



EUROPEAN CENTRAL BANK  
EUROSYSTEM

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ECB-PUBLIC

## OPINION OF THE EUROPEAN CENTRAL BANK

of 24 August 2017

on a draft law amending the NBB Organic Statute with regard to the number of directors on the  
NBB's Board

(CON/2017/34)

### Introduction and legal basis

On 27 July 2017 the European Central Bank (ECB) received a request from the Governor of the Nationale Bank van België/Banque Nationale de Belgique (NBB), on behalf of the Minister for Finance, for an opinion on a draft law on various financial provisions (hereinafter the 'draft law') which amends, *inter alia*, the Law of 22 February 1998 establishing the Organic Statute of the Nationale Bank van België/Banque Nationale de Belgique (hereinafter the 'NBB Organic Law') in order to reduce the number of directors on the NBB's Board of Directors.

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<sup>1</sup>, as the draft law concerns the NBB. 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 purpose of the draft law is to reduce the number of directors on the NBB's Board. Currently, under the NBB Organic Law, in addition to the Governor, who acts as chair, the Board is composed of at least five but not more than seven directors, one of whom is the Vice Governor. Under the draft law, in addition to the Governor, the Board is composed of a maximum of five members (including the Vice Governor). The draft law provides that the King determines the entry into force of this new provision.

### **2 General observation**

In principle, the ECB welcomes any legislative amendment which seeks to establish more efficient decision-making structures within a national central bank (NCB)<sup>2</sup>, provided that these amendments do not interfere with the NCB's independence.

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<sup>1</sup> Council Decision 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).

<sup>2</sup> See Opinions CON/2001/17 and CON/2007/6.

### 3 Specific observations

#### 3.1 *Transitional provisions and security of tenure of existing members of the Board*

3.1.1 Article 130 of the Treaty prohibits national governments and any bodies from influencing the members of NCBs' decision-making bodies in the performance of their tasks. The concept of central bank independence includes various types of independence, including personal independence. Personal independence would be jeopardised if the rules on security of tenure and grounds for dismissal of Governors under the Treaty and the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB') did not apply to other members of the decision-making bodies of NCBs involved in the performance of ESCB-related tasks. Various Treaty and Statute of the ESCB provisions require comparable security of tenure. Article 14.2 of the Statute of the ESCB does not restrict the security of tenure of office to Governors, while Article 130 of the Treaty and Article 7 of the Statute of the ESCB refer to 'members of the decision-making bodies' of NCBs, rather than to Governors specifically. This applies in particular where a Governor is 'first among equals' with other members with equivalent voting rights or where other members are involved in the performance of ESCB-related tasks<sup>3</sup>. As a consequence, any reorganisation measure affecting the tenure of office of the members of an NCB's decision-making bodies involved in the performance of ESCB-related tasks should expressly ensure that they continue to perform their duties until the end of their appointed term, in accordance with Article 14.2 of the Statute of the ESCB<sup>4</sup>.

3.1.2 Against this backdrop, the ECB understands that the date on which the draft law will enter into force will be determined by means of a Royal Decree. The ECB understands that this mechanism is designed to align the entry into force with the outflow of directors in the course of time in order to safeguard the personal independence of existing directors. The ECB assumes that the intention is for the Royal Decree to be issued following the expiry of a director's term of office which brings the composition of the Board to five directors not including the Governor. However, given the importance of protecting the personal independence of existing directors, and to avoid any ambiguity and satisfy the principle of legal certainty, the ECB suggests that the draft law contains transitional provisions which set out in clear terms when the amendments will come into force. This could be done, for example, by stating that the Royal Decree may be issued, at the earliest, following the expiry or termination of a director's term of office which results in the Board being composed of five directors or fewer not including the Governor.

#### 3.2 *Number of directors on the Board*

3.2.1 While the draft law provides that Article 19 of the NBB Organic Law is to be amended to provide that the Board will have, in addition to the Governor, a maximum of five directors, instead of a maximum of seven as is currently the case, it does not provide for a minimum number of directors, unlike the minimum of five directors as is currently the case.

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<sup>3</sup> See Opinions CON/2003/3 and CON/2005/25; ECB Convergence Report 2016, pp. 23 to 25.

<sup>4</sup> See Opinions CON/2007/6, paragraph 2.3 and CON/2007/14, paragraph 3.3.

- 3.2.2 Under the NBB Organic Law, the King is vested with the power to appoint the Governor<sup>5</sup> and the other members of the Board<sup>6</sup>. As the amendments foreseen by the draft law do not include a minimum number of other members for the Board, the size of the Board will, in effect be determined in a Royal Decree, with the involvement of the Government and the King. Based on a literal construction of this provision, the Board could theoretically be reduced to one director (who would, incidentally, hold the title of Vice-Governor) and the Governor, on the basis of the requirement in the draft law of parity between Dutch and French speakers. While the statutes of ESCB NCBs set out different compositions for their decision-making bodies, depending on national preferences and legal traditions, an institutional framework which provides a stable and long-term basis for a central bank's functioning is important from the perspective of central bank independence<sup>7</sup>. A legal framework which permits frequent changes to the institutional set-up of an NCB, thus affecting its organisational or governance stability, could adversely affect the NCB's institutional independence.
- 3.2.3 The draft law should seek to avoid a situation in which the government may, on a discretionary basis, decide on the size of the Board, with potentially wide and frequent variations. Because the size of the Board directly impacts the institutional set-up of the NBB and the functioning of the Board as a decision-making body whose mandate includes involvement in the performance of ESCB-related tasks, the draft law should contain provisions which facilitate consistency in, and predictability of, the size of the Board. This will contribute to the NBB's institutional stability and could be achieved, as it is for decision-making bodies of other ESCB NCBs, through, for example, the inclusion in the draft law of a fixed number of directors or a reasonably narrow range setting out a minimum and maximum number of directors.

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

Done at Frankfurt am Main, 24 August 2017.

[signed]

*The President of the ECB*

Mario DRAGHI

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<sup>5</sup> Article 23(1) of the NBB Organic Law.

<sup>6</sup> Article 23(2) of the NBB Organic Law. The appointment by the King of the other members of the Board follows a proposal of the Council of Regency.

<sup>7</sup> See CON/2011/104, especially paragraph 5.1, and CON/2013/41, paragraph 2.5.