



EUROPEAN CENTRAL BANK
EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 23 October 2018

on the rules to be followed by systemically relevant credit institutions when defining fixed remuneration policies
(CON/2018/44)

Introduction and legal basis

On 21 September 2018 the European Central Bank (ECB) received a request from the Ministry of Finance of the Netherlands for an opinion on a law on approval from the Minister for Finance regarding fixed remuneration of directors of systemically relevant 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, as the draft law relates to the ECB's tasks concerning the prudential supervision of credit institutions pursuant to Article 127(6) of the Treaty. 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 encompasses two elements related to the fixed remuneration of staff of systemically relevant credit institutions. For this purpose, systemically relevant credit institutions include essentially those credit institutions which are considered by De Nederlandsche Bank as global or other systemically important credit institutions in accordance with national law transposing Directive 2013/36/EU of the European Parliament and of the Council^{1 2}.
- 1.2 The first element refines the definition of 'basic fixed remuneration' by stipulating that basic fixed remuneration must not consist of shares in a systemically relevant credit institution or other financial instruments whose increase in value is partly dependent on an increase in the value of the credit institution's shares or benefits associated therewith.
- 1.3 The second element introduces a requirement for systemically relevant credit institutions to obtain prior approval from the Minister for Finance for any increase in basic fixed remuneration. In particular, any proposal by the body or individual within the credit institution responsible for establishing remuneration, or to establish the fixed remuneration of a new director or increase the

¹ 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 investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L176, 27.6.2013, p. 338).

² See Title VII, Chapter 4 of Directive 2013/36/EU on capital buffers and national law transposing those provisions, in particular Article 3:62a of the *Wet op het financieel toezicht* ('Financial Supervision Act' (FSA) adopted on 28 September 2006) and Articles 105c and 105d of the *Besluit Prudentiële regels Wft* (Decree on Prudential Rules FSA, adopted on 12 October 2006).

fixed remuneration of an existing director, is to be submitted to the Minister for Finance for his/her prior consent. The Minister must refuse to consent if he/she deems the amount of the fixed remuneration inappropriate with a view to a cautious, controlled and sustainable remuneration policy taking into account the broad consensus that exists within society. More detailed rules regarding the appropriateness of the level of any fixed remuneration may be set by means of an administrative order. Furthermore, under or pursuant to such an order, rules may be laid down with regard to the details to be submitted in connection with the Minister's consent.

- 1.4 The explanatory memorandum to the draft law and the opinion of the Council of State on the draft law contain divergent views as to whether the role proposed for the Minister for Finance under the draft law is consistent with the ECB's prudential supervisory competence within the framework of the single supervisory mechanism (SSM) as set out in Council Regulation (EU) No 1024/2013³.

2. Observations

- 2.1 Within the framework of the SSM as set out in Regulation (EU) No 1024/2013, the ECB is exclusively competent to carry out, for prudential supervisory purposes, specific tasks in relation to all credit institutions established in the participating Member States. One of those tasks consists of ensuring compliance with requirements imposed on credit institutions to have in place robust governance arrangements, including remuneration policies and practices, as set out in relevant Union law⁴. For the purpose of carrying out the tasks conferred on it by Regulation (EU) No 1024/2013, and with the objective of ensuring high standards of supervision, the ECB applies all relevant Union law, and where this is composed of directives, the national legislation transposing those directives. In this respect, when carrying out its prudential supervision tasks, the ECB is the competent authority within the meaning of Directive 2013/36/EU. Directive 2013/36/EU provides that competent authorities must ensure that, when establishing and applying the total remuneration policies for categories of staff, credit institutions comply with the principles set out in that Directive in a manner and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities⁵.
- 2.2 The competence granted to the Minister for Finance under the draft law does not seem to conflict with the ECB's competence as the competent authority responsible for ensuring compliance with the abovementioned requirement for credit institutions to have in place robust governance arrangements, including remuneration policies and practices. The ECB understands that, in exercising his/her competence under the draft law, the Minister would assess the appropriateness of a proposed basic fixed remuneration for new or existing directors on an individual basis with a view to a cautious, controlled and sustainable remuneration policy taking into account the broad consensus that exists within society. As long as the Minister does not assess credit institutions' compliance with their obligation to have in place robust governance arrangements, which falls under the ECB's competence, this approach does not seem to conflict with the ECB's supervisory

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).

⁴ See Article 4(1)(e) of Regulation (EU) No 1024/2013.

⁵ See Article 92 and further of Directive 2013/36/EU.

powers under Regulation (EU) No 1024/2013. In this vein, it has to be avoided that the eventual general administrative orders detailing the rules regarding the appropriateness of the level of individual fixed remuneration create a conflict with the ECB's supervisory powers. As previously noted by the ECB, banking legislation adopted by the Member States after the establishment of the SSM should facilitate the exercise by the ECB of its responsibilities within the SSM, including its capacity to enhance the consistency of supervision across the euro area. Member States should refrain from setting obstacles both to uniform supervisory practice and to the exercise of supervisory discretion by the ECB within the SSM⁶.

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

Done at Frankfurt am Main, 23 October 2018.

[signed]

The President of the ECB

Mario DRAGHI

⁶ See paragraph 2.2 of ECB Opinion CON/2016/53. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.