of, and in the exclusive interest of the government or other public sector entities, is the impact of the task on the institutional, financial and personal independence of that NCB.

In particular, the following aspects should be taken into account:

(a) whether the performance of the new task creates conflicts of interest with existing central bank tasks that are not adequately addressed, and does not necessarily complement those existing central bank tasks. If a conflict of interest arises between existing and new tasks, sufficient safeguards to mitigate that conflict should be in place. The complementarity between a new task and the existing central bank tasks should not be interpreted broadly, so as to lead to the creation of an indefinite chain of ancillary tasks. Such complementarity should also be examined in relation to the financing of those tasks;

33 Article 123 of the Treaty also serves the objective of maintaining price stability and reinforces central bank independence.

(b) whether without new financial resources the performance of the new task is disproportionate to the NCB's financial or organisational capacity, and may have a negative impact on its capacity to perform properly existing central bank tasks;

(c) whether the performance of the new task fits into the institutional set-up of the NCB in the light of central bank independence and accountability considerations;

(d) whether the performance of the new task harbours substantial financial risks;

(e) whether the performance of the new task exposes the members of the NCB decision-making bodies to political risks that are disproportionate and may also have an impact on their personal independence and, in particular, on the guarantee of term of office set out in Article 14.2 of the Statute.

2.8.4 On the basis of the criteria set out in paragraph 2.8.3, the following paragraphs assess whether HNB's new task is in line with the monetary financing prohibition.

New tasks related to the tasks conferred upon the ECB and the NCBs by the Treaty and the Statute

Calculation and publication of interest rate benchmarks is not among the central banking tasks listed in Article 127(2) or (5) of the Treaty or otherwise conferred upon the NCBs by the Statute. However, interest rate benchmarks are important for the functioning of financial markets. Financial markets rely on such benchmarks as a reference in financial contracts, in this case in mortgage and consumer loans. The absence of robust and reliable benchmarks might therefore trigger financial market disruptions with a possible adverse impact on HNB's ability to contribute to the stability of the financial system[34].

Tasks that are atypical of NCB tasks

Central banks have a particular interest in interest rate benchmarks, which are linked to financial stability. The ECB itself and the Eurosystem NCBs have tasks and responsibilities with respect to their contribution to the euro short-term rate determination process, albeit in the context of inter-bank rather than consumer lending[35]. HNB's new task of calculating and publishing the NRR on its website is not, therefore, atypical for an NCB of the ESCB.

Impact of the tasks on the independence of HNB

The ECB notes that the common framework to ensure the accuracy and integrity of indices used as benchmarks in financial instruments and financial contracts under Regulation (EU) 2016/1011 of the European Parliament and of the Council does not apply to central banks, as central banks already meet principles, standards and procedures aimed at ensuring they exercise their activities with integrity and in an independent manner[36]. Accordingly, HNB would have full discretion to develop the methodology for determining the NRR so as to ensure its accuracy, integrity and

34 See recital 1 of Guideline (EU) 2019/1265 of the European Central Bank of 10 July 2019 on the euro short-term rate (€STR) (ECB/2019/19) (OJ L 199, 26.7.2019, p. 8), and paragraphs 2 and 3.2.4 of Opinion CON/2014/2.

35 See Guideline (EU) 2019/1265 of the European Central Bank of 10 July 2019 on the euro short-term rate (€STR) (ECB/2019/19) (OJ L 199, 26.7.2019, p. 8).

36 See Recital 14 and Article 2(2)(a) of Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1).

reliability. When central banks provide benchmarks, it is their responsibility to establish appropriate internal procedures in order to ensure the accuracy, integrity, reliability and independence of those benchmarks, taking into account international best practice where relevant and appropriate[37]. The degree to which internal procedures of a central bank should meet best practice standards will depend on its assessment of the risks to which the benchmark is exposed, e.g. from manipulation risk.

Extent to which the performance of the new task creates conflicts of interest with existing central bank tasks

The performance of HNB's new task complements its existing tasks, as central banks have an interest in interest rate benchmarks for consumer loans due to their links to financial stability. HNB's new task also complements its existing activities related to the provision of data collected from credit institutions for regulatory purposes for the calculation of the NRR. As regards conflicts of interest that may arise with respect to the involvement of HNB staff and members of HNB's decision-making bodies in the production of the NRR, HNB might wish to consider publishing its arrangements for managing conflicts of interest on its website, in connection with the publication of the methodology for calculating the NRR. In the interests of accountability, HNB may also consider having the control procedures for the NRR audited for their compliance with relevant international best practices[38].

Extent to which the performance of the new task places a disproportionate burden on HNB's financial or organisational capacity

The principle of financial independence requires that Member States may not put their NCBs in a position where they have insufficient resources to carry out both their ESCB-related tasks and their national tasks, from an operational and financial perspective. Furthermore, when allocating specific new tasks to NCBs, each NCB concerned should have sufficient financial and human resources at its disposal to ensure that the tasks can be carried out without impacting on the NCB's financial or operational capacity to perform its ESCB tasks. In order to ensure that HNB's capacity to perform its ESCB-related tasks is not impacted, HNB must, therefore, be in a position to avail itself of the necessary resources, including personnel, to carry out its new task of calculating and publishing the NRR on its website.

Extent to which performance of the new task fits into HNB's institutional set-up, in the light of the principles of central bank independence and accountability

The performance of the new task fits smoothly into HNB's institutional set-up, given the links with financial stability. The new task does not therefore raise accountability or personal and institutional independence concerns.

Extent to which the performance of tasks harbours substantial financial risks

The draft law on credit institutions does not directly address HNB's potential liability in the event of any legal proceedings for damages in relation to the exercise of its powers under the draft law or

37 See paragraph 3.4 of Opinion CON/2019/18, and Board of the International Organization of Securities Commissions (OICU-IOSCO), Principles for Financial Benchmarks (July 2013), available at www.iosco.org.

38 See OICU-IOSCO Principles for Financial Benchmarks (July 2013), p. 27.

the failure to exercise these powers. In the absence of any provision in the draft law excluding HNB's liability, HNB would ultimately be liable for damages in accordance with the general liability regime under Croatian law. Therefore, the new task conferred on HNB under the draft law would entail additional financial risks.

Extent to which the performance of the new task exposes members of HNB's decision-making bodies to disproportionate political risks and has an impact on their personal independence

The performance of the new task does not appear to expose the members of HNB's decision-making bodies to any disproportionate political risk or to have an impact on their personal independence.

Conclusion regarding the compatibility of the draft law with the prohibition on monetary financing

HNB's new task of calculating and publishing the NRR on its website complements HNB's financial stability role, as well as HNB's existing provision of data for calculating the NRR. This task is not atypical for NCBs in the ESCB; the ECB itself and the Eurosystem NCBs have tasks and responsibilities in contributing to the euro short-term rate determination process, albeit in the context of inter-bank rather than consumer lending. When central banks calculate and publish interest rate benchmarks, it is their responsibility to establish appropriate internal procedures in order to ensure the accuracy, integrity, reliability and independence of those benchmarks, taking into account international best practice where relevant and appropriate. In addition, they should avail themselves of the necessary resources, including personnel, to carry out this new task.

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

Done at Frankfurt am Main, 18 March 2020.

[signed]

The President of the ECB

Christine LAGARDE