



OPINION OF THE EUROPEAN CENTRAL BANK
of 30 May 2014
on the organisation, supervision and solvency of credit institutions
(CON/2014/40)

Introduction and legal basis

On 30 April 2014, the European Central Bank (ECB) received a request from the Spanish Secretary of State for Economic Affairs and Business Support for an opinion on a draft law on the organisation, supervision and solvency of credit institutions (hereinafter the ‘draft law’).

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 and sixth indents of Article 2(1) of Council Decision 98/415/EC¹, as the draft law relates to the prudential supervision of credit institutions, the Banco de España, and to 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 finishes the transposition of Directive 2013/36/EU of the European Parliament and of the Council² into Spanish legislation that first took place on 29 November 2013 with the adoption of Royal Decree-Law 14/2013, which implemented the most urgent provisions of Directive 2013/36/EU.
- 1.2. Although the draft law is mainly a transposition of Directive 2013/36/EU, it also recasts current Spanish legislation on the organisation, supervision and solvency of credit institutions, and includes a number of new provisions.
 - (a) The Banco de España, in its capacity as national competent authority for the banking sector and as an integral part of the Single Supervisory Mechanism (SSM) together with the ECB and other national competent authorities, is to exercise its supervisory powers in cooperation

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 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).

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with the ECB and subject to the powers assigned to the ECB by Council Regulation (EU) No 1024/2013³ (hereinafter the ‘SSM Regulation’).

- (b) The Banco de España’s comprehensive assessment of credit institutions under Article 33(4) of the SSM Regulation is to be subject to a new, one-time fee.
- (c) The aggregate results of the annual stress tests to be conducted on credit institutions subject to the Banco de España’s supervision are to be sent to the Spanish Parliament.
- (d) The Banco de España will have the power to withdraw banking authorisations, a task that was previously the responsibility of the Ministry for Economic Affairs and Competitiveness, as well as the power to authorise the establishment of branches and the free provision of services by non-Union credit institutions.
- (e) The Banco de España will be able to intervene in a credit institution and temporarily replace its management where it determines that shareholders’ actions could be seriously detrimental to the credit institution’s financial situation.
- (f) The remuneration policies concerning the members of boards of directors of credit institutions are submitted to the shareholders meeting or an equivalent body for approval subject to the same conditions as those applicable to listed companies under Spanish mercantile law.
- (g) The administrative liability of members of the control committee (*comisión de control*) of savings banks is clearly defined and will consider the following to be very serious infractions: (i) serious and persistent negligence in fulfilling statutory duties; or (ii) failure to propose the suspension of board of directors’ agreements that are manifestly illegal or seriously detrimental to the financial situation of the savings bank or its depositors or clients.
- (h) The composition of the Steering Committee of the Deposit Guarantee Fund of Credit Institutions (DGF) will be changed to include a representative from the Ministry for Economic Affairs and Competitiveness and a representative from the Ministry of Finance and Public Administration.

2. General observations

The ECB welcomes the use of the draft law to recast the current, basic provisions governing the organisation, supervision and solvency of credit institutions into a single, comprehensive law, in order to improve the efficiency of the Spanish financial legal framework. Such consolidation may, inter alia, assist in smoothly integrating the Spanish national banking supervisory structure into the SSM and ensuring that there are no legal obstacles under national law to the ECB’s performance of banking supervisory tasks with the assistance of the national competent authority under the SSM Regulation. The ECB also

³ 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).

understands that the rules are not intended to narrow or amend the scope of the SSM Regulation, which is directly applicable.

In particular, it should be noted that a number of provisions under Spanish law with regard to banking supervision may become outdated when, pursuant to the SSM Regulation, some of the tasks presently assigned to the Banco de España are assumed by the ECB on 4 November 2014. The ECB will then be the competent authority to authorise credit institutions, to withdraw authorisations and to assess the acquisition and disposal of qualifying holdings for both significant and less significant credit institutions. The ECB will also conduct direct supervision over significant credit institutions, which will have an impact on most of the tasks allocated by the draft law to the Banco de España in respect of such credit institutions. Relevant procedures for conducting those tasks were provided for in Regulation (EU) No 468/2014 (ECB/2014/17) of the European Central Bank⁴ (hereinafter the ‘SSM Framework Regulation’), which applies to public authorities and credit institutions. Both the SSM Regulation and the SSM Framework Regulation will have primacy over the draft law (once enacted) and therefore the draft law must be read and applied in conjunction with these regulations.

3. Governance of the Deposit Guarantee Fund

According to the draft law, the two new members of the Steering Committee of the DGF are to be representatives of the Ministry for Economic Affairs and Competitiveness and the Ministry of Finance and Public Administration, respectively. In this regard, the ECB draws attention to recital 8 and Article 4(12) of the recent proposal of the European Parliament and the Council⁵ to recast Directive 94/19/EC of the European Parliament and of the Council⁶, which will require Member States to ensure that their Deposit Guarantee Schemes have sound governance practices in place. Despite the fact that having only two government members on the Steering Committee of the DGF implies that government influence on the decisions to be taken by that committee will be limited, the ECB emphasises that providing for politically appointed persons to sit on the DGF’s governing body should not compromise its efficient functioning, and should not lead to any increase in political intervention in the resolution of credit institutions⁷. As previously pointed out, the DGF may have a role in banking resolution procedures through the provision of finance for such resolution, as long as it does not in any way compromise its core function of protecting insured deposits⁸.

⁴ Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5. 2014, p. 1).

⁵ Proposal for a Directive of the European Parliament and of the Council on Deposit Guarantee Schemes. This proposal was approved by the European Parliament on 15 April 2014 but has not yet been published in the Official Journal.

⁶ Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (OJ L 135 , 31.5.1994, p. 5).

⁷ See paragraph 3.5 of Opinion CON/2011/21. All ECB opinions are published on the ECB’s website at www.ecb.europa.eu.

⁸ See paragraph 2.1 of Opinion CON/2013/25.

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In any case, the entire matter should soon be subject to a detailed review, in order to comply with the upcoming Union banking resolution framework (including the Banking Recovery and Resolution Directive⁹ and the Single Resolution Mechanism Regulation¹⁰).

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

Done at Frankfurt am Main, 30 May 2014.

[signed]

The President of the ECB

Mario DRAGHI

⁹ Directive 2014XX/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council. Not yet published in the Official Journal.

¹⁰ 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).