



## OPINION OF THE EUROPEAN CENTRAL BANK

of 29 July 2014

on reorganisation and winding-up measures regarding Hypo Group Alpe Adria

(CON/2014/61)

### Introduction and legal basis

On 11 June 2014 the European Central Bank (ECB) received a request from the Austrian Ministry of Finance for an opinion on a draft law on reorganisation and winding-up measures regarding Hypo Group Alpe Adria, including the establishment of a run-off unit<sup>1</sup> (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 on the sixth indent of Article 2(1) of Council Decision 98/415/EC<sup>2</sup>, as the draft law relates to the 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 Under the draft law<sup>3</sup>, Hypo Alpe-Adria-Bank International AG (HBInt) can be turned into a deregulated run-off unit that does not have to comply with own funds and liquidity rules for credit institutions. The unit can be established once HBInt’s banking licence lapses, which will occur when the Financial Market Authority (FMA) issues a notice confirming that HBInt has ceased its deposit-taking business and no longer has any qualifying holdings in other credit institutions or investment firms. The purpose of the run-off unit is to wind down HBInt’s remaining portfolio and to realise its assets. HBInt is obliged to establish a run-off plan to this effect, and may only conduct business transactions that serve this purpose. Such transactions include banking activities, with the

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<sup>1</sup> Federal Law adopting the Federal Law establishing a divestment unit (GSA), the Federal Law incorporating a federal divestment holding company for HYPO ALPE-ADRIA-BANK S.P.A. (HBI Federal Holding Law), the Federal Law incorporating a federal divestment (public limited) company (ABBAG Law) and the Federal Law on the reorganisation of HYPO ALPE ADRIA BANK INTERNATIONAL AG (HaaSanG) and amending the Law on financial market stability and the Law on the Financial Market Supervisory Authority.

<sup>2</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>3</sup> Federal Law establishing a divestment unit (GSA).

exception of deposit-taking business. Nevertheless, only certain provisions of the Law on banking<sup>4</sup> apply to the run-off unit, including the requirement that its managing directors and the members of the supervisory board are fit and proper persons to hold such positions, and provisions relating to internal audits, the prevention of money laundering and accounting. The draft law also enables the Minister for Finance (MoF) to transfer assets and liabilities of HBInt to third party institutions and authorises the MoF to establish a run-off holding company to take over and administer the shares in the run-off unit<sup>5</sup>.

- 1.2 The draft law<sup>6</sup> authorises the MoF to establish a separate holding company (HBI-Bundesholding AG) to take over all of HBInt's shares in its Italian subsidiary, Hypo Alpe-Adria-Bank S.P.A.
- 1.3 The draft law<sup>7</sup> also enables the cancellation and deferral of liabilities and contains other measures regarding HBInt that aim to facilitate the run-off of the bank. The draft law provides that certain subordinated<sup>8</sup> and shareholder liabilities are extinguished on publication of a regulation to that effect by the FMA. At the same time, most guarantees and collateral for such liabilities terminate by operation of law, with the exception of certain disputed liabilities. The due date in respect of such disputed liabilities is deferred until the making of a final court order in respect of the liability in question. The draft law also disapples creditors' contractual or statutory rights to terminate their relationship with a reorganised entity, seek the alteration of terms, or enforce security as a consequence of the reorganisation and winding-up measures<sup>9</sup>. The draft law appoints the FMA as the competent authority to implement the reorganisation and winding-up measures. The explanatory memorandum accompanying the draft law explains that statutory measures ensuring that the losses arising from the reorganisation and winding-up are borne by lower ranking creditors and former shareholders with a close relationship to HBInt are justified in order to achieve the Government's aims of achieving an orderly run-off of the bank and preserving financial stability.
- 1.4 The draft law also enables the MoF to provide measures pursuant to the Law on financial market stability<sup>10</sup> in respect of the run-off unit and to raise the maximum amount of costs of recapitalisation measures permitted thereunder from EUR 15 to EUR 22 billion. These funds are financed from the general budget without direct recourse to bank levies.

## 2. General observations

- 2.1 The ECB notes that the draft law was adopted by the National Council on 8 July 2014, and reminds

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<sup>4</sup> Federal Banking Law No 532/1993, as amended.

<sup>5</sup> Federal Law incorporating a federal divestment (public limited) company (ABBAG Law).

<sup>6</sup> Federal Law incorporating a federal divestment holding company for HYPO ALPE-ADRIA-BANK S.P.A. (HBI Federal Holding Law).

<sup>7</sup> Federal Law on the reorganisation of HYPO ALPE ADRIA BANK INTERNATIONAL AG (HaaSanG).

<sup>8</sup> A list of the relevant subordinated liabilities is listed in Annex 1 to the HaaSanG.

<sup>9</sup> See Article 5 of the HaaSanG.

<sup>10</sup> Federal Law amending the Law on financial market stability.

the consulting authority that Article 4 of Decision 98/415/EC requires that the ECB must be consulted ‘at an appropriate stage’ in the legislative process. This implies that the consultation should take place at a point in the legislative process that gives the ECB sufficient time to examine the draft legislative provisions and adopt its opinion. The ECB requests that, in future, the Austrian authorities comply with their obligation to consult the ECB at an appropriate stage.

- 2.2 The ECB understands that the MoF’s right to transfer assets and liabilities of HBInt to third parties aims at safeguarding the deregulated status of Hypo Group Alpe Adria in the event that it cannot be turned into a run-off unit because HBInt is still conducting deposit-taking business or maintaining qualifying holdings in other credit institutions or investment firms.
- 2.3 The ECB also understands that the MoF’s right to dispose of the shares in the Italian subsidiary Hypo Alpe-Adria-Bank S.P.A. will create a legal basis for the shares in this subsidiary to be sold without hindering the run-off.

### **3. Specific observations**

#### *3.1 Conduct of banking and leasing activities by the run-off unit*

Once HBInt has been turned into a run-off unit, the run-off unit may continue to conduct banking and leasing activities if such activities either directly or indirectly serve the purpose of the run-off. In this context the ECB is concerned that the run-off unit will be partly deregulated but remain entitled to conduct banking activities. The condition that such business ‘directly or indirectly’ serves the purpose of the run-off is loosely worded and therefore open to broad interpretation. This appears inappropriate in view of the need for thorough and consistent regulation of the financial sector. Therefore, the draft law should define more precisely the conditions to be met in order for the deregulated run-off unit to carry on banking and leasing activities.

#### *3.2 Relationship with Directive 2001/24/EC*

Article 6 of the draft law states that the Federal Law on the reorganisation of Hypo Alpe Adria Bank International AG serves the purpose of transposing Directive 2001/24/EC<sup>11</sup>. The ECB understands that the sole purpose of this provision is to establish that measures provided for in the draft law are reorganisation measures within the meaning of Article 2 of that Directive.

#### *3.3 Relationship with Directive 2014/59/EU*

Directive 2014/59/EU<sup>12</sup> entered into force on 2 July 2014. The ECB notes that the draft law is not

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<sup>11</sup> Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (OJ L 125, 5.5.2001, p. 15).

<sup>12</sup> Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 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 (OJ L 173, 12.6.2014, p. 190).

## ECB-PUBLIC

intended to implement the resolution framework or any of the specific resolution tools under that Directive, but establishes a special wind-down regime purely in respect of Hypo Group Alpe Adria.

### *3.4 Relationship with the Single Resolution Fund*

The ECB notes that Article 3(4) of the Agreement on the transfer and mutualisation of contributions to the Single Resolution Fund provides that any amount disbursed by the resolution financing arrangement of a Contracting Party prior to the date of application of the Agreement in respect of resolution actions within its territory shall be deducted from those contributions to be transferred by that Contracting Party to the Single Resolution Fund. The ECB understands that the draft law does not intend to transpose Directive 2014/59/EU or parts of it, and that the measures envisaged for the reorganisation and winding-up of Hypo Group Alpe Adria will not be financed from the national resolution fund to be established under Directive 2014/59/EU. It should therefore be ensured that any amounts disbursed for the purpose of reorganising and winding up Hypo Group Alpe Adria are not deducted from Austria's contributions to the Single Resolution Fund under the abovementioned Agreement.

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

Done at Frankfurt am Main, 29 July 2014.

[signed]

*The President of the ECB*

Mario DRAGHI