



OPINION OF THE EUROPEAN CENTRAL BANK

of 24 October 2012

on fiscal rules and on the servicing of bank accounts and payments of budget organisations

(CON/2012/79)

Introduction and legal basis

On 28 August 2012, the European Central Bank (ECB) received a request from the Bulgarian Ministry of Finance for an opinion on a draft law on public finance (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 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 relates to Българска народна банка (Bulgarian National Bank or BNB). 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 aims of the draft law are to: (a) improve the system for public finance management, including through the application of fiscal rules by the central and local authorities; (b) provide for the common organisation and structure of public finances as an integrated system for ensuring and financing public goods and services, the reallocation and transferring of incomes and the accumulation of resources by budget organisations; (c) consolidate national fiscal rules, *inter alia*, by introducing rules for the structural deficit, and for the deficit and consolidated debt of the general government sector; (d) transpose Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States² and create the conditions for the implementation of related regulations; and (e) provide for detailed rules on the servicing of bank accounts and payments of budget organisations by BNB and by banks, and for the interaction between BNB and the Ministry of Finance with regard to such servicing.

The system for public finance management established by the draft law is combined with a system for the servicing of bank accounts and payments of budget organisations. The servicing of bank accounts of budget organisations and budget organisation payments is carried out by BNB and by banks, subject to the rules laid down in the draft law, and in accordance with the joint instructions of the Minister for

¹ OJ L 189, 3.7.1998, p. 42.

² OJ L 306, 23.11.2011, p. 41.

Finance and the Governor of BNB. Funds from the Union are paid into, kept and serviced in bank accounts at BNB. A limited number of exceptions to this rule are set out in the draft law.

In order to ensure that public funds are secured, where accounts and payments of budget organisations are serviced by banks, the banks will guarantee the full amount of available cash funds in all accounts and deposits serviced by them in levs and exchangeable currency of the budget organisations. In this respect, BNB shall carry out services to enable the banks to guarantee the funds in favour of the Ministry of Finance. The types of guarantee are set out in the draft law. The Minister for Finance and the Governor of BNB can change the amount and the type of bank assets which serve as guarantee, as well as the terms and conditions of the guarantee referred to in the draft law³.

The accounts of the budget organisations with BNB are organised and serviced in a single system for collection, deposit, payment and accounting (hereinafter the ‘single account’). BNB services the single account and the other accounts and payments of budget organisations in accordance with the rules provided for in the draft law, and with the requirements of Article 43 of the Law on the Bulgarian National Bank (hereinafter the ‘Law on the BNB’)⁴. BNB, on behalf and on the account of the Ministry of Finance, services the accounts of the budget organisations included in the single account. The Ministry of Finance pays BNB on a contractual basis for the servicing of the single account and for the services connected with information provision for the accounts of budget organisations⁵.

2. Prohibition on monetary financing

2.1 It is important to safeguard compliance with the monetary financing prohibition pursuant to Article 123 of the Treaty. The prohibition is essentially designed to prevent national central banks (NCBs) from providing overdraft facilities or any other type of credit facility to the public sector⁶. National legislation may not therefore require that an NCB finance the performance of functions of other public sector bodies⁷. In this regard, the ECB notes that the draft law stipulates that payments in the single account system are carried out up to the amount of the total availability of the single account, within the framework of the relevant availability and limits referred to in Article 154(1), (13), and (14) of the draft law. BNB does not bear liability for non-payments or delayed payments

³ Article 152(8) of the draft law.

⁴ According to this provision, the BNB shall act as a fiscal agent and depository of the State pursuant to contracts concluded and under market conditions and at market prices of services. In this capacity, the BNB is *inter alia* responsible for executing bank servicing of accounts and payments included in the single account system, in the name and for the account of the Ministry of Finance; collecting and submitting to the Ministry of Finance regular information about the accounts of public-financed enterprises with banks in Bulgaria; and acting as a government debts agent and a government guaranteed debts agent. In its capacity as a government debts agent, the BNB keeps government securities accounts, which shall be registered according to debt transferees. BNB may act as an authorised representative of the Council of Ministers for purposes and under conditions established thereby and by the Council of Ministers.

⁵ Article 154(12) of the draft law.

⁶ The precise scope of application of the monetary financing prohibition is further clarified by Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty, (OJ L 332, 31.12.1993, p. 1).

⁷ ECB Convergence Report 2012, p. 29.

due to an insufficiency of funds in the single account⁸. The ECB understands that temporary interest-free loans⁹ from accounts which will be serviced by BNB do not involve any financing by the BNB as this would otherwise not be compliant with the monetary financing prohibition.

- 2.2 The ECB acknowledges that the draft law refers to services to be carried out by BNB as agent of the State. Article 21.2 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the ‘Statute of the ESCB’) establishes that the ‘ECB and national banks may act as fiscal agents’ for ‘Union institutions, bodies, offices or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States’. The ECB understands that the provision of services by BNB pursuant to the draft law is to be read in conjunction with Article 43 of the Law on the BNB, according to which BNB shall act as the fiscal agent and depositary of the State by virtue of contracts concluded at market conditions and prices. As noted in the ECB’s Convergence Report, national legislation that enables an NCB to hold government deposits and to service government accounts does not raise concerns about the compliance with the monetary financing prohibition as long as such provisions do not allow the extension of credit, including overnight overdrafts, and that deposits or current account balances are not remunerated above market rates¹⁰.

3. Central bank independence

The ECB expects that BNB’s involvement will be fully compatible with its institutional and financial independence¹¹ to safeguard the proper performance of its tasks under the Treaty and the Statute of the ESCB. The principle of central bank independence, *inter alia*, requires that Member States do not put their NCBs in a position where they have insufficient financial resources and inadequate net equity to carry out their tasks related to the European System of Central Banks or Eurosystem¹². The ECB acknowledges that the envisaged arrangements serve the system of servicing of the bank accounts and payments of budget organisations, and consequently of the system for public finance management. The ECB understands that instructions of the Minister for Finance relating to the services of BNB are limited to the role of the State and the budget organisations as clients and beneficiaries of accounts serviced by BNB. Furthermore, the ECB notes that BNB is able to charge appropriate fees for the provision of services under the draft law.

⁸ Article 154 (21) of the draft law.

⁹ Articles 104 and 142 of the draft law.

¹⁰ ECB Convergence Report 2012, p.31; see also Opinions CON/2012/44 paragraph 3.3 and CON/2012/63 paragraph 6.2.2. All ECB opinions are published on the ECB’s website at www.ecb.europa.eu.

¹¹ See ECB Convergence Report 2012, pp. 21-28.

¹² See Opinion CON/2012/63 paragraph 6.1.

4. Accountancy and statistics

With regard to accountancy, the ECB notes that Article 165(1) provides that the Ministry of Finance, upon agreement with the National Statistical Authority, may instruct enterprises which are not budget organizations and which fall within the general government sector to apply the relevant standards, instructions and accountancy plans. The list of these enterprises shall be published on the websites of both institutions. The ECB is of the opinion that complete and reliable public accounting practices for all sub-sectors of general government are a precondition for the production of high-quality statistics. In addition, Article 169 of the draft law specifies that the standards, instructions and accounting plan will provide the statistical information for preparation of the data on the general government sector and its subsectors in accordance with the requirements of the Union. To ensure high-quality statistics, the ECB considers that this provision could benefit from a reference to Council Regulation (EC) No 679/2010 of 26 July 2010 amending Regulation (EC) No 479/2009 as regards the quality of statistical data in the context of the excessive deficit procedure¹³ which strengthens the Commission's powers to access a widened scope of information for the needs of data quality assessment, in full compliance with Council Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics¹⁴ establishing a legislative framework for the production of European statistics. The latter Regulation also lays down the principles governing the development, production and dissemination of European statistics as regards professional independence, impartiality, objectivity, reliability, statistical confidentiality and cost-effectiveness.

5. Numerical fiscal rules

The draft law contains numerical fiscal rules associated with automatic correction mechanisms where expected budgetary outcomes deviate from targets. The ECB considers that numerical fiscal rules contribute to enhancing fiscal discipline as intended under the strengthened Union governance framework. To ensure full compliance with Union fiscal governance rules and possible future changes thereto, the draft act should refer to the relevant Union legislation¹⁵.

6. Fiscal transparency

The availability of timely and reliable fiscal data is crucial to the proper functioning of budgetary surveillance and the monitoring of budgetary developments. A key element in ensuring the quality of fiscal data is transparency, which must entail the regular public availability of such data. However, the draft law does not cover all the requirements under Directive 2011/85/EU, such as the obligation to publish cash-based fiscal data (or the equivalent figure from public accounting if cash-based data are not

¹³ OJ L 198, 30.7.2010, p. 1.

¹⁴ OJ L 87, 31.3.2009, p. 164.

¹⁵ This includes the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, which Bulgaria signed on 2 March 2012, as well as the six legislation changes to strengthen the Union economic governance framework (the so-called 'six-pack') which entered into force on 13 December 2011, including Directive 2011/85/EU.

available) on a monthly basis for central government, state government and social security sub-sectors, and on a quarterly basis for the local government sub-sector. Moreover, for fiscal transparency reasons and to ensure compliance with the relevant Union legislation, the ECB suggests that the draft law also obliges the government to publish a detailed reconciliation table showing the methodology of transmission between cash-based data and data based on ESA 95 as required under Directive 2011/85/EU.

7. Government deposits and liquidity management

Article 154(22) of the draft law allows the Minister for Finance to manage the government liquidity, including the single account, without any prior coordination with BNB, except for general guidelines about the government liquidity management. The ECB notes that the management of the government liquidity may interfere with the smooth implementation of monetary policy by BNB. Indeed, placing the government liquidity either with BNB or with the Bulgarian banking system may trigger large liquidity effects for the economy which are equivalent to monetary policy operations. As a result, the lack of any prior coordination with the BNB regarding the management of the government liquidity may jeopardise the smooth fulfillment of the monetary policy mandate of the BNB, which is a deficiency that should be addressed in the draft law.

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

Done at Frankfurt am Main, 24 October 2012.

[signed]

The President of the ECB

Mario DRAGHI