



OPINION OF THE EUROPEAN CENTRAL BANK

of 2 May 2014

on the resolution of crises in the financial markets

(CON/2014/31)

Introduction and legal basis

On 27 March 2014, the European Central Bank (ECB) received a request from the Finnish Ministry of Finance for an opinion on a draft law on the resolution of credit institutions and investment firms, a draft law on the Financial Crisis Resolution Authority and several related draft laws (hereinafter ‘the draft laws’).

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/EC¹, as the draft laws relate to Suomen Pankki and to rules applicable to financial institutions insofar as they 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 laws

1.1 The main purpose of the draft laws is to introduce legislative changes in Finland relating to the Banking Union and in particular to implement the proposed Bank Recovery and Resolution Directive² (BRRD) and the proposed recast Deposit Guarantee Scheme Directive³ (DGSD). The draft laws foresee the establishment of a new Resolution Authority and a new Deposit Guarantee and Resolution Fund, while the Financial Supervisory Authority (i.e. the national competent authority for banking supervision) will be given new ex-ante powers. Law No 379/1992 on the Government Guarantee Fund, which concerns public assistance, and Law No 986/2012 on the temporary bank levy would both be repealed. The funds raised by the bank levy will be transferred to the proposed Deposit Guarantee and Resolution Fund, which would be a fund outside the central government budget and managed by the Resolution Authority and, from 2016 onwards, could be

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 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 (COM (2012) 280 final).

³ Proposal for a directive .../.../EU of the European Parliament and of the Council on Deposit Guarantee Schemes (COM (2010) 368 final).

transferred to the Single Resolution Fund of the Member States participating in the Banking Union. It is intended that the draft laws will enter into force on 1 January 2015.

- 1.2 The Resolution Authority, the Ministry of Finance, the Financial Supervisory Authority and Suomen Pankki would be required to cooperate in the planning and preparation of crisis resolution measures outlined in the draft law on the resolution of credit institutions and investment firms, as well as in monitoring the decisions made. In addition to the general duty to cooperate, the draft laws propose that the Resolution Authority will be required to decide, in cooperation with the Financial Supervisory Authority and Suomen Pankki, whether payments are to be made from the Deposit Guarantee and Resolution Fund. The draft laws also contain several provisions concerning the duty of the Resolution Authority, the Financial Supervisory Authority and the Ministry of Finance to request Suomen Pankki's opinion prior to making decisions and to notify Suomen Pankki of the decisions made. In addition, both the Resolution Authority and Suomen Pankki would have the duty to share with each other, without delay, any data in their possession concerning: (a) matters that may have a significant impact on the stability of the financial markets or otherwise on the development of the financial markets; and (b) matters that may result in significant disruption to the operation of the financial system or to the continuation of the operations of a credit institution or investment firm.
- 1.3 Moreover, the Resolution Authority would have an Advisory Committee consisting of representatives appointed by the Ministry of Finance on the proposals of the Resolution Authority, Suomen Pankki and the Financial Supervisory Authority. The Advisory Committee would have the task to ensure cooperation and communication between the said authorities.
- 1.4 Although Suomen Pankki would have a predominantly cooperative and consultative role in the resolution of credit institutions and investment firms, the draft laws propose that in a crisis situation the Resolution Authority's staff could be increased through the temporary secondment of civil servants from the Ministry of Finance, Suomen Pankki or the Financial Supervisory Authority. A decision to second a civil servant would require the consent of the civil servant in question and would be made by the Government, on the proposal of the Director General of the Resolution Authority, after hearing the employer of the civil servant in question.

2. General observations

The ECB notes that the Finnish authorities have decided in advance of the adoption of the BRRD and the DGSD to transpose provisions which they consider to be close to finalisation. The ECB understands that, once the BRRD is adopted, the framework established under the draft laws will be reviewed in order to ensure full consistency with any further developments at Union level.

The ECB also notes that, whereas the draft laws take due account of the forthcoming Regulation on the

Single Resolution Mechanism (SRM)⁴ and are intended to enter into force at the same time as that Regulation, there is a need to ensure consistency during the period after which the ECB has assumed its tasks under Council Regulation (EU) No 1024/2013⁵ but before all of the provisions of the proposed SRM Regulation are applicable (i.e. 1 January 2016). Hence, where appropriate, the draft laws should refer to the competent authority as including the ECB and not just the Financial Supervisory Authority.

3. The Resolution Authority's competence

The ECB notes that, once the SRM Regulation is applicable, the Resolution Authority will only be responsible for those institutions which are not under direct ECB supervision and are not cross-border institutions. However, it will not be limited in its tasks to such institutions. According to the proposed SRM Regulation, the Resolution Authority is to assist the Single Resolution Board (hereinafter 'the Board') in resolution planning and in preparing resolution decisions for banks under the Board's responsibility. The Resolution Authority will also assist in the implementation of a resolution scheme established by the Board by exercising resolution powers and tools in relation to the entities in question. It is important that the Resolution Authority has adequate resources for its tasks, especially considering that, at times, there may be a lot of work to be done in a limited time frame and sometimes at short notice.

4. Suomen Pankki's involvement

The ECB understands that the tasks allocated to Suomen Pankki by the draft laws do not interfere with the performance of its Eurosystem-related tasks under the Treaty and do not prejudice the financial means necessary to carry out those tasks. Any involvement of Suomen Pankki or the members of its decision-making bodies in measures to strengthen financial stability must be compatible with the Treaty and, consequently, with Suomen Pankki's institutional and financial independence and the personal independence of the members of its decision-making bodies safeguarding the proper performance of their tasks under the Treaty and the Statute of the European System of Central Banks and of the European Central Bank⁶.

The ECB welcomes the tasks allocated to Suomen Pankki under the draft laws, which are broadly consistent with its financial stability role.

The ECB notes, as regards the secondment of Suomen Pankki staff to the Resolution Authority, that the draft laws require the consent of the civil servant concerned but that the employer will only be heard. The draft laws should also require Suomen Pankki's consent in order to respect the principle of central bank independence, in particular the principle of financial independence. One aspect of the principle of financial independence is the autonomy of a national central bank (NCB) in staff matters which means,

⁴ Proposal for a regulation of the European Parliament and of the Council establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Bank Resolution Fund (COM (2013) 520 final).

⁵ 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).

⁶ See Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank (OJ C 326, 26.10.2012, p. 230).

inter alia, that an NCB may not be put into a position where it has limited control or no control over its staff, or where the Government of a Member State can influence its policy on staff matters⁷.

5. The ECB's involvement as regards significant credit institutions

The draft law on the resolution of credit institutions and investment firms foresees arrangements for cooperation between the Financial Crisis Resolution Bureau (i.e. the national resolution authority) and the Financial Supervisory Authority in a number of circumstances. For instance, if the Financial Crisis Resolution Bureau considers that the preconditions for placing an institution under resolution management have been met, it is to take a decision to place the institution under resolution management after hearing the Financial Supervisory Authority on the matter (or after having received a notice from the Financial Supervisory Authority⁸). The ECB understands that the Financial Crisis Resolution Bureau will be competent for the resolution and planning of the resolution of institutions that do not fall within the scope of the proposed SRM Regulation. As a consequence, the Financial Supervisory Authority should only be heard in respect of institutions that are not directly supervised by the ECB. In this regard, the ECB notes that it will assume the supervisory tasks conferred on it by Council Regulation (EU) No 1024/2013 on 4 November 2014. However, not all of the provisions of the proposed SRM Regulation will apply on its planned date of entry in force; certain provisions will only apply as of 1 January 2016. Therefore, there is a need to take into account the period between the date when the ECB assumes the direct supervision of credit institutions and the date of full application of the proposed SRM Regulation, as during this period elements of the draft law will apply to credit institutions under ECB supervision. In this period, the Financial Crisis Resolution Bureau should closely cooperate with the competent authority, including the ECB.

Pursuant to Chapter 16, Article 2 of the draft law on the resolution of credit institutions and investment firms, the Ministry of Finance is to request an opinion from both Suomen Pankki and the Financial Supervisory Authority before placing limits on the operations of credit institutions. The ECB understands

⁷ See, for example, the ECB's Convergence Report 2013, p. 27.

⁸ See Chapter 11, Article 5a, paragraph 4, of the proposed Law on credit institutions.

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that this is without prejudice to the cooperation to be undertaken with the ECB, as competent authority, once the ECB assumes its supervisory powers on 4 November 2014.

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

Done at Frankfurt am Main, 2 May 2014.

[signed]

The President of the ECB

Mario DRAGHI