



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 6 February 2018

on funding sources and governance of the Malta Financial Services Authority

(CON/2018/6)

Introduction and legal basis

On 22 December 2017 the European Central Bank (ECB) received a request from the Central Bank of Malta, acting on behalf of the Parliamentary Secretariat for Financial Services, Digital Economy & Innovation, for an opinion on a draft law proposing amendments to the Maltese Financial Services Authority Act (hereinafter the 'draft law'). On 8 January 2018 the ECB received additional information from the Central Bank of Malta with further proposed amendments to 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 concerns the specific tasks conferred upon 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 draft law

- 1.1 The proposed amendments to the Malta Financial Services Authority Act (hereinafter referred to as the 'MFSA Act') stem from feedback from stakeholders to a consultation document entitled 'Strengthening the Malta Financial Services Authority; Taking the financial sector to a new level'¹, which was issued in August 2017. During the consultation process, stakeholders called for greater levels of efficiency and effectiveness of the MFSA, echoing similar views expressed by the European Commission, the European supervisory authorities and the International Monetary Fund (IMF)².
- 1.2 The draft law proposes amendments to the MFSA Act in order to strengthen the governance structure of the MFSA through the creation of a Chief Executive Officer (CEO) position. The CEO will be responsible for the MFSA's overall performance in terms of the achievement of its objectives and implementation of its strategy and policies, as set out by the Board of Governors. The CEO will be appointed by the Board of Governors and will be a non-voting member of the Board.
- 1.3 The MFSA currently manages Malta's Registry of Companies, and the Registrar of Companies is an MFSA senior official appointed by the Minister of Finance on the advice of the MFSA, pursuant

¹ Available on the Prime Minister of the Republic of Malta's website at www.opm.gov.mt.

² See the IMF's Staff Concluding Statement of the 2017 Article IV Mission on Malta from 17 November 2017, available on the IMF's website at www.imf.org.

to the Companies Act³. The draft law proposes to separate the function of Registrar of Companies from the MFSA. In particular, the Registrar will no longer be a member of the MFSA Coordination Committee and the Registry of Companies will thereby be separated from the MFSA. This is complemented by the deletion of references to the Registrar of Companies in the MFSA Act.

- 1.4 The draft law also addresses the financial provisions of the MFSA Act. It proposes that any sums required by the MFSA for carrying out any of its functions will be paid out of the Maltese Government's Consolidated Fund and without further appropriation. In preparing the estimates of the MFSA's income and expenditure for a given financial year, the MFSA must take account of any funds and other monies that may be due to be paid to it from the Consolidated Fund during the relevant financial year. The MFSA must also aim to ensure that its total revenues are sufficient to cover all sums properly chargeable to its income and expenditure account. A House of Representatives committee will examine the estimates and report its findings for consideration by the House of Representatives. Where, in respect of any given financial year, it is found that the amount approved by the MFSA Board of Governors is not sufficient or a need has arisen for expenditure for a purpose not provided for in the estimates, the MFSA Coordination Committee may adopt supplementary estimates for approval by the Board of Governors and for consideration by the House of Representatives following examination by the abovementioned committee. The sums referred to in the estimates will be fixed by resolution of the House of Representatives after considering the estimates prepared by the MFSA and the committee report.
- 1.5 The separation of the Registry of Companies from the MFSA will have a significant impact on the revenue of the MFSA. However, the Government is determined to guarantee the MFSA's full and effective autonomy as a public institution reporting to the House of Representatives. To this end, the annual budget of the MFSA will no longer depend substantially on the income of a structure – the Registrar of Companies – that is statutorily not within the MFSA's responsibility.

2. Observations

- 2.1 Pursuant to Article 127(6) of the Treaty and Article 6 of Council Regulation (EU) No 1024/2013⁴, the ECB carries out its tasks within a single supervisory mechanism (SSM) composed of the ECB and the national competent authorities (NCAs). Within the framework for cooperation within the SSM, the ECB is responsible for the effective and consistent functioning of the SSM, and both the ECB and NCAs are subject to a duty of cooperation, and an obligation to exchange information. Where appropriate and without prejudice to the responsibility and accountability of the ECB for the tasks conferred on it by Regulation (EU) No 1024/2013, NCAs are responsible for assisting the ECB, under the conditions set out in Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17)⁵, with the preparation and implementation of any acts relating to the tasks

³ See Article 400 of the Companies Act and Chapter 386 of the Laws of Malta.

⁴ 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).

⁵ Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (OJ L 141, 14.5.2014, p. 1).

conferred on the ECB under Article 4 of Regulation (EU) No 1024/2013 related to all credit institutions, including assistance in verification activities⁶.

- 2.2 Taking account of the foregoing responsibilities of the MFSA within the framework of the SSM, the ECB would like to point out that, when considering the MFSA's resources, the Maltese authorities should take into account the SSM's need for NCA staff on joint supervisory teams and inspection teams and the more intense supervision expected for less significant institutions⁷.

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

Done at Frankfurt am Main, 6 February 2018.

[signed]

The President of the ECB

Mario DRAGHI

⁶ Without prejudice to certain provisions of Regulation (EU) No 1024/2013, NCAs shall carry out and be responsible for certain tasks and adopting all relevant supervisory decisions with regard to certain less significant credit institutions or financial holding companies. Wherever the ECB is assisted by national competent authorities for the purpose of exercising the tasks conferred on it by Regulation (EU) No 1024/2013, the ECB and the NCAs shall comply with the provisions set out in the relevant Union acts in relation to the allocation of responsibilities and cooperation between competent authorities from different Member States.

⁷ See paragraph 2.4 of Opinion CON/2016/43. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.