



OPINION OF THE EUROPEAN CENTRAL BANK

of 27 January 2011

on closed-end investment funds issuing non-public investment certificates

(CON/2011/4)

Introduction and legal basis

On 20 December 2010, the European Central Bank (ECB) received a request from the Polish Minister for Finance for an opinion on a draft law amending the Law on investment funds (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 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 provisions¹, as the draft law 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 The draft law amends the Law of 27 May 2004 on investment funds² (hereinafter the 'Law on investment funds'), which defines the rules for the creation and operation of investment funds registered in Poland and the rules under which foreign funds and foreign management companies may operate in Poland.
- 1.2 The Law on investment funds provides that an investment fund may be created as: (a) an open-end investment fund, which sells and redeems units at the request of a unit-holder, or (b) a closed-end investment fund, which issues either public investment certificates or non-public investment certificates. The creation of any investment fund requires the authorisation of the Polish Financial Supervision Commission (FSC).
- 1.3 The draft law is aimed at implementing new rules for the supervision of closed-end investment funds issuing only investment certificates which, pursuant to the fund's articles of association, will not be: (a) offered by way of a public offering; (b) admitted to trading on a regulated market; or

¹ OJ L 189, 3.7.1998, p. 42.

² *Dziennik Ustaw* of 2004 No 146, Item 1546.

(c) introduced to an alternative trading system. In particular, the draft law proposes that the FSC's authorisation should not be required to establish such a fund³ as it issues only non-public investment certificates addressed to professional investors. Pursuant to the explanatory memorandum to the draft law, professional investors do not require such extensive protection of their interests by the regulator given their experience and knowledge.

- 1.4 The draft law also adapts the requirements, including the capital requirements, relating to such funds to the new supervision model. In addition, there are changes relating to the conversion of non-public investment certificates into public certificates, taking into account the new rules for establishing closed-end investment funds which have issued non-public investment certificates⁴.

2. General observations

- 2.1 The ECB takes note of the reasons underlying the new rules for the supervision of closed-end investment funds as described in paragraph 1.3, and in particular that the currently applicable supervision model governing such funds does not meet the expectations and needs of professional investors⁵. The ECB also notes that pursuant to the draft law the FSC's authorisation will no longer be required to establish such closed-end investment funds⁶.
- 2.2 Although the draft law refers to funds to which harmonised Union rules do not apply, the consulting authorities could consider using the experience of other Member States in which authorisation requirements for closed-end investment funds exist at a national level. As far as safeguards against misassessment of investment risks are concerned, the minimum investment level provided for by the draft law⁷ could be complemented with adequate information requirements to ensure that investors are aware of and are able to assess the risks connected to the conducted transactions. Such information requirements could include references to the risk profile of the acquired instruments and to the supervisory regime which applies to the fund.

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

Done at Frankfurt am Main, 27 January 2011.

[signed]

Vice-President of the ECB

Vítor CONSTÂNCIO

³ See Article 1(3)-(4) of the draft law.

⁴ See Article 1(19) of the draft law.

⁵ See the explanatory memorandum to the draft law, p. 1.

⁶ See Article 1(4) of the draft law.

⁷ See Article 1(18) of the draft law.