



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 21 December 2018

on macroprudential tools

(CON/2018/58)

Introduction and legal basis

On 21 November 2018 the European Central Bank (ECB) received a request from the Banco de España, on behalf of the Spanish State Secretary for Economy and Business Support, for an opinion on several provisions¹ of a draft royal decree-law on payment services and other urgent financial measures (hereinafter the 'draft royal decree-law').

On 23 November 2018, the draft royal decree-law was adopted by the Spanish Council of Ministers (the 'first royal decree-law')² and will be ratified by the Parliament within 30 days following this adoption. The first royal decree-law did not include the provisions contained in the draft royal decree-law on which the ECB was consulted relating to macro prudential tools. Instead, these provisions relating to macro prudential tools were included in a royal decree-law on the creation of macroprudential tools, adopted by the Council of Ministers on 14 December³ (the 'second royal decree-law', together with the first royal decree-law, the 'royal decree-laws').

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/EC⁴, as the draft royal decree-law relates to the Banco de España and rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets, and the specific tasks conferred on the ECB concerning the prudential supervision of credit institutions under 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 royal decree-laws

- 1.1 The second royal decree-law increases the number of macroprudential tools available to the Banco de España. In particular, the Banco de España may (1) require the application of the

¹ In particular, the ECB is consulted on the 4th additional provision, the 10th transitional provision, the 4th final provision and the 6th final provision, points 2, 4 and 5.

² Royal decree-law 19/2018, of 23 November, on payment services and other urgent financial measures.

³ Royal Decree-law 22/2018, of 14 December, establishing macro prudential tools.

⁴ 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).

countercyclical capital buffer (CCyB) to all exposures of a credit institution or group⁵ of credit institutions, or the exposures of a specific sector; (2) require credit institutions to limit their exposure to a specific sector of the economy if the aggregate exposure of credit institutions reaches levels that may pose an element of systemic risk; and (3) set limits and conditions on lending and acquiring fixed-income securities and derivatives by credit institutions, for transactions with agents from the private sector based in Spain.

- 1.2 The second royal decree-law also introduces an obligation for the Banco de España to communicate its intention to adopt a macroprudential tool seven days in advance to the Macroprudential Authority Financial Stability Council (AMCESFI) and, until such authority is created, to the Financial Stability Council (CESFI). The draft royal decree-law defines 'macroprudential tools' for this purpose as those designed to prevent systemic risks and to generate a sustainable contribution from the financial system to economic growth. 'Systemic risk' is defined for this purpose as the risk that a deterioration of all or part of the financial system may cause a disruption in the provision of financial services that ultimately has a negative effect on the real economy.
- 1.3 Finally, the first royal decree-law, which does not regulate macro-prudential tools, amends the Spanish Law on corporations, adopted by Royal legislative decree No 1/2010. This amendment provides that shareholders' right of separation (i.e. the right for shareholders' shareholdings to be acquired or redeemed by the company) due to a failure to distribute dividends as contemplated in the Law on corporations does not apply to shareholders of credit institutions.

2. Sectoral CCyB

- 2.1 The ECB welcomes the draft royal decree-law insofar as it equips the Banco de España with new macroprudential tools intended to ensure that, as macroprudential authority, it can conduct its macroprudential tasks. It understands that the Banco de España's primary monetary policy objective to maintain price stability, as defined in the Treaty, remains unaffected.
- 2.2 The ECB notes that the possibility of adding sectoral capital buffers to the macroprudential frameworks is being explored at the international level and discussions on this issue are ongoing also in Europe in the context of the review of Directive 2013/36/EU⁶. If an international agreement on sectoral capital buffers is reached and such instruments are implemented as binding requirements at the EU level, the Spanish authorities may need to reassess the design of the proposed national sectoral CCyB to ensure consistency with the EU framework. The ECB notes in this respect that an EU framework for sectoral CCyB would increase the effectiveness of the

⁵ For this purpose, a group is defined as a group of companies in the sense of Article 42 of the Spanish Commercial Code; i.e. where one exercises control over the others, or in the sense of Articles 4, 5, 6 and 7 of Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions (OJ L 74, 14.3.2014, p. 8), which are que linked amongst them by a relationship as described in Article 10(1), 113(6) or 113(7) of Regulation (EU) no. 575/2013.

⁶ See Basel Committee on Banking Supervision: 'Towards a sectoral application of the countercyclical capital buffer: A literature review', Working Paper 32, March 2018, available on the Bank for International Settlements' website at www.bis.org, and Presidency compromise text on the proposal for a Directive of the European Parliament and of the Council amending Directive 2013/36/EU, available on the Council's website at www.consilium.europa.eu.

national measure, as it would add reciprocity arrangements and avoid the risk of possible overlaps and double counting of risks, in particular with Article 130 et seq. of Directive 2013/36/EU⁷.

3. Conditions relating to lending and other transactions

The conferral on the Banco de España of the power to set limitations and conditions to avoid excessive risk taking or over-indebtedness of private economic agents can be considered a reasonable measure to mitigate concentration risks in the banking sector. The ECB understands that this power does not restrict or affect the powers that the ECB may exercise for prudential supervisory purposes, and in particular the power to restrict or limit the business, operations or network of institutions or to request the divestment of activities that pose excessive risk to the soundness of an institution, as laid down in Article 16(2)(e) of Council Regulation (EU) No 1024/2013⁸.

4. Right of separation from a financial institution due to a failure to distribute dividends

The intended change in Spanish corporate law abolishing the right of shareholders to demand the acquisition or redemption of their shares by the company due to a failure to distribute dividends can, so far as Spanish credit institutions are concerned, contribute to a more resilient and stable banking system, especially in times of macroeconomic stress. The intended change furthermore brings Spanish corporate law in line with the regulatory capital requirements of Regulation (EU) No 575/2013 of the European Parliament and of the Council⁹, ensuring that share capital fulfils the qualitative requirements for Common Equity Tier 1 instruments laid down in this Regulation at all times and under all conditions.

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

Done at Frankfurt am Main, 21 December 2018.

[signed]

The President of the ECB

Mario DRAGHI

⁷ 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 the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/8/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

⁸ 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).

⁹ 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).