



EUROPEAN CENTRAL BANK

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OPINION OF THE EUROPEAN CENTRAL BANK

of 11 August 2015

on amendments to constitutional law and the Law on Česká národní banka

(CON/2015/28)

Introduction and legal basis

On 6 July 2015 the European Central Bank (ECB) received a request from the Czech Minister for Human Rights, Equal Opportunities and Legislation (hereinafter the 'Minister') for an opinion on a draft constitutional law amending Law No. 1/1993 Coll. on the Constitution (hereinafter the 'draft constitutional law') and on a draft law amending the Law on Česká národní banka No. 6/1993 Coll. (hereinafter the 'draft law on ČNB'; together with the draft law, the 'draft laws'). The consulting authority did not specify a time limit for the submission of the ECB's opinion. The ECB understands that the draft laws have been adopted by the Czech Government and submitted to Parliament, but that they are not expected to be debated by the Lower House of Parliament (in committee) until after the summer recess.

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 (hereinafter the 'Treaty') and the third indent of Article 2(1) of Council Decision 98/415/EC of 29 June 1998¹, as the draft laws relate to Česká národní banka (ČNB). 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

The purpose of the draft laws is to amend a number of provisions of the Constitution of the Czech Republic (hereinafter the 'Constitution') relating to the powers of the legislative and executive branches of the State, and which consequently affect certain provisions of the Law on ČNB.

In particular, the draft laws contain provisions which would change the procedure for the appointment of ČNB's Governor, its two Vice-Governors and the other four members of ČNB's Board (hereinafter 'Board members'). Whereas the Constitution currently stipulates that the President of the Czech Republic (hereinafter the 'President') appoints and dismisses the Governor, the Vice-Governors and the Board members without any further requirement to obtain the consent of, or consult with, any third party, the draft constitutional law stipulates that the President shall appoint the Governor, Vice-Governors and Board members following the consent of the Senate. If the Senate should fail to reach a decision on the President's proposal within 60 days of being presented with the proposal, it will be deemed to have given its consent. The draft law on ČNB reflects this modification to the appointment procedure by stipulating

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).

that the President shall request the consent of the Senate for the appointment of the Governor, Vice-Governors and Board members. The Ministry's request for an ECB opinion notes that this procedure is similar to the appointment procedure for the Justices of the Czech Constitutional Court and should strengthen cooperation between the executive and the legislature. The Ministry also notes that the independent status of ČNB will be maintained.

Second, the draft law on ČNB would require ČNB's Board to appoint another Board member to perform in full the duties of Vice-Governor (hereinafter a 'substitute Vice-Governor') until a new Vice-Governor or Governor is appointed, in the event that one of the two offices of Vice-Governor is unoccupied or if a Vice-Governor has been appointed to perform the duties of Governor. Likewise, if the office of Governor is unoccupied, ČNB's Board will be required to appoint one of the Vice-Governors (or, if applicable, substitute Vice-Governors) to perform the duties of Governor until a new Governor is appointed.

The draft laws do not affect the criteria for appointment or grounds for dismissal of the Governor, Vice-Governors or other Board members, nor the provisions guaranteeing their personal independence as regards security of tenure.

Furthermore, pursuant to the transitional provisions of the draft constitutional law, appointments to the ČNB's Board by the President in office at the date of entry into force of the draft constitutional law will be governed by the Constitution in force prior to that date. Therefore, the proposed changes to the appointment of Board members would only apply to appointments made by any President elected in the future and they do not affect the term of office of Board members that are currently in office.

2. General observations

As regards the proposed change to the appointment procedure for the Governor, Vice-Governors and other Board members, the ECB notes that the draft laws would strengthen the involvement of the Senate (Upper House of Parliament) in this procedure. In this regard the ECB recalls that Member States are free to set the conditions required for the appointment of the members of the decision-making bodies of their national central banks (NCBs)².

3. Specific observations regarding the draft laws

- 3.1 The ECB welcomes the proposed amendment to the draft constitutional law stipulating that if the Senate fails to reach a decision on the President's proposal for a new Board member within 60 days of being presented with the proposal, it will be deemed to have given its consent. This should facilitate the timely appointment of new Board members³,
- 3.2 The ECB welcomes also the provisions of the draft laws on substitute Board members as these provisions should ensure the continuity of performance of the functions of Governor and Vice-

² See Opinion CON/2009/13, paragraph 3.4. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

³ Member States have a general duty to take the necessary measures to ensure the timely appointment of a successor if a position on one of the NCB's decision-making bodies becomes vacant. See Opinion CON/2013/69, paragraph 4.2, Opinion CON/2012/89, paragraph 7 and Opinion CON /2009/74, paragraph 2.2. See also the ECB's 2014 Convergence Report, p. 18.

Governor. The ECB notes that one consideration in the context of central bank independence is the need for a central bank legal framework that provides a stable basis for the central bank's functioning⁴. In this regard the ECB considers that the draft law on ČNB should safeguard the smooth and continuous functioning of ČNB's Board⁵.

- 3.3 The ECB notes that clear rules on the procedure for appointment and dismissal are not only necessary for the Governor of an NCB, but also for any person who takes over the duties of the Governor (or a Vice-Governor). Thus, it must be ensured that any Vice-Governor, or other Board member who takes over the duties of the Governor or Vice-Governor on an interim basis, benefits from the same rules that apply to the Governor (and Vice-Governors) as regards security of tenure of office, grounds for dismissal and conflicts of interest⁶. This is ensured under the draft law on ČNB, which confines the pool of eligible candidates to the Vice-Governors and other Board members, all of whom are subject to the same rules on security of tenure of office, grounds for dismissal and conflicts of interest.
- 3.4 The ECB notes that, should the provisions of the draft laws become subject to further amendments in the course of the parliamentary process and should these amendments substantially alter the draft laws compared to the versions on which the ECB was consulted, then the ECB would need to be reconsulted on these amendments⁷.

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

Done at Frankfurt am Main, 11 August 2015.

[signed]

The President of the ECB

Mario DRAGHI

⁴ See Opinion CON/2010/91, paragraph 2.2.

⁵ For instance, it should prove useful if the office of Governor or Vice-Governor were to become vacant but the constitutional procedure for appointing a successor had not yet been completed. This could arise, for example, if the Senate were to withhold its consent before the expiration of the 60-day period mentioned in paragraph 3.1 above, which would trigger the need to start a fresh appointment procedure.

⁶ See Opinion CON/2010/37 paragraph 2.1 and Opinion CON/2010/91 paragraph 3.2.

⁷ See for example Opinion CON2006/32, paragraph 4.1.