



OPINION OF THE EUROPEAN CENTRAL BANK

of 18 November 2008

at the request of Българска народна банка (Bulgarian National Bank)

on a draft law amending the Law on credit institutions

(CON/2008/71)

Introduction and legal basis

On 22 October 2008 the European Central Bank (ECB) received a request from the Governor of Българска народна банка (Bulgarian National Bank) (BNB) for an opinion on a draft law amending the Law on credit institutions (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 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 provisions¹, as the draft law relates to BNB 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 is primarily aimed at transposing Directive 2007/44/EC² into national law and adopting other related provisions³. The ECB has not been consulted on the transposition measures. Accordingly, this opinion only relates to: (i) the draft law provisions on the establishment of a register of financial institutions managed by BNB⁴; and (ii) the introduction of a European dimension to BNB’s supervisory powers.

¹ OJ L 189, 3.7.1998, p. 42.

² Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (OJ L 247, 21.9.2007, p.1).

³ See draft Articles 79(1) and 103(2).

⁴ See draft Articles 3 and 3a.

2. Specific comments

- 2.1. The draft law will empower BNB to carry out new tasks related to setting up and maintaining a register of financial institutions at BNB⁵. In particular, financial institutions not subject to license or registration under another law will be entered into the BNB register in order to be able to carry out their activities. The ECB welcomes the creation of the public register for financial institutions at BNB and recommends that BNB be provided with sufficient financial and personnel resources to carry out its register-related tasks⁶.
- 2.2. Furthermore, it is important to ensure that the draft law complies with Community legislation, and in particular with the definition of financial institutions. In this regard, the list of activities financial institutions may engage in should also include the issuance and administration of means of payment⁷ as provided for in Article 4(5) of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast)⁸. However, the ECB understands that the draft law on payment services and payment systems (LPSPS), on which the ECB has recently been consulted⁹, provides for the amendment of Articles 2(2) and 3(1) of the Law on credit institutions according to which the provision of payment services within the meaning of the LPSPS and the issuing and administering of other means of payment (e.g. traveller cheques and letters of credit) will be included within the list of activities that financial institutions may engage in. It appears that both draft laws will enter into force at different points in time. In this respect, the two draft laws should be properly aligned in order to remove this inconsistency with Community legislation.
- 2.3. Moreover, draft Article 3a(3) should also be aligned with Community legislation so that the application of this provision is explicitly restricted to financial institutions established in Bulgaria, and thus does not apply to financial institutions of other Member States.
- 2.4. Finally, the draft law provides that, in exercising its supervisory functions, BNB must recognise the possible impact of its actions on the financial stability of other Member States¹⁰. The ECB notes that this provision is aimed at reflecting the conclusions of the Ecofin meeting of 14 May 2008,

⁵ See Article 3 and 3a of the draft law.

⁶ See paragraph 4 of ECB Opinion CON/2007/40 of 12 December 2007 at the request of Българска народна банка (Bulgarian National Bank) on a draft law introducing a licensing regime for entities providing money remittance services; paragraph 2 of ECB Opinion CON/2007/38 of 23 November 2007 at the request of the Slovenian Ministry of Finance on a draft law on foreign exchange; paragraph 3.3 of ECB Opinion CON/2007/29 of 5 October 2007 at the request of the Portuguese Ministry of Finance and Public Administration on a draft decree-law amending the legal framework of credit institutions and financial companies; paragraph 2.1 of ECB Opinion CON/2007/23 of 2 August 2007 at the request of Banca Națională a României on a draft law on non-banking financial institutions; and paragraph 3.2 of ECB Opinion CON/2007/17 of 18 June 2007 at the request of the Italian Ministry of Economic Affairs and Finance on a draft law on the regulation and supervision of markets and the functioning of the competent independent authorities.

⁷ See sub-paragraph 2 of Article 2(2) of the Law on credit institutions published in *Darjaven Vestnik* issue No 59, 21.07.2006, as last amended on 05.08.2008.

⁸ OJ L 177, 30.6.2006, p. 1.

⁹ On 22 October 2008 the ECB received a request from the BNB's Governor for an opinion on a draft law on payment services and payment systems.

¹⁰ See draft Article 79(1).

namely that the mandates of national supervisory authorities should allow them to take the EU dimension into account in exercising their duties¹¹.

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

Done at Frankfurt am Main, 18 November 2008.

[signed]

The President of the ECB

Jean-Claude TRICHET

¹¹ See the Council conclusions on the EU Supervisory Framework and Financial Stability Arrangements, as agreed by the Ecofin on 14 May 2008, available on the Council's website at <http://consilium.europa.eu>.