



## **OPINION OF THE EUROPEAN CENTRAL BANK**

**of 20 March 2014**

**on the conflict of interest rules for senior officials of the Banco de España**

**(CON/2014/22)**

### **Introduction and legal basis**

On 14 February 2014, the European Central Bank (ECB) received a request from the Banco de España for an opinion on a draft resolution of the Banco de España's Governing Council amending the Banco de España's Internal Rules of 28 March 2000 as regards the conflict of interest rules for senior officials of the Banco de España (hereinafter the 'draft resolution').

The ECB's competence to deliver an opinion is based on Article 127(4) and Article 282(5) of the Treaty on the Functioning of the European Union and on the third indent of Article 2(1) of Council Decision 98/415/EC<sup>1</sup>, 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**

- 1.1 The draft resolution amends the Banco de España's Internal Rules in order to eliminate the current differences between the treatment of the Secretary-General and Directors-General of the Banco de España on the one hand, and senior public sector officials on the other, as regards restrictions on the exercise of private activities after termination of office.
- 1.2 The draft resolution provides for the qualified restriction on providing services in private companies. More particularly, the two-year restriction on senior public-sector officials providing their services to private companies after termination of office laid down in general law will be incorporated into the Banco de España's Internal Rules and also apply to the Banco de España's Secretary-General and Directors-General. The restriction is not unqualified but applies only to private companies which have had a direct connection to the office held. A direct connection between the company and the office held at the Banco de España is considered to exist where the Secretary-General, Directors-General, the governing bodies upon a proposal from the Directors-General or any officials responsible for bodies which report to the former by way of delegation or substitution have made decisions regarding such company. The restriction does not apply where

---

<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).

officials have returned to their former employers to engage in activities unrelated to their office at the Banco de España. During that two-year period, the former Secretary-General or Directors-General may not themselves, or through third parties or companies in which they have a direct or indirect stake above 10 %, enter into agreements to provide technical assistance or other services to the Banco de España, be it directly or through contracted or subcontracted companies.

- 1.3 The draft resolution also provides for the prohibition on providing services in institutions supervised by the Banco de España. The draft resolution maintains the current, absolute six-month prohibition on the Secretary-General and Directors-General providing their services to institutions subject to the Banco de España's supervision. Moreover, the Banco de España's Executive Commission will be allowed to extend that period up to a maximum of twelve months should it consider it necessary to prevent conflicts of interest.
- 1.4 As regards the regime adopted by the ECB, the provisions of the draft resolution are without prejudice to any rules and procedures adopted by the ECB and applicable to the Banco de España's Secretary-General and Directors-General in the framework of the Eurosystem or the Single Supervisory Mechanism (SSM).

## **2. General observations**

- 2.1 The ECB welcomes the fact that the draft resolution preserves the Banco de España's autonomy in staff matters, which is an aspect of the principle of central bank independence enshrined in Article 130 of the Treaty and Article 7 of the Statute of the European System of Central Banks and of the European Central Bank. The draft resolution should contribute to ensuring the effectiveness and independence of the supervision tasks conducted by the Banco de España.
- 2.2 Similarly, as provided by Article 31(3) of Council Regulation (EU) No 1024/2013<sup>2</sup>, the ECB is in the process of establishing comprehensive and formal procedures including ethics procedures and proportionate periods to assess in advance and prevent possible conflicts of interest arising where members of the Supervisory Board and ECB staff members who are engaged in supervisory activities are subsequently employed elsewhere within a period of two years after termination of office.
- 2.3 In order to avoid significant differences between the conflict of interest rules and restrictions after employment applicable to the members of the joint supervisory teams appointed by the ECB and those appointed by the Banco de España for the performance of the ECB's supervisory tasks, it would be advisable for the Banco de España's Internal Rules to refer to a possibility to review the

---

<sup>2</sup> 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, 29.10.2013, p. 63).

**ECB-PUBLIC**

rules as appropriate, taking into account the ethical rules, including rules on post-employment, that may be developed in the context of the SSM.

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

Done at Frankfurt am Main, 20 March 2014.

[signed]

*The President of the ECB*

Mario DRAGHI