



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 27 November 2017

on transactions with related parties

(CON/2017/50)

Introduction and legal basis

On 8 November 2017 the European Central Bank (ECB) received a request from Българска народна банка (Bulgarian National Bank) (BNB), following correspondence exchanged between BNB and the Minister for Finance, for an opinion on a draft law amending 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 sixth indent of Article 2(1) of Council Decision 98/415/EC¹, as the draft law relates 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 main purpose of the draft law is to strengthen the regulatory framework for banking supervision in Bulgaria, and in particular regarding transactions with related parties. The draft law therefore amends the Law on credit institutions² as follows:

- institutions seeking to obtain an authorisation as a credit institution would be required to provide to BNB additional information on persons with a direct or indirect qualifying holding in that institution;
- in order to ensure their sound and prudent management, credit institutions would be required to notify BNB whenever they suspect the existence of a negative influence from the persons who own a direct or indirect qualifying holding in that institution;
- credit institutions may only lend to persons who are considered to be related parties by means of a unanimous decision by the management board and after approval by the supervisory board of the credit institution;
- the draft law expands the list of exposures which are considered to be exposures to related parties;

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 Published in *Darjaven Vestnik* No 59, 21 July 2006.

- credit institutions are required to implement internal rules and procedures to identify, monitor and report exposures to persons who are considered to be related parties; and
 - BNB is empowered to adopt an ordinance to further specify the implementation of the rules on exposures to persons who are considered to be related parties.
- 1.2. The draft law also aims to improve the legal framework for the implementation of European Banking Authority (EBA) guidelines, recommendations and other acts in Bulgaria. To this end, the draft law introduces an explicit requirement for credit institutions to comply with those EBA guidelines, recommendations and other measures which BNB has also announced it will comply with. In addition, the draft law grants BNB the power to issue ordinances, guidelines or other instruments to introduce requirements, criteria and conditions resulting from EBA guidelines, recommendations and other measures.

2. General observations

The ECB notes that the International Monetary Fund Financial Sector Assessment Program for Bulgaria (hereinafter the 'FSAP Report')³ contains findings regarding the compliance of the Bulgarian legal framework with the Basel Committee on Banking Supervision's Core Principles for Effective Banking Supervision (hereinafter 'Core Principles')⁴, and in particular with the Core Principle on transactions with related parties⁵. The ECB understands that BNB has already undertaken specific measures to address the IMF findings⁶ and in particular to bring the Bulgarian regulatory framework into compliance with the Core Principle on transactions with related parties⁷.

3. Specific observations

- 3.1 The Core Principles provide a sound foundation for the regulation, supervision, governance and risk management of the banking sector⁸. From a prudential perspective, transactions with related parties may give rise to conflicts of interest and merit careful attention⁹. The risks related to transactions with related parties are already addressed, for example, in the internal governance

³ See International Monetary Fund (IMF), Bulgaria: Financial Sector Assessment Program, Detailed Assessment of Observance on the Basel Core Principles for Effective Banking Supervision, IMF Country Report No 15/295 and Bulgaria, Financial Sector Assessment Program: Technical Note—Stocktaking of Progress Achieved by the Bulgarian National Bank in Strengthening Banking Supervision, IMF Country Report No 17/199, both available on the IMF's website at www.imf.org.

⁴ See Basel Committee on Banking Supervision (BCBS), Core principles for Effective Banking Supervision, September 2012, available on the BCBS's website at www.bis.org.

⁵ See BCBS Core Principles for Effective Banking Supervision, Principle 20.

⁶ See Bulgarian National Bank, Plan on Reforms and Development of Banking Supervision Exercised by the Bulgarian National Bank, 5 October 2015, available on the BNB's website at www.bnb.bg.

⁷ The FSAP Report has assessed the Bulgarian legal framework as 'materially non-compliant' with Core Principle 20.

⁸ See ECB, Guide to banking supervision, November 2014, available on the ECB's website at www.ecb.europa.eu.

⁹ See Technical working document: ECB staff drafting proposals on amendments to the Union framework for capital requirements of credit institutions and investment firms - Drafting proposals in relation to a proposal for a directive of the European Parliament and of the Council amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures and further proposed amendments to the current text of the Capital Requirements Directive (CRD), Amendment 22, available on the ECB's website at www.ecb.europa.eu.

rules¹⁰ and the disclosure rules¹¹ applicable to credit institutions in the Union. The ECB supports the objective to further strengthen the Bulgarian as well as the Union regulatory frameworks regarding transactions with related parties¹².

- 3.2 The ECB notes the clarifications regarding the BNB's implementation of EBA guidelines and recommendations in Bulgaria contained in the draft law, which should improve legal certainty.

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

Done at Frankfurt am Main, 27 November 2017.

[signed]

The President of the ECB

Mario DRAGHI

¹⁰ See Guidelines (EBA/GL/2017/11) of the European Banking Authority on internal governance under Directive 2013/36/EU, Final Report, 26 September 2017, in particular paragraphs 105, 113 and 176, available on the EBA's website at www.eba.europa.eu.

¹¹ See Guidelines (EBA/GL/2016/11) of the European Banking Authority on disclosure requirements under Part Eight of Regulation (EU) No 575/2013 (EBA/GL/2016/11), Table 1, available on the EBA's website at www.eba.europa.eu.

¹² See also paragraph 2.3 of Opinion CON/2016/48, available on the ECB's website at www.ecb.europa.eu.