



OPINION OF THE EUROPEAN CENTRAL BANK

of 13 February 2014

on the macro-prudential mandate and instruments of the NBB

(CON/2014/16)

Introduction and legal basis

On 10 January 2014, the European Central Bank (ECB) received a request from the Minister for Finance for an opinion on a draft law establishing instruments of macro-prudential policy and specifying the tasks assigned to the Nationale Bank van België/Banque Nationale de Belgique (NBB) in the context of its mission to contribute to the stability of the financial system (hereinafter the 'draft law'). The ECB was asked to deliver an opinion within one month so that the ECB's opinion could be taken into consideration before the draft law is submitted to the Belgian Parliament.

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 third, fourth and sixth indents of Article 2(1) of Council Decision 98/415/EC¹, since the draft law relates to the NBB, statistics and 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 implements Recommendation ESRB/2011/3².
- 1.2 Under the draft law the NBB's mandate is to 'contribute to the stability of the financial system', which concept is defined as 'a situation in which the probability of lack of continuity, or disruption, of the functioning of the financial system is low or, if such disruptions were to occur, their effects on the economy would be limited'. To achieve the objective of contributing to financial stability, the NBB will have the following powers: (a) to detect and monitor different factors and developments which may affect the stability of the financial system; (b) to issue recommendations on measures to be implemented by the competent authorities, in order to contribute to the stability of the financial system as a whole, particularly through (i) strengthening the robustness of the

¹ Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

² Recommendation ESRB/2011/3 of the European Systemic Risk Board of 22 December 2011 on the macro-prudential mandate of national authorities. Available on the website of the ESRB at www.esrb.europa.eu.

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financial system, (ii) preventing the occurrence of systemic risks, and (iii) limiting the effect of potential disruptions; and (c) to adopt measures falling within the ambit of its own competences with a view to achieving the objectives described under (b) above. The draft law stipulates that the principle of independence – provided for in Article 130 of the Treaty – will apply to the NBB when acting in the context of contributing to the stability of the financial system.

- 1.3 The draft law also sets out specific accountability mechanisms under which the NBB is to provide the Chamber of Representatives with an annual report on its activities in the areas of prudential supervision and contributing to the stability of the financial system. The Governor of the NBB may also be invited to hearings before the competent committees of the Chamber of Representatives, be it at the request of such committees or at the Governor's own initiative.
- 1.4 In order to strengthen the framework for the collection of information, the draft law authorises the NBB to use any information in its possession or to make use of any entitlements to information it has in the context of its other tasks (including that of prudential supervision). The NBB may also require a private entity that is not subject to its supervision to provide it with any information that entity has which would be useful for discharging the NBB's macro-prudential mandate. Failure to comply with such requirements may be penalised by the imposition of administrative fines. Communication of such information to the NBB might be ensured by means of the control function exercised by other competent authorities over the private entity in question. Finally, the NBB may enter into arrangements to cooperate with the ECB, the European Systemic Risk Board (ESRB), the European supervisory authorities (ESAs) and foreign authorities with competence in the field of macro-prudential supervision, and it may exchange confidential information with those organisations.
- 1.5 The draft law provides that, in discharging its macro-prudential mandate, the NBB may, without prejudice to the competences assigned to the ECB, use any of the following tools in respect of financial institutions: (a) the power to impose own funds requirements or additional liquidity requirements in respect of all credit institutions or specific categories of credit institutions; (b) the power to impose specific requirements as regards own funds, which may vary depending on the nature of exposures, the value of collateral received by the credit institution concerned, the areas of activity or the geographic area of operation of the debtors, such measures being in addition to or stricter than those applied in the context of prudential supervision; (c) the power to impose quantitative limits on exposures in respect of an individual counterparty or a group of linked counterparties; (d) the power to impose limits on the total levels of activity of institutions, as a percentage of their own funds, which are in addition to or stricter than those applied in the context of prudential supervision; (e) the power to impose conditions for the valuation of collateral accepted against credits extended for verifying compliance with the requirements regarding solvency as provided for under or in accordance with prudential legislation; (f) booking all or part of the distributable profits to an account which cannot be accessed by the institution concerned; (g) the power to impose asset valuation rules different from those imposed under accounting rules

in the context of prudential supervision; (h) the power to require the disclosure of information in addition to that which may be required under prudential supervision rules in respect of all credit institutions or those belonging to a specific category; and (i) the power to issue public statements on the adoption of the abovementioned measures and their corresponding objectives. Prior to imposing any of the abovementioned measures, the NBB shall inform the ESRB, the ECB and, if necessary, the ESAs and the European Commission. Prior to imposing own funds requirements or any measures intended to reduce systemic risks, the NBB must take into account objections raised by the ECB or any other European authority.

- 1.6 The NBB may issue recommendations to the ECB or any other Union authorities on measures to be adopted and implemented in order to contribute to the stability of the financial system as a whole, be it by means of measures intended to strengthen the robustness of the financial system, to anticipate the occurrence of systemic risks or to limit the potential effects of disruption. National authorities to whom recommendations are addressed are requested to provide the NBB with a formal opinion giving reasons why those recommendations are not followed. If recommendations issued by the NBB addressed to federal national authorities are not followed, the King may decide to adopt the measures necessary to implement the NBB recommendation concerned by means of a royal decree adopted in the Council of Ministers.

2. General observations

- 2.1 The ECB supports the effective design of macro-prudential policy frameworks within the Member States, in line with the guiding principles expressed in Recommendation ESRB/2011/3. The ECB welcomes the fact that the NBB plays a leading role in this respect, given its expertise and existing responsibilities in the area of financial stability³.
- 2.2 The ECB furthermore welcomes that the NBB, in respect of the discharge of this macro-prudential mandate, enjoys the same degree of independence as established in Article 130 of the Treaty, which shall also be adequately balanced with the strengthened accountability of the NBB before the Chamber of Representatives. In the interests of clarity, it would, however, be appropriate to exclude the power of the Minister of Finance to exercise control over decisions made by the NBB in the discharge of its macro-prudential mandate under Article 22 of the Organic Law of the NBB which, in its current form, excludes such control only in respect of the European System of Central Banks' tasks and operations and the prudential supervision described in Article 12 *bis* of the Organic Law of the NBB. Without prejudice to the principle of independence and this proposed change, the Organic Law of the NBB could be further amended in order to establish specific mechanisms for cooperating with any authority whose actions have a material impact on financial stability, in accordance with Recommendation B.2 of Recommendation ESRB/2011/3.

³ Opinion CON/2013/70, especially paragraph 2.1. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

- 2.3 The ECB welcomes the strengthening of the methods for collecting information. The ECB also welcomes the fact that the NBB may require a wide range of private entities to provide information and that they may be subject to administrative fines in the event of failure to comply with those requirements. While the ECB also welcomes the fact that domestic authorities must provide the NBB, at its request, with any information useful for the discharge of its macro-economic mandate⁴, it nevertheless recommends that those authorities should be required by law to communicate the information concerned at their own initiative.
- 2.4 The ECB understands that, once collected in accordance with the mechanisms described under paragraph 2.3 above, information may be shared with the ECB, the ESRB, the ESAs or other domestic supervisory authorities in accordance with cooperation agreements to be entered into between the NBB and the organisations in question. However, such agreements should not be necessary for the exchange of information falling within the ambit of Articles 56 and 58 of Directive 2013/36/EU of the European Parliament and of the Council⁵, and Article 6(2) of Council Regulation (EU) No 1024/2013⁶, between the NBB and authorities competent in the areas of prudential supervision, macro-prudential supervision, banking resolution and recovery, the ECB, the central banks of the European System of Central Banks (ESCB), the ESRB and the ESAs. The ECB recommends that cooperation arrangements as referred to above should be without prejudice to Article 36/14, 1^o and 2^o⁷ of the Organic Law of the NBB, pursuant to which the NBB may provide information to the ECB and ESCB central banks in certain cases. This includes cases when the information concerned is relevant for discharging the mandate of the ECB and of the ESCB central banks with regard to monetary policy, emergency liquidity assistance, oversight of payment and securities settlement systems, and safeguarding the stability of the financial system, especially in cases of emergency, and where the information is relevant to the institutions entrusted with a macro-prudential mandate. In the interests of clarity, it is also advisable to include a cross-reference to Article 36/34 § 4, as amended by Article 36/14 of the draft law, in order to have a comprehensive and consistent list of all cases in which the NBB may share confidential information with other authorities.

3. Specific comments

- 3.1 The draft law sets out comprehensive mechanisms further substantiating the already existing macro-prudential responsibilities of the NBB. In the period since the financial crisis began, the Belgian legislator in 2011 entrusted the NBB with specific tools described in Article 36/3 of the

⁴ Article 36/33 § 3 of the Organic Law of the NBB, as amended by Article 9 of the draft law.

⁵ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (OJ L 176, 27.6.2013, p. 338).

⁶ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 20.10.2013, p. 63).

⁷ The ECB notes that these two paragraphs will be amended by the Law on various amendments accompanying the draft Law on status and supervision of credit institutions, which was submitted to the ECB for its opinion on 3 January 2014.

Organic Law of the NBB in order to: (a) detect potential threats to the stability of the financial system, especially through monitoring and assessing strategic evolutions and profiling systemically important financial institutions; (b) issue opinions to the federal government and parliament on the measures necessary or useful for the stability, good functioning and efficiency of the financial system of the country; (c) coordinate the management of the financial crisis; and (d) contribute to the objectives of international and European institutions involved in the matters described under (a), (b) and (c) above, including in particular the ESRB. Financial institutions designated by the NBB as systemically important, and notified of this designation, must provide their proposed strategic decisions to the NBB, which may oppose such decisions. The NBB may also impose specific measures regarding solvency, liquidity, risk concentration and risk positions on the abovementioned systemically important financial institutions. Previous reforms also gave the NBB the power to take extraordinary measures, including the forced transfer to the State or any other domestic or foreign public-law entity of assets, credits, categories of activity, securities or pools of securities held by such central securities depositories vis-à-vis central securities depositories and assimilated institutions. This aimed at avoiding a situation whereby financial stability might be disrupted domestically or globally by a breach of the law by those entities or by mismanagement, liquidity problems, operational and administrative or accounting problems arising within the entities in question.

- 3.2 The ECB understands that the new macro-prudential tools introduced by the draft law are without prejudice to the two abovementioned regimes, which shall therefore remain unchanged. As part of the comprehensive reform of the status and supervision of credit institutions⁸, Article 36/3 of the Organic Law of the NBB will, however, be amended in order to exempt credit institutions designated by the NBB as systemically important, and notified of this designation, from the requirement to provide the NBB with their strategic decisions. Such a requirement will be imposed in the future on all credit institutions as part of micro-prudential supervision. Future legal developments may affect the macro-prudential supervision of financial institutions other than credit institutions, especially the Proposal for a regulation of the European Parliament and of the Council on improving securities settlement in the European Union and on central securities depositories (CSDs)⁹. The ECB recommends, for the sake of clarity of the Organic Law of the NBB, that the Belgian legislator reflects on the appropriateness of maintaining three different sets of provisions on macro-prudential supervision. This is particularly appropriate in view of the similarities between Articles 36/3 and 36/34, both of which apply to financial institutions on which the NBB may impose requirements relating to own funds, liquidity, risk concentration and risk positions with a view to contributing to the stability of the financial system. Should these two provisions nonetheless remain separate, the mechanism for designating systemically important institutions

⁸ The ECB was consulted on 3 January 2014 on the draft Law on the status and supervision of credit institutions and on the draft Law on various amendments.

⁹ See the Proposal for a regulation of the European Parliament and of the Council on improving securities settlement in the European Union and on central securities depositories (CSDs) and amending Directive 98/26/EC, COM (2012), final.

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should also be reflected in Article 36/34, in order to comply with Recommendation C.3 of Recommendation ESRB/2011/3. This mechanism is currently provided for in Article 36/3 only, and will apply in the near future to financial institutions other than credit institutions.

- 3.3 The draft law provides that the NBB, in the application of its macro-prudential powers, is to take into account the recommendations of the ESRB and the views of the Commission and the ECB, in particular when the ECB applies stricter requirements for capital buffers or other measures aimed at addressing systemic risk¹⁰. In this respect, the ECB recommends that the draft law is further aligned with the procedures set out in relevant Union law and in particular those of Article 5 of Regulation (EU) No 1024/2013¹¹.
- 3.4 This opinion is without prejudice to the conclusions of the ESRB's follow-up assessment, which will be prepared pursuant to Article 17 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council¹².

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

Done at Frankfurt am Main, 13 February 2014.

[signed]

The President of the ECB

Mario DRAGHI

¹⁰ Article 11 of the draft law, which introduces a new Article 36/34, § 3 in the Organic Law of the NBB.

¹¹ See in this respect, Recital 24 of Regulation (EU) No 1024/2013, which specifically provides that national competent authorities or national designated authorities and the ECB shall act in respect of any coordination procedure provided for in such acts after having followed the procedures provided for in that same regulation.

¹² Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).