OPINION OF THE EUROPEAN CENTRAL BANK
of 5 December 2013
on the Financial Supervisory Authority’s governance
(CON/2013/83)

Introduction and legal basis

On 6 November 2013, the European Central Bank (ECB) received a request from the Danish Financial Supervisory Authority (FSA) (Finanstilsynet) for an opinion on a draft law amending the Law on financial business, the Law on securities trading, the Law on mortgage credit loans and mortgage credit bonds, the Law on managers of alternative investment funds and various other laws1 (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 provisions2, as the draft law relates 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

1.1 The draft law addresses the FSA’s governance and management structure by establishing a governing board tasked with providing technical, organisational and managerial assistance to the FSA’s management and with taking supervisory decisions3. The Financial Council, which is the FSA’s current decision-making body, will be dissolved once this governing board has been established. According to the draft law, the purpose of the amendment is to provide an efficient organisational set-up for the FSA to strengthen its supervisory powers4.

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3 See Section 1(10) of the draft law amending Section 345 of the Law on financial business.
4 See Section 2.4 of the explanatory memorandum to the draft law.
1.2 In accordance with the draft law, the FSA will be managed by the governing board and a managing director who will between them have legal, economic and financial expertise. The governing board will be responsible for the following tasks: (a) approving the organisation of supervisory activities; (b) laying down the strategic targets for the FSA’s supervisory activities; (c) approving the FSA’s annual report; (d) deciding on supervisory matters of a fundamental nature and those having significant consequences; (e) deciding to transfer cases for criminal investigation; and (f) approving executive orders and guidelines in areas where the FSA is authorised to issue regulations. The governing board may delegate some of its powers to the FSA’s managing director by issuing an instruction.

1.3 The Minister for Business and Growth will appoint seven members of the governing board: three with an academic background in law, economics or finance; two with management experience in the financial sector; one with management experience in the general business community; and one member from Danmarks Nationalbank. The Minister for Business and Growth will appoint a chairperson and a deputy chairperson from among the board members. A representative from the Ministry of Business and Growth will hold a seat as an observer on the board. The governing board will adopt decisions based on a simple majority voting procedure. In the event of an equal number of votes, the chairperson will cast the deciding vote.

1.4 Furthermore, a panel of experts will be appointed. They will between them possess broad technical knowledge of the financial sector, e.g. banking business, mortgage-credit business, insurance and pension business, securities trading, stockbroking business, etc., as well as of financial consumer-related matters. As required, the governing board may request assistance from such panel in conjunction with the discussion of specific supervisory matters.

2. General observations

2.1 The ECB welcomes the establishment of the governing board, which should provide an efficient organisational set-up for the FSA in order to strengthen its supervisory powers. Such a governing board will ensure the FSA’s operational independence from political authorities, which is in line with essential and internationally recognised standards for financial market supervision.

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5 See amended Section 345(7) of the draft law.
6 See amended Section 345(14) of the draft law.
7 See amended Section 345(1)-4 of the draft law.
8 See amended Section 345(12) of the draft law.
9 See amended Section 345(8) of the draft law.
10 See the explanatory memorandum in relation to Section 345(1) of the draft law.
2.2 With regard to the composition of the governing board, the ECB welcomes the fact that Danmarks Nationalbank will provide one member of the governing board\textsuperscript{12}, which is in line with the current practice for nominating Financial Council members.

2.3 Finally, the minimum term of office for governing board members is set at two years. Currently, Financial Council board members serve a four-year term. For the sake of continuity and stability, the ECB suggests considering a longer duration for such term of office, in line with international practice, with a possible limitation on the number of reappointments.

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

Done at Frankfurt am Main, 5 December 2013.

[signed]

\textit{The President of the ECB}

Mario DRAGHI

\textsuperscript{12} The existing legislation provides that Danmarks Nationalbank may nominate a member of the Financial Council, see the current Section 345(1), point 1 of the Law on financial business.