



EUROPEAN CENTRAL BANK  
EUROSYSTEM

EN

ECB-PUBLIC

## OPINION OF THE EUROPEAN CENTRAL BANK

Of 22 December 2014

on disclosure of information if a bank is subject to resolution or licence revocation

(CON/2014/90)

### Introduction and legal basis

On 20 November 2014, the European Central Bank (ECB) received a request from Българска народна банка (Bulgarian National Bank) (BNB) for an opinion on a draft law amending and supplementing the Law on credit institutions (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 the third and sixth indents of Article 2(1) of Council Decision 98/415/EC<sup>1</sup>, as the draft law relates to BNB 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 is aimed at increasing transparency and public awareness in the event that a bank is subject to resolution measures or has had its banking licence revoked.
- 1.2 Under the draft law, BNB may instruct the conservators of a bank placed under special supervision to enter into an agreement with a company that has experience in tracking monetary transfers and receivables, as well as transactions with financial instruments<sup>2</sup>. In addition, the assignee in bankruptcy is required to enter into such an agreement<sup>3</sup>.
- 1.3 The draft law introduces a special regime requiring public disclosure of the identity of certain individuals holding deposits and loans in banks subject to resolution measures and those having their licence revoked. This requirement applies to individuals under an obligation to disclose their property, income and expenses in the country and abroad in accordance with the Law on the disclosure of property belonging to individuals occupying high-ranking state and other offices<sup>4</sup>.

---

<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> See paragraph 2 of the draft law amending Article 103(3) of the Law on credit institutions.

<sup>3</sup> See paragraph 6 of the draft law amending Article 33(5) of the Law on bank insolvency.

<sup>4</sup> See Article 2.

- 1.4 Under the draft law, prior to any deposits being paid out to a company registered in a jurisdiction with a preferential tax regime<sup>5</sup>, the company must disclose the identity of its beneficial owners to the bank in question. In addition, if a company registered in a jurisdiction with a preferential tax regime has a loan that has not been serviced or is overdue, and this loan is from a bank subject to resolution measures or a bank having its licence revoked, the company is required to disclose the identity of its beneficial owners to the bank in question. The bank must publish the names of the beneficial owners of the companies in two central daily newspapers.
- 1.5 Furthermore, the individuals that manage and represent a bank subject to resolution measures or a bank having its license revoked must publish the names of all natural and legal persons whose bank loans have not been serviced or are overdue in two central daily newspapers<sup>6</sup>.

## 2. General observations

- 2.1 The ECB welcomes the introduction of measures that assist in the retrieval of assets and enhance collection efforts in bank resolution.
- 2.2 On the proposed public disclosure of confidential information to promote transparency in bank resolution, the ECB notes that public disclosure by banks of confidential information is subject to specific disclosure obligations, exceptions and prohibitions established in Union law as well as national law<sup>7</sup>. In this vein, the envisaged publication of the names of bank customers, i.e. all natural and legal persons whose loans have not been serviced or are overdue from banks in resolution (or where the bank's licence has been revoked)<sup>8</sup> needs to be balanced with privacy issues and adhere to due process. Safeguards regarding the publication of customer information should be introduced, including, for example, an assessment of whether the disclosure is proportionate and of systemic importance<sup>9</sup>.

## 3. Specific observations

- 3.1 *Tracking monetary transfers and receivables as well as transactions with financial instruments*
- 3.1.1 Providing for a competence of BNB<sup>10</sup> to enter into a service contract with specialised third parties having experience in tracking money transfers adds a specific power to the existing toolkit under the Law on credit institutions. The ECB understands that BNB is already authorised under the Law on credit institutions to issue binding instructions to the conservators in relation to their activity,

---

<sup>5</sup> The jurisdictions with a preferential tax regime are specified in paragraph 1, point 64 of the Additional Provisions of the Law on Corporate Income Tax.

<sup>6</sup> See paragraph 3 of the draft law introducing Article 121(c)(3) final line of the Law on credit institutions.

<sup>7</sup> See, for example, recital 68 and Article 442 of the 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>8</sup> See paragraph 3 of the draft law introducing Article 121(c) (3) final line of the Law on credit institutions.

<sup>9</sup> See Opinion CON/2014/39, paragraph 3.3.

<sup>10</sup> See paragraph 2 of the draft law amending Article 103 of the Law on credit institutions.

including the delegation of some of the conservator's powers to third parties<sup>11</sup>. Whether BNB decides to exercise this right or not depends on its discretion.

3.1.2 On the proposed mandatory requirement for the assignee in bankruptcy to enter into an agreement with a company that has experience in tracking money transfers and receivables as well as transactions with financial instruments, the ECB recommends that the assignee be granted discretion to decide in each individual case whether such an agreement is necessary.

3.2 *Public disclosure and information requirements concerning beneficial owners of companies*

3.2.1 The ECB welcomes the requirement to ascertain the identity of the beneficial owners of companies registered in a jurisdiction with a preferential tax regime before any payouts of deposits are made. In this regard, the ECB notes that the information on the identity of the beneficial owners of companies should be readily available as part of banks' compliance with customer due diligence requirements<sup>12</sup>. The importance of enhancing transparency on beneficial ownership and adequate customer due diligence has been further emphasised in recent legislative proposals at Union level<sup>13</sup>.

3.2.2 The publication of the names of the beneficial owners of companies registered in a jurisdiction with a preferential tax regime with loans that have not been serviced or are overdue at banks in resolution (or where the bank's licence has been revoked) should be subject to appropriate safeguards as set out in paragraph 2.2 above. With respect to loans that have not been serviced or are overdue, the key concern should be to enhance collection efforts.

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

Done at Frankfurt am Main, 22 December 2014.

[signed]

*The President of the ECB*

Mario DRAGHI

---

11 See Article 107(3) and (4) of the Law on credit institutions.

12 Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).

13 See, for example, Articles 11(1)(b) and 12(4) of the proposal for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (COM(2013) 45 final).