

Yves Mersch
Member of the Executive Board

[COURTESY TRANSLATION¹]

Mr. Harris Georgiades
Minister of Finance
Michael Karaoli & Gregori Afxentiou
1439 Nicosia
Cyprus

2 August 2019

Dear Mr. Georgiades,

Thank you for your letter of 6 June 2019 requesting an opinion of the European Central Bank (ECB) on a draft law amending the Business of Credit Institutions Law of 1997 (66(I)/1997) (hereinafter the 'draft law').

After careful consideration, the ECB has decided not to adopt an opinion in the present case on the draft law as the main purpose of the proposed amendments is to ensure a better alignment of the Cypriot legal system with Union law, in particular with (a) 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 firms² (CRD IV); (b) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms³ (CRR); (c) 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 firms⁴ (BRRD); and (d) the Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU⁵.

Pursuant to Article 1(2) of Council Decision 98/415/EC⁶, Member States are not required to consult the ECB on draft legislative provisions the exclusive purpose of which is the transposition of Union directives

¹ The official ECB letter is addressed in the official language of the concerned Member State.

² 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).

³ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

⁴ 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).

⁵ EBA/GL/2017/12.

⁶ 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).

into the law of Member States. The rationale for this exemption is that the ECB will already have been consulted on the proposed Union act pursuant to Article 127(4) of the Treaty on the Functioning of the European Union, and it is therefore unnecessary to extend the ECB's advisory function to draft legislative provisions which purely transpose that Union act. The ECB is of the opinion that this extends by analogy, to draft legislative provisions which have the exclusive purpose of transposing Union regulations into national law, provided that they do not have an impact on matters falling within the ECB's fields of competence which is different from the impact of the regulation itself, on which the ECB will have been consulted by Union institutions⁷. In this respect, the ECB would like to draw your attention to the ECB Opinions CON/2014/9, CON/2016/10, CON/2016/11, CON/2017/6 and CON/2018/37⁸ which concern the Union legal acts referred to above.

In assessing the present consultation request, the ECB also took note of the proposed amendments which remove the references to the Cyprus Cooperative Bank from the Business of Credit Institutions Law in view of the withdrawal of its banking license by the ECB Governing Council on 31 August 2019. It is noted that these amendments do not touch, or only touch marginally, on the ECB's fields of competence.

The ECB also took note of the deletion of Article 11 of the Business of Credit Institutions Law and the corresponding revision of Article 15 of that Law, which grants the Central Bank of Cyprus (CBC) the power to issue directives for the purposes of limiting authorised credit institutions from granting credit facilities to members of the management bodies and qualified shareholders. The ECB provided its views on the said limitation in the ECB Opinion CON/2016/48. Against this backdrop, the draft law does not merit the issuance of an ECB opinion.

The ECB appreciates that the Ministry of Finance has sent the draft law to the ECB for consultation and trusts that the Ministry of Finance will continue to consult the ECB on draft Cypriot legislation falling within the ECB's fields of competence pursuant to Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union, and in particular on any draft legislation concerning CBC's power to impose limitations on the granting of credit facilities to the members of management bodies and qualified shareholders of authorised credit institutions in case it goes beyond the provisions on limitations to credit facilities currently in force.

Yours sincerely,

[signed]

Cc: Mr. C. Herodotou, Governor of the Central Bank of Cyprus

⁷ See European Central Bank, Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions (October 2015), available on the ECB's website at: <https://www.ecb.europa.eu/pub/pdf/other/guideconsultationecb2005en.pdf>.

⁸ Available on the ECB's website at www.ecb.europa.eu.