



OPINION OF THE EUROPEAN CENTRAL BANK
of 16 August 2013
on the autonomy of the Banco de España in staff matters
and on termination of the office of the Governor
(CON/2013/61)

Introduction and legal basis

On 25 July 2013, the European Central Bank (ECB) received a request from the Banco de España for an opinion on a partial draft Resolution of the Banco de España's Governing Council (hereinafter the 'draft resolution') which will amend the Banco de España's Internal Rules of 28 March 2000 (hereinafter the 'Internal Rules').

The ECB's competence to deliver an opinion is based on the last paragraph of Article 127(4) and the Article 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 resolution relates to the Banco de España. 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 resolution

The draft resolution updates the Internal Rules to incorporate several amendments made to Law 13/1994 on the autonomy of the Banco de España (hereinafter 'Law 13/1994'). The most relevant amendments include: (a) the introduction of staff cost-cutting measures equivalent to those generally established for public sector employees, provided that the Banco de España's ability to carry out its functions on an independent basis is not impaired, although the Banco de España may not, in any event, agree wage increases or decreases beyond the limits generally set for public sector employees; and (b) the deletion of the ground for dismissal of the Governor and/or Deputy Governor on the basis that either has reached the age of 70 years. The other grounds for dismissal remain unaffected.

2. General observations

When Law 13/1994 was first amended, through Law 17/2012 on the State General Budget for 2013 (hereinafter 'Law 17/2012'), the ECB was consulted and issued Opinion CON/2012/89. The draft

¹ OJ L 189, 3.7.1998, p. 42.

resolution implements the amendments of Law 13/1994 and takes into account some, but not all, of the ECB's comments.

3. Staffing policy of the Banco de España

The ECB recommended in its Opinion CON/2012/89² that the Sixth Final Provision of the Law 17/2012 (which amended Article 6 bis of Law 13/1994) should state that the Banco de España will not be obliged to take measures if these interfere with its ability to independently carry out its tasks. The ECB also stated that, based on the understanding that the Banco de España will not be obliged to take measures if these interfere with its ability to independently carry out its tasks, Article 22 and the Sixth Final Provision of Law 17/2012 are compatible with the principle of central bank independence. However, the recommendation made in Opinion CON/2012/89 was not taken into account in this respect as the above mentioned confirmation was neither made in the Sixth Final Provision of Law 17/2012, nor in Article 6 bis of Law 13/1994³.

The ECB notes that the draft resolution incorporates this recommendation in the second paragraph of Article 18 of the Internal Rules. However, the third paragraph of Article 18 of the Internal Rules, which mirrors the second sentence of Article 6 bis of Law 13/1994, establishes an absolute limit for remuneration changes, but does not expressly safeguard the Banco de España's ability to carry out its tasks independently. Thus, the concerns expressed by the ECB in Opinion CON/2012/89 relating to Article 6 bis of Law 13/1994 are also valid with respect to Article 18 of the Internal Rules. The ECB therefore recommends an express provision in the third paragraph of Article 18 of the Internal Rules that the Banco de España will not be obliged to take measures if these interfere with its ability to independently carry out its tasks.

4. Termination of the office of the Governor and/or Deputy Governor

- 4.1 The ECB welcomes the deletion of the age limit applicable to the term of office of the Governor and/or Deputy Governor from both Law 13/1994 and the draft resolution.
- 4.2 The draft resolution still includes the following wording in the context of the grounds for dismissal of the Governor and the Deputy Governor: 'due to permanent incapacity to exercise his/her role, serious failure to comply with his/her obligations, professional disqualification or proceedings for a wilful offence'. The concerns expressed in Opinion CON/2012/89⁴ relating to Article 25(4) of Law 13/1994 are also valid with respect to Articles 42 and 50 of the Internal Rules, which mirror the Law. As consistently stated in the ECB's convergence reports and opinions, the statutes of national central banks should either contain grounds for dismissal compatible with those laid down in

² See Opinion CON/2012/89, paragraph 6. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

³ Article 6 bis of Law 13/1994 reads as follows: 'Without prejudice to its autonomy in matters of staff policy, the Banco de España shall apply to its staff costs-related measures equivalent to those generally established, principally by the State budget laws for each year, and may not, under any circumstances, agree remuneration increases that involve an increase in the overall wage the limits set for such workers.' (Unofficial translation)

⁴ See Opinion CON/2012/89, paragraph 7.

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Article 14.2 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the ‘Statute of the ESCB’), or omit any mention of grounds for dismissal, since Article 14.2 is directly applicable⁵. Accordingly, Articles 42.3 and 50.3 of the Internal Rules should be aligned with Article 14.2 of the Statute of the ESCB, or the grounds for dismissal should be deleted.

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

Done at Frankfurt am Main, 16 August 2013.

[signed]

The Vice-President of the ECB

Vítor CONSTÂNCIO

⁵ See, for example, the ECB’s Convergence Report 2012, p. 24.