



OPINION OF THE EUROPEAN CENTRAL BANK

of 30 January 2019

**on remuneration for executives and senior management in Narodowy Bank Polski
(CON/2019/3)**

Introduction and legal basis

On 28 January 2019 the European Central Bank (ECB) received a request from the Polish *Sejm* (Parliament) for an opinion on three draft laws amending various laws on remuneration policies at Narodowy Bank Polski (NBP). Each of the three draft laws has been introduced by members of the Parliament drawn from different political parties in the Parliament.

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 laws relate to NBP. 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 laws

1.1 *Law amending the Law on Narodowy Bank Polski and the Law on restricting business activities for public officials (hereinafter the 'first draft law')*

1.1.1 The first draft law, proposed by members of Parliament from the *Prawo i Sprawiedliwość* (Law and Justice party), introduces, inter alia, a provision that requires the NBP management board to set the remuneration for individual categories of senior management positions at NBP, provided that the maximum remuneration for a position must not exceed 60% of the NBP Governor's total remuneration (including any applicable awards, bonuses and other benefits). Under the current version of the Law on Narodowy Bank Polski², the NBP management board takes into account salary levels in the banking sector when establishing the amount of funds available for remuneration of NBP staff members.

1.1.2 Additionally, the first draft law proposes to make public the remuneration of persons occupying senior managerial positions at NBP and of NBP management board members, as well as the NBP management board's resolution on the rules of remuneration of NBP staff members. The publication would include the specific position and its remuneration for each month, including any applicable awards, bonuses and other benefits paid in the calendar year preceding the year in which the information is published.

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 Ustawa z dnia 29 sierpnia 1997 r. o Narodowym Banku Polskim (Dz.U. z 2017 r., poz. 1373).

- 1.1.3 The first draft law also proposes publishing certain historical data. In particular, within 30 days of the entry into force of the draft law, the NBP Governor would be required to publish, on the NBP's website, the NBP management board's resolutions on the rules of remuneration of NBP staff members and levels of remuneration of NBP management board members and other senior management from 1995 to 2018.
- 1.1.4. Finally, the first draft law proposes to amend the Law on restricting business activities for public officials³ by requiring NBP management board members and other senior management to make declarations of their financial interests. This requirement is similar to requirements for the NBP Governor and certain other public administration officials in Poland. The draft law also has a provision that puts restrictions on the type of business activities in which NBP management board members and other senior management are able to participate.

1.2 *Law amending the Law on restricting business activities for public officials (hereinafter the 'second draft law')*

Similarly to the first draft law, the second draft law, proposed by members of Parliament from the *Platforma Obywatelska* (Civic Platform party), aims to impose a requirement on NBP management board members and other senior management to make declarations of their financial status. Additionally, in this case, much of the information disclosed in these declarations of financial interests would be public, including the name of the individuals submitting the declaration. Addresses, information on the location of real estate property and information that would allow the identification of personal property owned by the person submitting the declaration would not be made public.

1.3 *Law amending the Law on Narodowy Bank Polski (hereinafter the 'third draft law')*

The third draft law, proposed by members of Parliament from the Kukiz'15 movement, introduces a new mechanism under which the Marshall of the Sejm, acting upon the proposal of the NBP Governor, is to issue an ordinance specifying the qualification requirements, remuneration rules and position bands applicable to NBP staff members. This ordinance is to be made public. Accordingly, under the third draft law the rules for NBP staff remuneration would no longer be laid down by the NBP management board and salary levels in the banking sector will no longer be taken into account when establishing the amount of funds available for remuneration of NBP staff members.

2. Specific observations

2.1 *Central bank independence*

As all of the three draft laws apply to and directly affect the NBP's decision-making bodies and its employees, they should be examined from the perspective of central bank independence requirements under Article 130 of the Treaty, in particular financial independence, as well as that of the personal independence of the members of the NBP's decision-making bodies⁴.

³ Ustawa z dnia 21 sierpnia 1997 roku o ograniczeniu prowadzenia działalności gospodarczej przez osoby pełniące funkcje publiczne (Dz.U. z 2017 r., poz. 1393).

⁴ See, e.g., paragraph 2.2 of Opinion CON/2017/49. All ECB opinions are published on the ECB's website at

2.2 *Financial independence*

2.2.1 The ECB has a well-established doctrine that autonomy in staff matters is an integral aspect of the principle of financial independence of national central banks (NCBs) in the European System of Central Banks. According to this principle, Member States may not impair an NCB's ability to employ and retain the qualified staff necessary for the NCB to perform independently the tasks conferred on it by the Treaty and the Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as the 'Statute of the ESCB'). Also, an NCB may not be put into a position where it has limited control or no control over its staff, or where the government of a Member State can influence its policy on staff matters⁵.

2.2.2 In order to protect NBP's autonomy in staff matters, the Polish legislator is under an obligation to ensure that a decision on any legislative proposal is taken in close and effective cooperation with NBP, taking due account of its view, to ensure the ongoing ability of the NCB to independently carry out its tasks⁶.

2.2.3 Amendments included in any legislative proposal that lead to reductions in remuneration are not compatible with the principle of financial independence if NBP's ability to employ and retain staff to perform independently the tasks conferred on it by the Treaty and the Statute of the ESCB is affected. The ECB notes that the explanatory memoranda accompanying the draft laws do not analyse this issue, including the effects of a possible reduction of remuneration on NBP's ability to employ and retain the necessary staff. In order to be compatible with the principle of financial independence, any adopted legislative solution should provide for a cooperation mechanism with NBP, to ascertain if NBP considers that an exception to a cap on remuneration is required. Such a deviation should be decided upon in close and effective cooperation with NBP, taking due account of NBP's views, to ensure the ongoing ability of NBP to independently carry out its tasks⁷. Any amendments that lead to reductions in the remuneration for an NCB's staff members should not interfere with that NCB's powers to administer its own financial resources, including the funds resulting from any reduction in salaries that it pays⁸.

2.2.4 *Personal independence*

The ECB notes that any sanctions which are imposed by the Law on restricting business activities for public officials (under the first or the second draft laws) due to the NBP Governor's and other members of the NBP management board's non-compliance with the obligation to submit declarations of their financial interests should be compatible with Article 14.2 of the Statute of the ESCB, and should not establish new grounds for dismissal of the NBP Governor or other members of the NBP management board, contrary to that Article.

2.3 *Transparency*

www.ecb.europa.eu.

⁵ See paragraph 6 of Opinion CON/2012/89, paragraph 3.3 of Opinion CON/2008/10 and paragraph 2.2 of Opinion CON/2008/9.

⁶ See the ECB's Convergence Report 2018, 2.2.3 ('Autonomy in staff matters'). See also paragraph 2.1 of Opinion CON/2016/32.

⁷ See paragraph 2.1 of Opinion CON/2016/32.

⁸ See the ECB's Convergence Report 2018, 2.2.3 ('Autonomy in staff matters') and paragraph 4.2.2 of Opinion CON/2014/38.

The doctrine of autonomy in staff matters does not prevent the publication of information on the method by which remuneration is determined and the remuneration of NCB staff members and the members of the NCB's decision-making bodies. Such disclosure principally promotes transparency and good governance and constitutes best practice in public administration⁹¹⁰. However, to the extent that the provisions included in any of the draft laws might lead to the publication of personal information, the relevant data protection legislation and related case-law would need to be considered prior to the draft law being adopted.

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

Done at Frankfurt am Main, 30 January 2019.

[signed]

The President of the ECB

Mario DRAGHI

⁹ See paragraph 3.1 of Opinion CON/2008/10.

¹⁰ At the ECB and in several Member States, such information is public or can be disclosed upon request.