



OPINION OF THE EUROPEAN CENTRAL BANK

of 18 February 2013

on the amended calculation of the annual financial stability contribution

(CON/2013/13)

Introduction and legal basis

On 5 February 2013, the European Central Bank (ECB) received a request from the Nationale Bank van België/Banque Nationale de Belgique (NBB), acting on behalf of the Belgian Ministry of Finance, for an opinion on a draft law amending the Law of 28 December 2011 establishing a financial stability contribution (hereinafter the 'draft law'). The ECB was requested to deliver an opinion under extremely urgent circumstances.

The ECB's competence to deliver an opinion is based on Article 127(4) and 282(5) of the Treaty on the Functioning of the European Union and the fifth 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, since the draft law relates to settlement systems and the 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 In order to improve the method for calculating the annual financial stability contribution set out in the Law of 28 December 2011, on which the ECB was previously consulted², the draft law aims to adjust the financial stability contribution according to the level of risks of the assets held by Belgian credit institutions.
- 1.2 The method for calculating the financial stability contribution – which currently amounts to 0.035% of all credit institutions' total liability after deduction of (i) deposits eligible for reimbursement by the Belgian deposit guarantee scheme, and (ii) their regulatory capital, regardless of their activities – would differ, depending on whether (a) the credit institution is systemically important within the meaning of Article 36/3, § 2 of the Law of 22 February 1998 establishing the Organic Statute of the Nationale Bank van België/Banque Nationale de Belgique (hereinafter the

¹ OJ L 189, 3.7.1998, p. 42.

² CON/2011/103.

‘NBB Statute’) and whether (b) such credit institution acts as depository within the meaning of the Royal Decree No 62 of 10 November 1967 on the deposit of fungible financial instruments and the settlement of transactions in respect of such instruments.

- 1.3 Under the draft law, the financial stability contribution for the systemically important credit institutions would be adjusted from 1 January 2014, as they potentially incur a greater market risk and are hence more likely to trigger intervention by the stability fund. Such increase is calculated on a consolidated basis and on the basis of a risk indicator defined as the ratio of (i) the total financial assets held for trading, after deduction of 80% of the total of derivatives held for trading to (ii) the balance sheet total. The preparatory works for the draft law consider such approach in line with the structural reform measures currently under discussion in the European Union and the United States in order to protect deposit-taking banks against risk-taking activities³.
- 1.4 The systemic risk posed by credit institutions acting as a central securities depository and/or a securities settlement system differs from risk posed by other credit institutions, in view of their inherently different activities, volatility of the balance sheet’s size, liabilities’ structure and regulatory regime. Hence, the draft law sets out a regime prevailing over the regime applicable to systemically important credit institutions. First, the rate of the financial stability contribution is increased from 3.5 to 9.5 basis points. Second, to limit the negative effects of excessive balance sheet volatility, such rate is applied to an annual average of month-end figures rather than such amount calculated at 31 December of the year preceding collection of the financial stability contribution. Third, such rate applies to the total of (i) the amounts due to credit institutions defined as any term accounts and any debts resulting from assignments and advances, (ii) amounts due to customers defined as any term deposits or deposits with notice, any special deposits and any debts to other creditors, (iii) all liabilities represented by securities, and (iv) subordinated liabilities. Such adaptations would be applicable to the financial stability contribution for 2013.

2. Specific observations

- 2.1 The ECB welcomes the draft law, which adjusts the calculation of the financial stability contribution in proportion to the risk profile of the credit institutions, as defined with reference to the importance of its trading activities, off-balance sheet exposure and systemic importance for the market in question. In this manner, such adjustment would align the calculation of the financial stability contribution to that of the annual contribution to the Belgian deposit guarantee scheme⁴⁵.

³ The preparatory works (p. 2) refer to the Vickers proposal which is based on the concept of ring-fencing, i.e. isolating from the rest of the banking sector credit institutions that collect deposits from individuals and small and medium-sized enterprises. Such works also refer to the Volcker rule in the United States, which aims to reduce excessive risk-taking by banks, by prohibiting banks from proprietary trading and from owning or sponsoring private equity and hedge funds. These works refer, finally, to the group of experts appointed in October 2012 by the European Commission and chaired by the Governor of the central bank of Finland, Erkki Liikanen, which aims to make deposit banks stronger and to limit the risk of involving taxpayers in supporting banking groups excessively engaged in trading activities.

⁴ Decision No 115/2011 of 23 June 2011 of the Belgian Constitution Court required changes to the calculation of the annual contribution to the Belgian deposit guarantee scheme.

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In addition, such amendments would contribute to the overall clarity and transparency of the financing mechanism of the Resolution Fund⁶. In that context, the ECB emphasises that Member States should act in a coordinated manner in order to avoid significant differences in national implementation having a counterproductive effect. Against this background, any national measure should ensure a sufficiently level playing field within the euro area, which is of key importance to maintaining the integrity of the euro area banking system.

- 2.2 The ECB notes, nevertheless, that any alignment of the contribution by type of assets might encourage credit institutions to favour derivative activities at the expense of other trading activities which are not exempted under the draft law. Furthermore, this would complicate the cross-border harmonisation of derivative activities throughout the European Union.
- 2.3 The credit activity of central securities depositaries is mostly limited to intraday credit, which is not covered by the micro-prudential rules under Directives 2006/48/EC and 2006/49/EC⁷ due to the difficulty in addressing very short term exposures. Therefore, a different method of calculation of the ratio is justified in order to take into account, on the one hand, the short duration of the exposure towards their participants and, on the other hand, their systemic role as utilities on the market they serve. The ECB nevertheless encourages the Belgian legislator to follow the ongoing work initiated by CPSS-IOSCO and the European Commission with respect to their internal organisation and the recovery and resolution plans for securities settlement systems, which might have an impact on the calculation of the financial stability contribution.

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

Done at Frankfurt am Main, 18 February 2013.

[signed]

The President of the ECB

Mario DRAGHI

⁵ The ECB notes that this amendment would also follow Article 94(2)(c) and (7) of the proposal for a directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directives 77/91/EEC and 82/891/EC, Directive 2011/24/EC, 2002/47/EC; 2004/25/EC, 2005/56/EC; 2007/36/EC and 2001/35/EC and Regulation (EU) No 1093/2010 (COM(2012) 280 final).

⁶ CON/2012/91.

⁷ 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) (OJ L 177, 30.6.2006, p. 1), and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (OJ L 177, 30.6.2006, p. 201).