



EUROPEAN CENTRAL BANK
EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 14 January 2013

on credit unions

(CON/2013/5)

Introduction and legal basis

On 6 November 2012, the European Central Bank (ECB) received a request from the Polish Parliament for an opinion on a draft law amending the Law on credit unions and certain other laws (hereinafter the ‘draft law’). On 6 December 2012, the ECB was reconsulted on a revised version of the draft law produced by the Parliament. This opinion considers the revised version of 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 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 Narodowy Bank Polski (NBP) 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 amends the Law of 5 November 2009 on credit unions² (hereinafter the ‘Law on credit unions’), which currently regulates the operation of credit unions active in Poland, and certain other laws, with a view to stabilising the credit unions system in the following areas:

- 1.1 *Deposit guarantees.* The draft law establishes an obligatory deposit guarantee scheme covering deposits received by credit unions, formed as a sub-fund under the management of the Bank Guarantee Fund (*Bankowy Fundusz Gwarancyjny*, BFG), which operates the existing deposit guarantee scheme for banks (hereinafter the ‘credit unions sub-fund’). The credit unions sub-fund would be financed from mandatory annual contributions made by credit unions, with possible reliance on other sources of financing if the payout of guaranteed deposits is necessary, that are to be used in a pre-defined order and include a stabilisation fund for credit unions operated by the

¹ OJ L 189, 3.7.1998, p. 42.

² *Dziennik Ustaw* (Dz. U.) of 2012, item 855.

National Credit Union, a statutory central association of individual credit unions³. To this end, the draft law inserts a new Chapter 4c in the Law of 14 December 1994 on the Bank Guarantee Fund⁴ (hereinafter the ‘Law on the BFG’). Chapter 4c mirrors, with necessary modifications, the rules applicable to the existing deposit guarantee scheme for banks as regards, *inter alia*, the coverage level and the payout procedures.

- 1.2 *Supervisory framework.* Supervisory powers exercised by the Financial Supervision Authority (*Komisja Nadzoru Finansowego*, KNF) over credit unions are enhanced by, *inter alia*, granting the KNF new supervisory tools and clarifying the scope of information to be provided by credit unions to the KNF.
- 1.3 *Liquidity of credit unions.* The draft law regulates more comprehensively the credit unions’ obligation to maintain a ‘liquid reserve’. The liquid reserve aims to preserve the credit unions’ liquidity and is to be held by individual credit unions on separate accounts with the National Credit Union. Funds from the liquid reserve may be drawn on by the National Credit Union to grant ‘liquidity loans’ to individual credit unions facing liquidity problems. At the same time, the draft law and the Law on credit unions provide for several forms of collateralised central bank liquidity assistance to be provided by NBP: (a) to the stabilisation fund; (b) as direct loans to individual credit unions, also against collateral in the form of State guarantee; and (c) to the BFG for the operation of the credit unions sub-fund⁵.
- 1.4 *Restructuring, reorganisation and insolvency.* The draft law modifies the framework for the restructuring, reorganisation, winding up and insolvency of credit unions. The following specific amendments are introduced:
 - (a) In the Law of 28 February 2003 on bankruptcy and rehabilitation⁶, the existing insolvency regime for banks is extended to also cover credit unions.
 - (b) In the Law on credit unions, a number of restructuring instruments are introduced, to be implemented under the KNF’s supervision, with a view to more easily dividing, merging, taking over or liquidating individual credit unions, including with the use of financial assistance granted from the stabilisation fund.
 - (c) In the Law on the BFG, the BFG is entrusted with new tasks related to restructuring of credit unions, such as granting loans and guarantees to credit unions threatened by insolvency and acquiring claims of credit unions. This financial support is to be financed from the credit unions sub-fund.

³ The existing stabilisation fund, operated by the National Credit Union, is designed to provide financial assistance to credit unions in financial difficulties. It is financed from annual contributions of individual credit unions, separate from annual contributions to the credit unions sub-fund. Under the proposed Article 38r(2) of the Law on the BFG and the proposed Article 55(1a) of the Law on credit unions, the resources of the stabilisation fund are transferred, if necessary, by the National Credit Union to the credit unions sub-fund and used for the payout of guaranteed deposits.

⁴ Consolidated text published in Dz. U. of 2009 No 8, item 711.

⁵ See paragraphs 3.1 to 3.4 of this opinion.

⁶ Consolidated text published in Dz. U. of 2012, item 1112.

- 1.5 *Information sharing arrangements.* The existing information sharing arrangements between the KNF, NBP and the BFG are extended to also cover information relating to credit unions.

2. General observations

- 2.1 The ECB was consulted on the existing Law on credit unions in 2009, when this law was at an early drafting stage⁷. In its opinion, the ECB especially recommended the inclusion of credit unions in NBP's minimum reserves regime and in the scope of the KNF's financial supervision⁸. The ECB notes that these elements are now part of the credit unions' regulatory framework. In particular, credit unions will be expected to hold minimum reserves with NBP through a central account maintained by NBP for the National Credit Union, from 18 months after the publishing of the Law on credit unions, i.e. from 27 January 2014. The ECB understands that the draft law aims to complement the existing legal provisions in order to establish a comprehensive legal framework for credit unions in view of their rising importance in the Polish banking sector. This is to be done, in particular, by introducing more robust supervisory instruments, liquidity safeguards and restructuring tools. In this opinion, the ECB addresses the elements introduced by the draft law, as well as other relevant aspects of the Law on credit unions that have changed compared to the draft law opined on by the ECB in 2009.
- 2.2 Shortly before the ECB was consulted on the draft law, another amendment to the Law on credit unions was adopted (hereinafter the '2012 amendment')⁹. The ECB understands that the 2012 amendment did not include any independent substantive provisions which would warrant an ECB opinion, and that its sole aim was to introduce in the Law on credit unions certain technical amendments required from a legislative perspective to reflect the impact on several of its provisions of the long time span between adoption and entry into force¹⁰.

3. Specific observations

Liquidity support from NBP to the National Credit Union

- 3.1 Pursuant to the draft law, in the event of a threat to the liquidity of credit unions and where there is a risk that funds held in the stabilisation fund may be exhausted, NBP may grant, against adequate collateral, a loan to the National Credit Union with a view to increasing the stabilisation fund. The

⁷ See Opinion CON/2009/60. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

⁸ See paragraphs 2.5 and 2.7 of Opinion CON/2009/60.

⁹ See the Law of 10 October 2012 amending the Law on credit unions (Dz. U. of 2012, item 1166).

¹⁰ The Law on credit unions was adopted on 5 November 2009. On 30 November 2009, the Polish President requested the Constitutional Court to review the Law's compliance with the Constitution and on 12 January 2012 the Court passed its judgement (ref. Kp 10/09). The Law on credit unions then had to be adapted: (a) to incorporate the Court's findings, which was achieved by resolution of the Polish Parliament of 28 June 2012; and (b) to address certain temporal issues which do not result directly from the Court's judgement, which was achieved by the 2012 amendment. Eventually, the Law on credit unions, as amended by the 2012 amendment, entered into force on 27 October 2012.

National Credit Union then provides financial support from the stabilisation fund to illiquid credit unions.

- 3.1.1 The ECB has consistently stated in its convergence reports and its opinions that national legislation which provides for the financing by national central banks (NCBs) of credit institutions, other than in connection with central banking tasks, in particular to support insolvent credit or other financial institutions, is incompatible with the monetary financing prohibition¹¹. The provision of liquidity in exceptional circumstances and on a case-by-case basis to temporarily illiquid but solvent credit institutions constitutes an inherent central bank task¹². Solvency support to credit or other financial institutions is a State task however, and may not be assumed by an NCB.
- 3.1.2 Therefore, it should be ensured that liquidity support provided by NBP to the National Credit Union with a view to increasing its stabilisation fund is temporary in nature and may not be used to provide financial support to insolvent credit unions¹³. The ECB reiterates its recommendation to introduce into Polish law express safeguards in this respect, which should be applicable to all financial institutions receiving NBP's liquidity support¹⁴.
- 3.1.3 Following the entry into force of the draft law, two parallel legal bases will exist for the granting of financial assistance by NBP to replenish the resources of the stabilisation fund: the existing, transitional Article 91(3) of the Law on credit unions and Article 43(2) of the Law of 29 August 1997 on Narodowy Bank Polski¹⁵, as amended by the draft law. They lay down similar but non-identical criteria for granting assistance. The ECB recommends that the rules for granting NBP support to the stabilisation fund are clarified by defining the relationship between these two provisions or by deleting the transitional provision in Article 91(3) of the Law on credit unions.

Liquidity support from NBP to individual credit unions

- 3.2 Pursuant to Article 8(1) of the draft law, within the period of six months following the entry into force of the draft law, if there is a threat to an individual credit union's liquidity, NBP may grant credit to it to replenish its financial resources.
- 3.2.1 Pursuant to Article 8(2) of the draft law, such credit may be granted against the State guarantee provided for under the Law of 12 February 2009 on State support to financial institutions (hereinafter the 'Law on State support')¹⁶. The following criteria need to be satisfied to comply with the monetary financing prohibition where a State guarantee is used as collateral accepted by NBP for liquidity granted to individual credit unions: (a) it must be ensured that the credit provided

¹¹ See the ECB's Convergence Report 2012, p. 29. The monetary financing prohibition in Article 123 of the Treaty is further clarified in Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of prohibitions in Article 104 and 104b(1) of the Treaty (OJ L 332, 31.12.1993, p. 1).

¹² See Opinion CON/2008/58, paragraph 4.1.

¹³ e.g. by the granting of loans for the purposes of implementing rehabilitation proceedings pursuant to the proposed Article 38(6) and (8) of the Law on credit unions.

¹⁴ See the ECB's Convergence Report 2012, p. 251, paragraph 6.6.4.

¹⁵ Consolidated text published in Dz. U. of 2005 No 1, item 2.

¹⁶ Dz. U. of 2009 No 39, item 308.

by NBP is as short term as possible; (b) there must be systemic stability aspects at stake; (c) there must be no doubt as to the legal validity and enforceability of the State guarantee under Polish law; and (d) there must be no doubt as to the economic adequacy of the State guarantee, which should cover both principal and interest on the loans, thus fully preserving the financial independence of NBP¹⁷. The ECB notes, in particular, that the economic adequacy criterion is not currently met, as Article 4(2) of the Law on State support only provides for State guarantees covering up to 50% of the outstanding credit amount. In addition the short-term nature criterion is also not currently met as Article 8 of the draft law may be interpreted as allowing longer-term credit, provided that it is granted within the period of six months following the entry into force of the draft law. The ECB recommends that the draft law is amended to ensure compliance with these two criteria.

- 3.2.2 Pursuant to Article 8(3) of the draft law, a limitation under which funds obtained by a credit union may only be used to remove the risk of insolvency does not apply to NBP credit obtained under Article 8(1) of the draft law. As the current formulation of this exemption may lead to diverging interpretations, the ECB recommends that the draft law expressly clarifies that financial support under Article 8(1) of the draft law cannot be used as a means of recapitalisation of insolvent credit unions.

Liquidity support from NBP to the BFG for the operation of the credit unions sub-fund

- 3.3 Pursuant to the draft law, collateralised credit may also be granted by NBP to the BFG for the operation of the credit unions sub-fund i.e. to support the payout of guaranteed deposits received by credit unions, where other sources of financing are exhausted and a threat to financial stability has arisen. The ECB understands that such credit may only be used in connection with the deposit guarantee function of the credit unions sub-fund, and not in connection with its solvency support function¹⁸. The ECB notes that: (a) such credit is equivalent to a similar liquidity support measure available from NBP to the BFG for the operation of the deposit guarantee scheme for banks; and (b) the criteria for granting both of these liquidity support measures by NBP are defined in a uniform manner in the Law on BFG and in the draft law. In this regard, reference is made to the ECB's previous assessment, which confirmed the compatibility of those criteria with the monetary financing prohibition¹⁹.

Information sharing

- 3.4 The proposed Article 80za of the Law on credit unions provides, *inter alia*, for the exchange of information on credit unions between NBP, the KNF and the BFG. The ECB welcomes these provisions as they will enable the said entities to perform their statutory tasks with regard to credit unions, and facilitate the performance by NBP of its financial stability mandate.

¹⁷ See, for example, Opinion CON/2012/4, paragraph 5.

¹⁸ See Opinion CON/2012/58, paragraph 3.1.

¹⁹ See Opinion CON/2012/58, paragraph 3.3, where it was confirmed that NBP's financing of the BFG, as regards the operation of the deposit guarantee scheme for banks under the present Polish law, meets the requirements of being short-term, addressing urgent situations where systemic stability aspects are at stake and of being at the NCB's discretion (see the ECB's Convergence Report 2012, p. 30).

3.5 *Legislative consistency*

In the interests of legislative consistency, the proposed Chapter 3a of the Law on the BFG needs to be reconciled with parallel amendments to that Law proposed by another recent legislative initiative establishing a stabilisation fund for credit institutions on which the ECB produced a separate opinion²⁰.

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

Done at Frankfurt am Main, 14 January 2013.

[signed]

The Vice-President of the ECB

Vítor CONSTÂNCIO

²⁰ See the Chapter 3a proposed in the draft law amending the Law on the Bank Guarantee Fund and certain other laws, discussed in Opinion CON/2012/91.