



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 16 November 2018

on the implementation of the recommendations of the convergence report into the Law on
Българска народна банка (Bulgarian National Bank)
(CON/2018/53)

Introduction and legal basis

On 23 October 2018 the European Central Bank (ECB) received a request from the Minister for Finance for an opinion on a draft law amending the Law on the Bulgarian National Bank (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 indent of Article 2(1) of Council Decision 98/415/EC¹, as the draft law relates to Българска народна банка (Bulgarian National Bank (BNB)). 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 Introduction

As noted in the explanatory memorandum accompanying the draft law, the draft law aims to bring the Law on the Bulgarian National Bank (hereinafter the 'Law on BNB')² in line with Articles 130 and 131 of the Treaty and with the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'). The draft law has been prepared on the basis of the assessment and recommendations for Bulgaria contained in the Convergence Report of the European Commission and the Convergence Report of the ECB³ and aims to fully reflect the requirements of Union law in BNB's regulatory framework⁴. With regard to the requirements for legal integration of BNB into the Eurosystem, the explanatory memorandum states that the legal framework must be prepared and enter into force on the date on which the Member State with a derogation adopts the euro, which is why the draft law does not contain any proposals for changes in this area⁵.

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 46, 10 June 1997.

3 See p. 1 of the Explanatory memorandum.

4 See p. 3 of the Explanatory memorandum.

5 See p. 1 of the Explanatory memorandum.

1.2 *Personal independence*

The draft law amends Article 14(1) of the Law on BNB by providing that a member of BNB's Governing Council may be relieved from office only if he no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct. The draft law also amends Article 14(3) of the Law on BNB to provide that the decision to relieve the Governor of BNB from office may be referred to the Court of Justice on grounds of infringement of the Treaties or of any rule of law relating to their application.

1.3 *Institutional independence*

The draft law amends Article 44 of the Law on BNB to provide that when exercising their powers and carrying out their duties under the Law, BNB, the Governor of BNB and BNB's Governing Council must be independent and must not seek or take instructions from EU institutions, bodies, offices or agencies, from the Council of Ministers or from the governments of other Member States of the European Union, or from any other bodies or institutions. This provision is further amended to provide that EU institutions, bodies, offices or agencies, the Council of Ministers or the governments of other EU Member States, or any other bodies or institutions, must not exercise influence over BNB, the Governor of BNB or BNB's Governing Council.

1.4 *Prohibition of monetary financing*

The draft law amends Article 45(1) of the Law on BNB to stipulate that BNB must not provide any loans or guarantees to the Council of Ministers, municipalities, other government or municipal institutions, public organisations or undertakings, EU institutions, bodies, offices or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States, and must not purchase debt instruments directly from them. In addition, the draft law replaces Article 45(3) of the Law on BNB, which currently provides for the possibility to extend credits to the government under certain conditions, with a provision which prohibits BNB to purchase, either on the primary or on the secondary market, debt instruments issued by the Bulgarian State or Bulgarian municipalities, or from Bulgarian government or municipal institutions, or public organisations or undertakings.

1.5 *Confidentiality*

The draft law amends Articles 13(1) and 23(2) of the Law on BNB to clarify that the Governor of BNB, BNB's Governing Council and the employees of BNB are bound by an obligation to maintain professional secrecy.

1.6 *Other amendments*

The draft law also provides for some other changes to the Law on BNB that are not related to the Convergence Reports of the Commission and the ECB⁶, namely: (i) a provision which empowers BNB to issue an ordinance laying down the face value, form and design of banknotes and coins put into circulation by BNB; (ii) a provision that all BNB employees must not have been convicted of a premeditated crime or debarred from holding a relevant position by a court, and that these facts must be established internally; and (iii) other amendments, mostly of editorial nature.

⁶ See p. 3 of the Explanatory memorandum.

2. General observations

- 2.1 The ECB welcomes the Bulgarian government's efforts to achieve the required level of legal convergence by reference to the recommendations for Bulgaria contained in the Convergence Reports of the Commission and the ECB.
- 2.2 The ECB notes that the compatibility of Bulgarian legislation, including the Law on BNB and the Law on counter-corruption and unlawfully acquired assets forfeiture⁷, with Articles 130 and 131 of the Treaty will be assessed in the ECB's next Convergence Report.

3. Specific observations

3.1 *Personal independence*

The ECB welcomes that the draft law removes the text in Article 14(1) of the Law on BNB according to which a member of the Governing Council could be relieved from office where he/she is in practice unable to perform his/her duties for more than six months. Such a ground for relieving a member of the Governing Council from office was in addition to the two grounds provided for in Article 14.2 of the Statute of the ESCB⁸. The ECB moreover welcomes that the draft law modifies the second ground for relieving a member of the Governing Council from office and now refers only to serious misconduct.

3.2 *Institutional independence*

The ECB welcomes the amended Article 44 of the Law on BNB which clarifies that BNB, the Governor of BNB and BNB's Governing Council must be independent and must not seek or take instructions from national institutions, Union institutions and any other bodies or institutions⁹. The clarification that such national and Union institutions must not exercise influence over BNB, the Governor of BNB and BNB's Governing Council further aligns the Law on BNB with Article 130 of the Treaty.

3.3 *Prohibition of monetary financing*

The ECB welcomes the amended Article 45(1) of the Law on BNB which now prohibits both the lending by BNB to a range of public sector entities and purchases by BNB of debt instruments from such entities¹⁰. The ECB further welcomes that the list of the relevant public sector entities is expanded to include central governments, regional, local or other public authorities, other bodies governed by public law, public undertakings of Member States and EU institutions and bodies, in order to fully mirror the wording of Article 123(1) of the Treaty.

Article 45(2) of the Law on BNB provides that the prohibition under Article 45(1) of the Law on BNB must not apply to the extension of credits to state-owned and municipal credit institutions in emergency cases of liquidity risk that may affect the stability of the financial system. It is recommended that the scope of this exemption addressed to state-owned and municipal credit institutions is brought into line with the scope of the exemption under Article 123(2) of the Treaty,

⁷ Published in *Darjaven Vestnik* No 7, 19 January 2018.

⁸ See the ECB's Convergence Report 2018, paragraph 7.1.2.2.

⁹ See the ECB's Convergence Report 2018, paragraph 7.1.2.1.

¹⁰ See the ECB's Convergence Report 2018, paragraph 7.1.4.

which provides that the prohibition of monetary financing under Article 123(1) of the Treaty must not apply to publicly owned credit institutions which, in the context of the supply of reserves by central banks, must be given the same treatment by national central banks as private credit institutions¹¹.

The prohibition of monetary financing prohibits the direct purchase of public sector debt, but such purchases in the secondary market are allowed, in principle, as long as such secondary market purchases are not used to circumvent the objective of Article 123 of the Treaty¹². For this reason, in accordance with the proposed revised Article 45(1) of the Law on BNB, Article 45(3) of the Law on BNB should be reformulated to clarify that BNB may not purchase debt instruments 'directly' from the relevant public sector entities, and the references to the primary or secondary markets should be deleted.

3.4 *Confidentiality*

While the ECB considers the amendments to Article 13(1) and Article 23(2) of the Law on BNB may be helpful to ensure clarity, it is noted that under Article 37 of the Statute, professional secrecy is an ESCB-wide matter. Therefore, the ECB assumes that the confidentiality rules of the Law on BNB are without prejudice to the confidentiality obligations towards the ECB and the ESCB¹³.

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

Done at Frankfurt am Main, 16 November 2018.

[signed]

The President of the ECB

Mario DRAGHI

11 See the ECB's Convergence Report 2018, paragraph 7.1.4.

12 See the ECB's Convergence Report 2018, paragraph 7.1.4.

13 See the ECB's Convergence Report 2018, paragraph 7.1.3.