



## OPINION OF THE EUROPEAN CENTRAL BANK

of 18 March 2014

on financial supervision, macro-prudential supervision and payment systems oversight

(CON/2014/21)

### Introduction and legal basis

On 20 February 2014, the European Central Bank (ECB) received a request from the Estonian Ministry of Finance for an opinion on a draft law amending the Law on credit institutions and other acts (hereinafter the 'draft law'). The draft law also amends the Law on Eesti Pank, particularly relating to its role in respect of macro-prudential supervision and payment systems oversight.

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, fifth and sixth indents of Article 2(1) of Council Decision 98/415/EC<sup>1</sup>, as the draft relates to Eesti Pank, payment systems 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 transposes Directives 2013/36/EU<sup>2</sup> and 2011/61/EU<sup>3</sup> and gives effect to the streamlining resulting from Regulation (EU) No 575/2013<sup>4</sup> and Recommendation ESRB/2011/3<sup>5</sup>. It is also based on international agreements at G20 level<sup>6</sup>.

1.2 The main changes introduced by the draft law are as follows.

- a) At micro level, it specifies the composition of own funds of credit institutions and investment funds and lays down stricter requirements for Tier1 capital. It strengthens the

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<sup>1</sup> 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).

<sup>2</sup> 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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p 338).

<sup>3</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p 1).

<sup>4</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p 1).

<sup>5</sup> Recommendation of the European Systemic Risk Board of 22 December 2011 on the macro-prudential mandate of national authorities (ESRB/2011/3) (OJ C 41, 14.2.2012, p 1).

<sup>6</sup> <http://www.bis.org/publ/bcbs220.pdf>

requirements relating to liquidity and the management of liquidity risk, enhances the supervision of risk management, and lays down stricter publication requirements in order to strengthen market discipline.

- b) At macro level, it provides for the establishment of a macro-prudential supervision authority. It establishes buffers for credit institutions and investment firms, lays down provisioning requirements, and defines measures aimed at mitigating macro-prudential and systemic risks.
  - c) It sets a leverage ratio for credit institutions and investment firms in order to control sharp increases in leverage.
  - d) It lays down requirements regarding the governance and reporting of alternative investment fund managers (AIFM).
- 1.3 The draft law gives the Estonian Financial Supervision Authority (FSA) greater supervisory powers over credit institutions. These include the supervision of branches in other countries, and of financial holding companies and mixed financial holding companies. The FSA will also have power to impose administrative penalties and make discretionary supervisory decisions within the limits imposed by the draft law.
- 1.4 Under the draft law, Eesti Pank will be the competent authority in respect of macro-prudential supervision and payment systems oversight. Eesti Pank currently carries out some payment systems oversight tasks and the draft law provides a national legal basis for these tasks.

## **2. Financial and macro-prudential supervision**

- 2.1 The draft law stipulates that the objective of macro-prudential supervision is to help safeguard the stability of the financial system as a whole, including by strengthening its resilience and decreasing the build-up of systemic risks, thereby ensuring a sustainable contribution to economic growth. This precisely reflects Recommendation A of Recommendation ESRB/2011/3.
- 2.2 The draft law confers the new tasks of contributing to the stability of the financial system and ensuring macro-prudential stability on Eesti Pank.
- 2.3 The ECB supports the design of effective macro-prudential policy frameworks within Member States, in line with the guiding principles laid down in Recommendation ESRB/2011/3. The ECB and the national central banks should play a leading role in macro-prudential oversight, given their expertise and existing responsibilities in the area of financial stability<sup>7</sup>. In this respect, in line with ESRB Recommendation 2011/3, it is important that there are appropriate legally enforceable mechanisms in place to facilitate cooperation between Eesti Pank and other national authorities whose actions have a material impact on financial stability<sup>8</sup>. Similar mechanisms should be set up

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<sup>7</sup> See paragraph 2.1 of Opinion CON/2013/30, paragraph 2.1 of Opinion CON/2013/45 and paragraph 4.2 of Opinion CON/2013/82. All ECB opinions are published on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

<sup>8</sup> The information exchange between the FSA and Eesti Pank takes place under the Cooperation Agreement of 21 December 2007, the objective of which is the stability of the Estonian financial system and the regulation of financial services and financial markets. This Agreement provides for cooperation in areas such as the establishment of a safety net in the financial sector and the exchange of information with Union institutions and other international organisations (the

in order to ensure appropriate cross-border cooperation and exchange of information between Eesti Pank and other national or Union authorities, particularly the European Systemic Risk Board (ESRB). It is also important that there is a clear legal basis for Eesti Pank to make public and private statements on systemic risks.

- 2.4 From an operational and financial point of view, the allocation of new tasks to a national central bank (NCB) should not affect its ability to carry out its existing tasks. Financial independence, which is an element of the principle of central bank independence referred to in Article 130 of the Treaty, requires that an NCB must have sufficient means to carry out its national tasks as well as its European System of Central Banks or Eurosystem-related tasks. Such financial independence is assessed in terms of whether any third party is able to exercise either direct or indirect influence over an NCB task and whether the NCB is able to fulfil its mandate, both operationally in terms of manpower, and financially in terms of appropriate financial resources<sup>9</sup>.
- 2.5 In respect of financial supervision, the ECB notes the broader competence of the FSA under the draft law.
- 2.6 This opinion is without prejudice to the conclusions of the ESRB's follow-up decision, which will be prepared pursuant to Article 17 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council<sup>10</sup>.

### **3. Transposition of Directive 2013/36/EU as regards buffers**

- 3.1 The draft law provides for all the buffers specified in Directive 2013/36/EU, including those that are optional. It is important for both the ECB and national competent authorities or designated authorities to have the broadest possible range of macro-prudential tools at their disposal. Therefore, the ECB welcomes the implementation of all risk buffers, which will ensure the consistency of the available macro-prudential tools and lower the risk of regulatory arbitrage.<sup>11</sup>
- 3.2 The draft law provides for the calculation of countercyclical buffers for credit institutions on the basis of the total risk exposure calculated pursuant to Article 92(3) of Regulation (EU) No 575/2013 and the weighted average of countercyclical buffers calculated pursuant to the rules established by Eesti Pank. Under Article 140 of Directive 2013/36/EU, power is delegated to the Commission to adopt the regulatory technical standards referred to in that article in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010. The methodology for the calculation of the weighted average of countercyclical buffers should be taken into account by Eesti Pank when defining the relevant national rules.

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World Bank, the International Monetary Fund, the Organisation for Economic Cooperation and Development, etc.), as well as the exchange of information on the state of, and risks in, the financial sector (including its financial infrastructure).

<sup>9</sup> See paragraph 3.3 of Opinion CON/2014/17.

<sup>10</sup> 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).

<sup>11</sup> See paragraph 3.2 of Opinion CON/2013/82.

#### 4. Oversight of payment systems

- 4.1 The draft law sets out that the objective of the oversight of payment systems is to contribute to the development of payment systems and to their sound operation. Eesti Pank will carry out the following tasks in respect of such oversight: (a) analyse the development and operation of payment systems; (b) provide guidance to payment system operators; (c) specify requirements for payment system operators and the operation and development of payment systems, when so required by law; (d) approve operational rules and principles of payment systems, when so required by law.
- 4.2 The oversight of payment and clearing systems is a Eurosystem task to be conducted in line with the Treaty and the Statute of the European System of Central Banks and of the European Central Bank (hereinafter, the ‘Statute of the ESCB’). This excludes interference with the Eurosystem’s oversight role by any Union or national body other than central banks acting within the framework of the Eurosystem<sup>12</sup>. Furthermore, the aims of such oversight are to maintain systemic stability, promote efficiency and safeguard the transmission channel for monetary policy<sup>13</sup>. The ECB understands that the term ‘payment systems’ is considered to be broadly defined in Estonian law to cover also settlement systems. In the light of the above, the ECB welcomes the aim of formalising Eesti Pank’s oversight function and clarifying and enhancing its regulatory powers in this field. The Estonian law should clarify that Eesti Pank shall take all necessary measures to apply the rules laid down by the Eurosystem with a view to ensuring efficient and sound payment and clearing systems in line with Article 127 of the Treaty, and Articles 3 and 22 of the Statute of the ESCB, as well as to ensure efficient and sound settlement systems.

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

Done at Frankfurt am Main, 18 March 2014.

[signed]

*The President of the ECB*

Mario DRAGHI

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<sup>12</sup> See paragraph 2.1.2 of Opinion CON/2013/84.

<sup>13</sup> See paragraph 2.1.1 of Opinion CON/2013/84.