



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK
of 17 April 2019
on participation in the Single Resolution Mechanism
(CON/2019/16)

Introduction and legal basis

On 20 March 2019 the European Central Bank (ECB) received a request from the Bulgarian Minister of Finance for an opinion on a draft law amending and supplementing the Law on the recovery and resolution of credit institutions and investment firms, the Law on Българска народна банка (Bulgarian National Bank) and the Law on the bank deposit guarantee (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 and sixth indents of Article 2(1) of Council Decision 98/415/EC¹, as the draft law relates to Българска народна банка (Bulgarian National Bank (BNB)), rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets and tasks conferred on the ECB 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

The draft law introduces provisions which the consulting authority considers necessary in relation to the application in Bulgaria of Regulation (EU) No 806/2014 of the European Parliament and of the Council (hereinafter the 'SRM Regulation')².

1.1. Competences of the national resolution authorities and the Single Resolution Board

The draft law establishes the competences of BNB as the national resolution authority responsible for the resolution of credit institutions³ and of the Financial Supervision Commission (FSC) as the national resolution authority responsible for the resolution of investment firms within the meaning of the SRM Regulation⁴. The draft law provides that, when performing their resolution tasks, BNB and the FSC must comply with the guidelines and general directions issued by the Single Resolution

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 Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).

³ See paragraph 1 of the draft law.

⁴ See paragraph 3 of the draft law.

Board (SRB)⁵ and take the necessary actions to implement the SRB's decisions pursuant to the SRM Regulation.

1.2. *Cooperation between national and Union authorities in the context of resolution*

The draft law further specifies that, in the framework of the SRM Regulation, BNB and the FSC must cooperate with the SRB, the European Commission, the Council of the European Union, the ECB, national resolution authorities and national competent authorities⁶. The draft law also amends the Law on BNB to enable BNB to exchange information with the SRB⁷.

1.3. *National financing arrangements*

The draft law reorganises the existing national resolution financing arrangements. It is envisaged that the existing national resolution fund for the resolution of credit institutions (the 'Bank Resolution Fund' (BRF)), which is currently managed by the Bulgarian Deposit Insurance Fund (BDIF), will in the future be managed by BNB⁸. Within the BRF, two sub-funds would be established – one sub-fund for the collection of contributions in accordance with Articles 69 to 71 of the SRM Regulation and one sub-fund with the objective of funding the resolution of branches of third-country credit institutions. The draft law provides that the available funds in the BRF would be held in a BNB account and invested in accordance with the Law on BNB⁹. The costs of managing the BRF will be financed by the fees collected in connection with BNB's resolution function and pursuant to Article 59a of the Law on BNB.

The draft law also provides for the split of the existing national resolution fund for the resolution of investment firms (the 'Investment Firm Resolution Fund' (IFRF)) into two sub-funds: one sub-fund for the collection of contributions in accordance with Articles 69 to 71 of the SRM Regulation and one sub-fund with the objective of funding the resolution of investment firms which fall outside the scope of the SRM Regulation as well as branches of third-country investment firms¹⁰. BNB will be the depositary of the IFRF¹¹.

1.4. *Contributions to the Single Resolution Fund*

The draft law mandates BNB and the FSC to notify the relevant credit institutions and investment firms of an SRB notification of the amount of contributions due in accordance with Articles 69 to 71 of the SRM Regulation¹². BNB and the FSC will be required to promptly transfer to the Single Resolution Fund (SRF) the contributions collected from such credit institutions and investment firms. The draft law also aims to facilitate the gradual transfer of the financial means of the BRF to the SRF¹³. In addition, the draft law clarifies the rules for the calculation and collection of

5 See paragraphs 2 and 4 of the draft law.

6 See paragraph 5 of the draft law.

7 See paragraph 57 of the draft law.

8 See paragraph 39 of the draft law.

9 See paragraph 41 of the draft law.

10 See paragraph 40 of the draft law.

11 See paragraph 43 of the draft law.

12 See paragraph 46 of the draft law.

13 See paragraph 55 of the draft law.

contributions from branches of third-country credit institutions, investment firms which fall outside the scope of the SRM Regulation as well as branches of third-country investment firms¹⁴.

1.5. *Competences relating to the application of resolution tools*

To complement the proposed transfer of the management of the BRF from the BDIF to BNB, the draft law seeks to transfer the BDIF's functions with regard to the establishment of bridge institutions and asset management vehicles to BNB. In particular, BNB is now empowered to establish a bridge bank¹⁵, a bridge financial holding company¹⁶ and an asset management vehicle¹⁷. In addition, the draft law specifies that the capital of those entities may be fully or partially financed by the SRF or the BRF¹⁸. Moreover, eligible liabilities may also be converted into ordinary shares in order to constitute the capital of a bridge institution¹⁹.

1.6. *Exchange of information in the period leading up to the establishment of close cooperation*

Finally the draft law aims to ensure the appropriate exchange of information for the purposes of establishing close cooperation between the ECB and BNB and in relation to the implementation of the Agreement on the transfer and mutualisation of contributions to the Single Resolution Fund²⁰. To this end the draft law introduces a transitional provision which permits the exchange of information, on the one hand, between BNB and the SRB and, on the other hand, between credit institutions established in Bulgaria and the SRB. This transitional provision would apply as of the date of publication in the State Gazette and until the date of application of an ECB decision establishing close cooperation between the ECB and BNB.

2. General observations

- 2.1 With regard to the proposed amendments to decision-making and governance of the national resolution financing arrangements, the resolution decision-making process should allow for timely and efficient decision-making, if necessary, within a very short time, such as a few days or, where necessary, a few hours²¹.
- 2.2 The ECB underlines that this opinion is without prejudice to the ongoing assessment of the request filed on 18 July 2018 by the Republic of Bulgaria to establish close cooperation between the ECB and BNB, in line with the existing procedures established under Article 7 of Council Regulation (EU) No 1024/2013²².

14 See paragraphs 43-45 of the draft law.

15 See paragraph 17 of the draft law.

16 See paragraph 19 of the draft law.

17 See paragraph 20 of the draft law.

18 See paragraphs 17, 19 and 20 of the draft law.

19 See paragraph 26 of the draft law.

20 See paragraph 53 of the draft law.

21 See paragraph 1.3 of ECB Opinion CON/2013/76. All ECB opinions are available on the ECB's website at www.ecb.europa.eu.

22 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).

3. Specific observations

3.1 *BNB as a resolution authority*

BNB is already the national resolution authority competent for the resolution planning and resolution of credit institutions. It also has the relevant resolution powers necessary to fulfil these functions. The ECB understands that, under the existing law, BNB is already competent to apply both the bridge institution tool and the asset separation tool. In particular, BNB is the competent resolution authority to decide on a transfer to a bridge institution or an asset management vehicle of instruments of ownership, assets, rights and liabilities²³. BNB is also competent to approve the operation of a bridge bank, a bridge financial holding company, or an asset management vehicle, upon proposal of the BDIF²⁴, while the capital of those entities is provided by the BRF²⁵.

3.2 *Complementing existing resolution tasks*

The proposed transfer to BNB of the existing competences of the BDIF regarding the establishment and incorporation of bridge institutions and asset management vehicles does not confer genuinely new tasks on BNB. Rather, BNB's proposed new administrative competences in relation to the management of the BRF complement BNB's existing resolution tasks. The draft law specifies certain new administrative competences that BNB would exercise when carrying out its tasks as a resolution authority.

3.3 *Compliance with the monetary financing prohibition*

Since the draft law only envisages complementing BNB's existing resolution tasks, it is not necessary to assess whether the conferral of new tasks on a national central bank complies with the prohibition of monetary financing under the Treaty. The ECB understands that BNB will manage, but not own, the BRF. The role of a resolution fund that is managed within a central bank must remain consistent under all circumstances with the prohibition on monetary financing under Article 123 of the Treaty, as supplemented by Council Regulation (EC) No 3603/93²⁶, which prohibits, inter alia, any financing by a central bank of the public sector's obligations vis-à-vis third parties²⁷. While administrative resolution tasks may be considered to be central banking tasks, the discharge of these tasks by central banks may not extend to the financing of resolution funds or other financial arrangements related to resolution proceedings as these are governmental tasks²⁸. The provision of such financing would constitute a government task in breach of the prohibition of monetary financing under the Treaty²⁹. Where a resolution fund established within a central bank holds capital of a bridge institution or an asset management vehicle, it should be clarified, for the

²³ See Articles 60(1) and 64(1) of the Law on the recovery and resolution of credit institutions and investment firms.

²⁴ See, for example, Articles 61(2), 63(2) and 64(5) of the Law on the recovery and resolution of credit institutions and investment firms.

²⁵ See, for example, Articles 61(1), 63(1) and 64(3) of the Law on recovery and resolution of credit institutions and investment firms.

²⁶ Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b (1) of the Treaty (OJ L 332 , 31.12.1993, p. 1).

²⁷ See paragraph 3.1.2 of Opinion CON/2015/35.

²⁸ See paragraph 2.1.2 of ECB Opinion CON/2019/13 and paragraph 3.2.3 of Opinion CON/2016/28.

²⁹ See paragraph 3.1.1 of Opinion CON/2015/35 and paragraph 3.1.4 of Opinion CON/2015/22.

avoidance of doubt, that the central bank will not employ its resources, other than those collected in the resolution fund, to assume or finance any obligation of these entities³⁰.

3.4 *Financial independence*

The principle of financial independence requires NCBs to have sufficient means to carry out not only their ESCB-related tasks from an operational and financial point of view, but also their national tasks. For that reason, it should be ensured that if a resolution fund established within BNB becomes the owner of a bridge institution or an asset management vehicle, sufficient financial and human resources are provided to address the operational burden associated with it³¹. The ECB notes that the draft law provides that the costs of managing the BRF will be financed by the fees collected in connection with BNB's resolution function.

3.5 *Liability of BNB*

The ECB notes that the BNB, the members of the BNB Governing Council, and the BNB staff are not held liable for acts or omissions in the course of discharging their duties under the Law on the recovery and resolution of credit institutions and investment firms, unless they acted intentionally³². The ECB understands that this provision applies also in relation to the draft law and the BNB's tasks of managing the BRF and acting as the depositary of the IFRF.

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

Done at Frankfurt am Main, 17 April 2019.

[signed]

The President of the ECB

Mario DRAGHI

30 See paragraph 3.1.2 of Opinion CON/2015/35 and paragraph 3.4.2 of Opinion CON/2015/25. See also ECB Convergence Report 2018, point 2.2.5.1.

31 See paragraph 3.1.2 of Opinion CON/2015/35.

32 See Article 5(3) of the Law on the recovery and resolution of credit institutions and investment firms.