



## OPINION OF THE EUROPEAN CENTRAL BANK

of 7 May 2010

on an amendment to the rules securing the continuation of office of the President of Narodowy Bank Polski  
(CON/2010/37)

### Introduction and legal basis

On 3 May 2010 the European Central Bank (ECB) received a request from the Marshal of the Polish Parliament for an opinion on a draft law amending the Law on Narodowy Bank Polski (hereinafter the ‘draft law’)<sup>1</sup>.

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/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions<sup>2</sup>, as the draft law relates to Narodowy Bank Polski (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 law**

- 1.1 Under Article 10(1) of the Law on Narodowy Bank Polski (hereinafter the ‘Law on NBP’)<sup>3</sup>, in the event of absence, the President of NBP is substituted by the Vice-President – First Deputy President of NBP (hereinafter the ‘Vice-President’). This provision is currently the only provision in Polish law securing the continuity of office of the NBP President<sup>4</sup>.
- 1.2 According to the explanatory memorandum to the draft law<sup>5</sup>, the smooth performance and transfer of the duties of NBP’s decision-making bodies following the expiry of the term of office of NBP’s President, as well as the continuity of the operations of NBP, are essential for the financial security of the State and the stability of its monetary policy. The draft law aims to clarify the current rules securing the continuity of the office of the NBP President by adding a new Article 9a according to

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<sup>1</sup> Published on the website of the Polish Parliament at [www.sejm.gov.pl](http://www.sejm.gov.pl), parliamentary print No 3008.

<sup>2</sup> OJ L 189, 3.7.1998, p. 42.

<sup>3</sup> Law of 29 August 1997 on Narodowy Bank Polski (consolidated text: *Dziennik Ustaw* (Dz. U.) of 2005 No 1, Item 2).

<sup>4</sup> Article 10(1) does not specify the nature of the absence or the scope of duties and powers conferred upon the Vice-President as regards his participation in certain decision-making bodies of NBP. While this lack of full clarity was provisionally remedied in practice, the draft law aims to provide legal certainty to this end.

<sup>5</sup> See explanatory memorandum to the draft law, p. 1.

which: (i) following the expiry of the whole of the 6-year term of office of the NBP President<sup>6</sup>, the NBP President remains in office until a newly appointed President takes up his duties; and (ii) following the termination of the term of office of the NBP President due to death, resignation or dismissal<sup>7</sup>, the duties of the NBP President are performed by the Vice-President until a newly appointed NBP President takes up his duties.

## **2. ECB comments**

- 2.1 The continuity of the office of the Governor or President of a national central bank raises two issues for central bank independence. First, there is the issue of institutional independence. The statutes of national central banks have to provide clear rules on who will take over the office of Governor or President in the event of the expiry of the term of office of the existing Governor or President by passage of time or due to death, resignation or dismissal so as to avoid any external interference. Second, there is the issue of personal independence. It must be ensured that any person who takes over the duties of the Governor or President on an interim basis until a newly appointed Governor or President takes up his duties benefits from the same rules on security of tenure of office and grounds for dismissal as any member of the decision-making bodies of national central banks involved in the performance of ESCB-related tasks.
- 2.2 The ECB welcomes the draft law as it improves legal certainty by securing continuity of the office of the NBP President and removes ambiguities in the existing provisions. As regards personal independence, the ECB notes that, when performing the duties of the President under proposed Article 9a(2), the Vice-President benefits from the same safeguards as are normally applicable to the members of decision-making bodies of national central banks.
- 2.3 As regards the institutional independence, in relation to the expiry of the 6-year term of office or termination of the office under Article 9(4)(2-4) of the Law on NBP, the national authorities should ensure that a successor is appointed within a reasonable time following such expiry or termination.
- 2.4 In addition, the ECB notes that, for reasons of legal clarity, the Law on NBP as amended by the draft law would benefit from a clarification of the relationship between the current wording of Article 10(1) and the proposed Article 9a.

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<sup>6</sup> Ground for the expiry of the NBP President's term of office provided for under Article 9(4)(1) of the Law on NBP.

<sup>7</sup> Grounds for termination of the term of office of the NBP President provided for under Article 9(4)(2-4) of the Law on NBP.

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

Done at Frankfurt am Main, 7 May 2010.

[signed]

*The President of the ECB*

Jean-Claude TRICHET