



**OPINION OF THE EUROPEAN CENTRAL BANK**  
**of 18 February 2014**  
**on the macro-prudential oversight of the financial system**  
**(CON/2014/18)**

**Introduction and legal basis**

On 13 January 2014, the European Central Bank (ECB) received a request from the Polish Minister for Finance for an opinion on a draft law on the macro-prudential oversight of the national financial system (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 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 provisions<sup>1</sup>, as the draft law relates to Narodowy Bank Polski (NBP) 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/2011/3 of the European Systemic Risk Board of 22 December 2011 on the macro-prudential mandate of national authorities<sup>2</sup>.
- 1.2 To this end, a Systemic Risk Board (hereinafter the ‘Board’) is established as the authority responsible for the conduct of macro-prudential oversight. The Board is composed of: (a) the NBP’s President, as Chairman; (b) the Finance Minister, as Deputy Chairman; (c) the Chairman of the Financial Supervision Authority; and (d) the President of the Bank Guarantee Fund. The Board is to pursue the objective of strengthening the national financial system’s resilience to systemic risk, thereby contributing to long-term and sustainable economic growth.
- 1.3 Specifically, the Board’s tasks include:
  - (a) identifying, assessing, monitoring and mitigating systemic risk;
  - (b) applying macro-prudential instruments by adopting resolutions that may take the form of:
    - (i) opinions; (ii) warnings and recommendations addressed to the authorities from which the

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<sup>1</sup> OJ L 189, 3.7.1998, p. 42.

<sup>2</sup> OJ C 41, 14.2.2012, p. 1.

## ECB-PUBLIC

Board draws its members; (iii) warnings addressed to a specific part of or the entire financial market;

- (c) monitoring compliance with its recommendations;
- (d) identifying systemically important financial institutions and recommending specific supervisory requirements to be applied to them;
- (e) cooperating with the European Systemic Risk Board and other Union institutions and bodies as well as macro-prudential authorities in other Member States and international organisations.

1.4 Additionally, the draft law amends, *inter alia*, the following laws:

- (a) the Law of 29 August 1997 on Narodowy Bank Polski<sup>3</sup>, by enabling NBP to provide the Board with organisational and administrative support and the information necessary for the performance of its macro-prudential mandate and by setting an additional task for NBP defined as taking action aimed at mitigating systemic risk;
- (b) the Law of 14 December 1994 on the Bank Guarantee Fund<sup>4</sup>, by authorising the Bank Guarantee Fund to provide to the Board information on entities covered by the deposit guarantee scheme operated by the Bank Guarantee Fund;
- (c) the Law of 21 July 2006 on supervision of the financial market<sup>5</sup>, by allowing the Financial Supervision Authority to provide the Board with the information necessary for the performance of its macro-prudential mandate;
- (d) the Law of 7 November 2008 on the Financial Stability Committee<sup>6</sup>, aiming to ensure that the Board's tasks do not overlap with those of the Financial Stability Committee, an existing body with a financial stability mandate<sup>7</sup>.

1.5 The draft law also transposes into Polish legislation that part of 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<sup>8</sup>, which relates to procedures for the imposition of capital buffers.

## 2. General observation

The ECB supports the establishment of effective macro-prudential policy frameworks within the Member States that are in line with the guiding principles expressed in Recommendation ESRB/2011/3. Moreover,

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<sup>3</sup> Consolidated text published in Dz. U. of 2013 item 908.

<sup>4</sup> Dz. U. of 1995 No 4, item 18.

<sup>5</sup> Dz. U. of 2006 No 157, item 1119.

<sup>6</sup> Dz. U. of 2008 No 209, item 1317.

<sup>7</sup> See also Opinion CON/2008/39 and paragraph 3.5 of Opinion CON/2012/58. All ECB opinions are published on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

<sup>8</sup> OJ L 176, 27.6.2013, p. 338.

national central banks should play a leading role in macro-prudential oversight, together with the ECB, given their expertise and existing responsibilities in the area of financial stability<sup>9</sup>.

### 3. Specific observations

#### 3.1 *NBP's role in the performance of the Board's mandate*

3.1.1 The ECB notes that the draft law grants important powers to NBP in the performance of the Board's macro-prudential mandate, in particular: (a) by designating NBP President as Chairman of the Board with the right of a casting vote; and (b) by assigning the task of supporting the Board's activities to NBP, by ensuring its secretariat and preparing its meetings and draft resolutions. However, the ECB notes that, in the event of the NBP President's absence, Board meetings may be chaired by the Finance Minister as Deputy Chairman<sup>10</sup>. The ECB considers that having all Board meetings chaired by an NBP representative would facilitate the effective conduct of the macro-prudential policy. Replacement arrangements should ensure that NBP plays a leading role in this respect, in line with Recommendation ESRB/2011/3<sup>11</sup>.

3.1.2 Pursuant to Article 17 of the draft law, the Board may issue recommendations addressed to each of the institutions from which the Board draws its members, including NBP. The ECB understands that, if read in conjunction with the definition in Article 2(3) of the draft law, Article 17 limits the subject matter of the Board's recommendations that are addressed to NBP, as well as NBP's obligation to provide information on the relevant implementation measures under Article 30a(2)(3) of the draft law, to those NBP activities that may contribute to mitigating systemic risk. It is important that NBP's involvement in the performance of the Board's mandate and the abovementioned recommendations do not affect: (a) NBP's institutional, functional and financial independence; or (b) the performance by the European System of Central Banks of its tasks under the Treaty and the Statute of the European System of Central Banks and of the European Central Bank<sup>12</sup>. Thus, for legal certainty reasons, the abovementioned limitation, which may be inferred from Article 17 in conjunction with Article 2(3) of the draft law, could be replaced with an explicit provision stating that the Board's recommendations addressed to NBP are without prejudice to the principle of central bank independence referred to in Article 130 of the Treaty.

#### 3.2 *Relations with the Financial Stability Committee*

In order to avoid an overlap of the Board's tasks with those of the Financial Stability Committee, the draft law discontinues the Committee's regular meetings and terminates its analytical function,

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9 See, for example, paragraph 2.1 of Opinion CON/2013/66, paragraph 2.1 of Opinion CON/2013/54, paragraph 2.1 of Opinion CON/2013/45 and paragraph 2.1 of Opinion CON/2013/30.

10 See Articles 8(2) and 11(4) of the draft law, which additionally seem to be inconsistent with second sentence of Article 6(2) of the draft law.

11 See recommendation B(3). See also recital 24 of 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).

12 See paragraph 4 of Opinion CON/2009/88 and paragraph 3.2 of Opinion CON/2012/55.

## ECB-PUBLIC

thereby transforming it into a body responsible for developing and coordinating crisis management procedures and tasks between members of the Committee. This crucial coordination task will remain necessary, since the ECB understands that the Bank Guarantee Fund, one of the institutions represented on the Committee, may be designated as a resolution authority as defined in 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<sup>13</sup>. However, overlaps in the institutional status and powers of the Board and of the Committee, as well as identical composition under different chairmanship, could give rise to a lack of clarity with regard to the allocation of responsibilities or to unnecessary duplication of tasks. While recognising that crisis management coordination might necessitate different governance arrangements from those of the macro-prudential oversight function, a number of responsibilities that are assigned to the Committee and the Board in parallel could be more uniformly regulated, in particular such competences as the exchange of information between members<sup>14</sup> or the establishment of working groups<sup>15</sup>. The ECB encourages the Polish authorities to review this aspect.

#### 4. Other issues

This opinion is without prejudice to the conclusions of the follow-up assessment of Recommendation ESRB/2011/3, which the ESRB will prepare in accordance with Article 17 of Regulation (EU) No 1092/2010.

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

Done at Frankfurt am Main, 18 February 2014.

[signed]

*The President of the ECB*

Mario DRAGHI

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<sup>13</sup> COM/2012/0280 final, available on the Commission's website at [www.europa.eu](http://www.europa.eu).

<sup>14</sup> Articles 13 to Article 14a of the draft law, Article 10 of the Law on the Financial Stability Committee.

<sup>15</sup> Article 9 of the draft law, Article 8 of the Law on the Financial Stability Committee.