EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 13 September 2013

on amendments to the Central Bank of Malta Act

(CON/2013/69)

Introduction and legal basis

On 14 August 2013, the European Central Bank (ECB) received a request from the Central Bank of Malta (hereinafter 'CBM') for an opinion on draft amendments to the Central Bank of Malta Act[1] (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 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[2], as the draft law concerns the CBM. 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 introduces additional amendments to the Central Bank of Malta Act in order to cater for further legal developments with regard to the previous version of the draft legislation, on which the ECB commented in Opinion CON/2011/43[3]. The draft law proposes adding a new paragraph (d) in Article 5(1) in order to clarify that the CBM has been given the macro-prudential policy mandate, as well as a new Article 17B to establish a Joint Financial Stability Board (JFSB) to ensure effective cooperation between the CBM and the Malta Financial Services Authority (MFSA), which is the competent authority as regards banking supervision. A new Article 8(3) also provides for the appointment of a second Deputy Governor.

2. Clarification of the macro-prudential policy mandate

2.1 Article 5(1)(d) of the draft law provides the CBM, as the sole macro-prudential authority, with the macro-prudential policy powers set out in the new Article 17A of the draft law, notwithstanding the fact that this task is currently assumed under Article 5(1)(c) of the Central Bank of Malta Act,

1 Cap 204 of the Laws of Malta.

2 OJ L 189, 3.7.1998, p. 42.

3 All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

which provides that the Bank is entrusted with the function of ensuring the stability of the financial system.

2.2 The ECB supports the design of effective macro-prudential policy frameworks within Member States, in line with the guiding principles set out in Recommendation ESRB/2011/3 of the European Systemic Risk Board of 22 December 2011 on the macro-prudential mandate of national authorities[4]. Moreover, the ECB considers that the ECB and national central banks (NCBs) should play a leading role in macro-prudential oversight, given their expertise and existing responsibilities in the area of financial stability[5].

2.3 At the same time, while the CBM's performance of macro-prudential tasks should be operational and financially independent[6], it should not affect: (a) the CBM's functional and financial independence; or (b) the European System of Central Banks' performance of its tasks under the Treaty and the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB')[7]. The ECB also understands that current provisions of the Central Bank of Malta Act, which ensure the CBM's independence in implementing its objectives and performing all its tasks and activities, will also cover the formulation and implementation of macro-prudential policy.

2.4 For the benefit of its macro-prudential oversight tasks, the CBM should be authorised to require and obtain in a timely fashion all data and information collected from reporting entities, such as all financial corporations and other entities which have the information at their disposal, including information other than that currently collected for other purposes, such as statistical purposes[8]. In this regard, the ECB welcomes the amendment to Article 23 of the Central Bank of Malta Act, which gives the CBM the general power to collect information related to statistics in respect of the CBM's macro-prudential mandate. The new Article 17A(2) provides the CBM, in its capacity as the single macro-prudential authority, with a mandate to cooperate with the ESRB and, where necessary, with other Member States' macro-prudential authorities, in particular with regard to the exchange of information required to ensure effective macro-prudential oversight.

2.5 This opinion does not prejudice the conclusions of the ESRB's follow-up assessment of the abovementioned recommendations, which will be issued pursuant to Article 17 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board[9].

---

4 OJ C 41, 14.2.2012, p. 1.

5 See, for example, paragraph 5.1 of Opinion CON/2012/44, paragraph 3.1 of Opinion CON/2012/55 and paragraph 2.1 of Opinion CON/2013/30.

6 See recommendation E of Recommendation ESRB 2011/3.

7 See paragraph 4 of Opinion CON/2009/88, paragraph 3.2 of Opinion CON/2012/55 and paragraph 2.3 of Opinion CON/2013/30.

8 See recommendation C of ESRB Recommendation 2011/3.

9 Regulation (EU) No 1092/2010; OJ L 331, 15.12.2010, p. 1.

3. Joint Financial Stability Board

3.1 The ECB welcomes the CBM's decision to establish the JFSB in the Central Bank of Malta Act by virtue of Article 17B of the draft law and considers that this will enhance the CBM's role as a national macro-prudential authority. The ECB understands that the JFSB mainly serves as a forum for cooperation between the CBM and the MFSA on issues which, though falling within the separate competences of the CBM and MFSA, may ultimately affect financial stability generally. The ECB also understands that the new Article 17B will not shift any executive powers relating to macro-prudential policy to the JFSB, and that the insertion of Article 17B(1) will further clarify the JFSB's status as a body intended to assist the two institutions in the performance of their regulatory tasks by facilitating cooperation between them.

3.2 On a related note, the amendments provide for two types of macro-prudential instrument. The new Article 17A covers the first type addressing macro-prudential issues, referring to directives issued by the CBM and addressed to commercial banks, in order to implement macro-prudential policy and instruments. The second refers to instruments addressing financial stability matters generally and macro-prudential issues specifically, and comprises the JFSB's recommendations, advice or assessments addressed to public authorities or public institutions. The ECB understands that the CBM is the sole competent authority to issue macro-prudential instruments, primarily concerning the banking sector[10], while the JFSB, as a forum for cooperation, may make recommendations to the CBM Governor on macro-prudential instruments and may further advise other public authorities or institutions on financial stability issues.

3.3 The ECB also welcomes Article 17B(4), which provides that the JFSB's functions should be performed without prejudice to the Treaty and the Statute of the ESCB and any legal acts issued thereunder, ensuring that the JFSB's activities must also take account of the ECB's macro-prudential supervisory powers in the context of the single supervisory mechanism.

4. Appointment of a second Deputy Governor

4.1 The ECB welcomes Article 8(3), which provides for the appointment of a second Deputy Governor, who will be responsible for the financial stability mandate. A number of NCBs already employ this arrangement, based on an allocation of tasks. The ECB agrees that having two Deputy Governors, one responsible for the monetary policy mandate and the other for the financial stability mandate, will improve the streamlining and effective division of responsibilities at senior management level within the CBM.

4.2 A Member State's relevant authorities have the duty to take necessary measures to ensure the timely appointment of a successor if a member's position on one of its NCB's decision-making bodies becomes vacant. In this regard, the ECB welcomes the amendment to Article 8(3)(b), which

10 See Article 17A of the draft law.

reflects the need for the smooth and continuous functioning of the CBM's decision-making bodies. By virtue of this provision, a Deputy Governor may be temporarily appointed by the Board to carry out the duties of a Governor in case of a vacancy. However, the appointment of a new Governor under the provisions of Article 8 should take place as soon as possible.

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

Done at Frankfurt am Main, 13 September 2013.

[signed]

The President of the ECB

Mario DRAGHI