



OPINION OF THE EUROPEAN CENTRAL BANK

of 9 September 2010

on amendments to the legal framework for the operation of Bank Gospodarstwa Krajowego

(CON/2010/70)

Introduction and legal basis

On 16 August 2010 the European Central Bank (ECB) received a request from the Polish Parliament's Sejm for an opinion on a draft law (hereinafter 'the draft law') amending the Law of 14 March 2003 on Bank Gospodarstwa Krajowego (hereinafter the 'Law on BGK')¹.

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 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 provisions², as the draft law relates to Narodowy Bank Polski (NBP) and contains 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

1.1 Bank Gospodarstwa Krajowego (BGK) is the only Polish credit institution established by legislation as a State bank³. Its main activities include supporting the government's socio-economic programmes, as well as local self-government and regional development projects. Within this scope, BGK provides banking services to public entities and several public funds established for special purposes, including those established to distribute Union funds. As a specific financial

¹ Dz. U. of 2003, No 65, item 594.

² OJ L 189, 3.7.1998, p. 42.

³ See Article 2(1) of the Law on BGK in conjunction with Article 1 of the Regulation of the President of Poland of 30 May 1924 merging the State credit institutions into Bank Gospodarstwa Krajowego (*Dziennik Ustaw* (Dz. U.) of 1924 No 46, item 477). See also Article 46(1) of the Law on banking of 13 April 1960 (Dz. U. of 1960 No 20, item 121) together with Article 64(2) of the Law on banking of 12 June 1975 (Dz. U. of 1975 No 20, item 108) and Article 96(1)(1) of the Law on banking of 26 February 1982 (Dz. U. of 1982 No 7, item 56). See also Article 14(1) of the Law on banking of 29 August 1997 (consolidated text: Dz. U. of 2002 No 72, item 665) (hereinafter the 'Law on banking'). See Regulation of the Minister for the State Treasury of 11 May 2010 laying down the articles of incorporation for Bank Gospodarstwa Krajowego (Dz. U. of 2010 No 81, item 535).

institution created for public purposes, BGK is exempted from Directive 2006/48/EC of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast)⁴.

- 1.2 According to the draft law's explanatory memorandum⁵, one of the main aims of the draft law is to reduce the cost of borrowing by BGK on the financial markets. The draft law intends to improve BGK's credit rating up to a level similar to the rating of Poland's sovereign debt. This effect would be achieved by introducing an explicit provision on the liability of the State Treasury for BGK's debts in case of BGK's liquidation⁶. Moreover, the draft law also significantly relaxes the rules on transfers of funds between BGK and the State Treasury, by introducing (i) a general obligation for the Minister for public finance to provide BGK with own funds sufficient to carry out its statutory tasks⁷, and (ii) the possibility of reducing BGK's statutory funds if they exceed the level necessary to comply with supervisory requirements and, consequently, resulting in a transfer to the State budget⁸. The draft law aims also to facilitate the refinancing of BGK's real estate activities, including in particular its support of government housing programmes, by creating a legal basis for issuance by BGK of mortgage-backed securities⁹. The draft law also streamlines and clarifies Law on BGK.
- 1.3 As a result of the draft law, BGK will also become the provider of core banking services to the State budget and State budget entities. State bank accounts, including those for the State budget, State budget entities and tax authorities, are currently operated by NBP which maintains a legal monopoly on providing core banking services to the State until Poland's adoption of the euro¹⁰. The draft law removes this limitation¹¹, allowing the Minister for Finance to select either NBP or BGK as a provider of banking services. After the entry into force of the draft law, NBP would, if selected, therefore be allowed¹² - but no longer legally required - to fulfil the function of fiscal agent of the State.

2. General observations

In view of the envisaged strengthening of BGK's market position resulting from the draft law expressly introducing State liability for BGK's obligations, the ECB notes its previous observations on the need to

4 OJ L 177, 30.6.2006, p. 1. See Article 2.

5 Not yet available on Sejm's website.

6 Article 1(2) of the draft law, amending Article 3(4) of the Law on BGK.

7 Article 1(2) of the draft law, amending Article 3(3) of the Law on BGK.

8 Article 1(7) of the draft law, inserting new Article 5c to the Law on BGK.

9 Article 1(8) of the draft law, inserting new Article 6a to the Law on BGK.

10 Resulting from Article 196(2) and (4) of the Law of 27 August 2009 on public finance (Dz. U. of 2009, No 157, item 1240).

11 Article 5 of the draft law, deleting Article 196(4) of the Law on public finance.

12 Under Article 196(2) of the Law on public finance and Article 51(1)(2) of the Law of 29 August 1997 on Narodowy Bank Polski (consolidated text: Dz. U. of 2005, No 1, item 2).

maintain a level playing field and to avoid undue distortions of competition between financial institutions¹³.

3. Specific observations

- 3.1. The ECB understands that BGK may be a counterparty for NBP's monetary policy operations, and that mortgage-backed securities issued by BGK may become eligible as collateral for the NBP's monetary policy operations¹⁴. The ECB reminds the Polish authorities that compliance with the monetary financing prohibition laid down in the Treaty needs to be ensured. In this respect, Article 123(2) of the Treaty lays down that publicly owned credit institutions shall be given the same treatment as private credit institutions insofar as participation in monetary policy operations of the central banks is concerned, whereas the prohibition contained in Article 123(1) of the Treaty against purchases in the primary market of securities issued by the public sector applies also to publicly owned credit institutions. Therefore, NBP may not purchase mortgage-backed securities issued by BGK in the primary market¹⁵.
- 3.2. Article 21.2 of the Statute of the European System of Central Banks and of the European Central Bank (ESCB Statute) expressly recognises the provision by the ECB or the national central banks of fiscal agency services to the public sector, as it is a legitimate function traditionally performed by central banks¹⁶. However, Article 21.2 of the ESCB Statute does not oblige the central banks to undertake any fiscal agency functions. In view hereof, the ECB takes note of the possibility for the Minister of Finance to select BGK instead of the NBP as provider of banking services to the State budget¹⁷.
- 3.3. In view of the envisaged possibility of reducing BGK's statutory funds and transferring the difference to the State budget¹⁸, the ECB understands that sufficient safeguards will be in place to ensure that such a transfer would not compromise BGK's compliance with banking supervisory requirements.

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

¹³ See paragraph 2.2 of ECB Opinion CON/2009/22. All ECB opinions are available on the ECB's website at www.ecb.europa.eu.

¹⁴ As published and updated from time to time on NBP's website www.nbp.pl.

¹⁵ See also in part paragraph 3.2 of ECB Opinion CON/2009/68.

¹⁶ See Chapter 2 of the ECB Convergence Report of May 2010.

¹⁷ Article 5 of the draft law, deleting Article 196(4) of the Law of 27 August 2009 on public finance (Dz. U. of 2009, No 157, item 1240).

¹⁸ Article 5c of the Law on BGK, as amended by Article 1(7) of the draft law.

Done at Frankfurt am Main, 9 September 2010.

[signed]

The President of the ECB

Jean-Claude TRICHET