



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 12 June 2019

on the objectives and governance of the Latvian Financial and Capital Markets Commission (CON/2019/22)

Introduction and legal basis

On 28 May 2019 the European Central Bank (ECB) received a request from the Latvian Minister for Finance for an opinion on a draft law amending Law on the Financial and Capital Markets Commission (hereinafter the 'draft law')¹.

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 on the third indent of Article 2(1) of Council Decision 98/415/EC², as the draft law relates to the Latvijas Banka and to the specific tasks conferred upon 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

- 1.1 According to its annotation, the draft law has two aims. First, it changes the procedure for the appointment of the members of the *Finanšu un kapitāla tirgus komisija* (FCMC, Financial and Capital Markets Commission) Council by expanding the qualification requirements, stating the maximum terms of office and prohibiting office holders from holding office for more than two consecutive terms. Second, it strengthens the provisions on the prevention of money laundering and financing of proliferation and terrorism in the financial and capital markets by expanding the objectives and more precisely setting out the FCMC Council's functions. According to the annotation, these aims are in line with the Organisation for Economic Co-operation and Development's short-term recommendations issued for Latvia³ to reinforce the supervisory and control mechanism for the prevention of financial system abuse. The aims also reflect the findings of the July 2018 MONEYVAL mutual evaluation report⁴ on anti-money laundering and counter-terrorist financing measures in Latvia.
- 1.2 The draft law changes Latvijas Banka's role in the appointment of the Chair and the members of the FCMC Council. The current Law on the Financial and Capital Markets Commission (hereinafter 'Law on FCMC')⁵ provides that the Chair and Deputy Chair of the FCMC Council are appointed by

1 Grozījumi Finanšu un kapitāla tirgus likumā.

2 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).

3 Available on the Organization for Economic Co-operation and Development website at www.oecd.com.

4 Available on the Financial Action Task Force's website at www.fatf-gafi.org.

5 Finanšu un kapitāla tirgus komisijas likums, available at www.likumi.lv.

the Parliament upon a joint recommendation of the Governor of Latvijas Banka and the Minister for Finance, and that the other FCMC Council members are appointed by the Chair after coordination with the Governor of Latvijas Banka and the Minister for Finance. The draft law provides for the Chair and all members of the FCMC Council to be appointed by the Parliament upon a recommendation of *Ministru kabinets* (Cabinet of Ministers). The candidates for the positions of Chair and FCMC Council members are to be selected in an open competition and evaluated by a commission, which, inter alia, includes a member of Latvijas Banka's Council.

- 1.3 The draft law amends the qualification criteria for candidates for the positions of Chair and FCMC Council members. In particular, candidates for these positions are required to have all of the following: (a) a university degree in law, economics or financial management; (b) knowledge of the Latvian language and one foreign language; (c) at least five years' experience in financial and capital markets or the supervision/prevention of money laundering and financing of terrorism and proliferation; (d) compliance with requirements to receive a second category special permit for access to official secrets. The Law on official secrets⁶ has a provision requiring anyone with access to secret information to obtain the second category special permit⁷. This permit will not be granted to any person where, during the course of the examination, it is determined that there are doubts that this person is not able to and cannot be relied upon to preserve official secrets.
- 1.4 The draft law amends existing provisions relating to removing the Chair and FCMC Council members from office. The existing law sets out four reasons for Parliament to remove these officials from office: (a) upon the office holder's own application; (b) where there is a final judgement convicting the office holder of an intentional criminal offence; (c) where the office holder is unable to perform his or her duties for more than six consecutive months due to illness or other reasons; and (d) upon a joint application by the Governor of Latvijas Banka and the Minister for Finance.
- 1.5 The draft law abolishes the fourth ground for removal and introduces three new grounds for removal: (d) where there has been a final decision that annuls a special permission of access to State secrets or downgrades the relevant category in respect of the office holder; (e) where the Chair of the FCMC Council applies for the removal of an FCMC Council member who no longer complies with the criterion of having an impeccable reputation; and (f) where there is an application by at least 34 out of the 100 members of Parliament for the removal from office of the Chair of the FCMC where he or she no longer complies with the criterion of having an impeccable reputation. The draft law also specifies that all six grounds apply not only in relation to the Chair and Deputy Chair of the FCMC, but in relation to any FCMC Council member. If a person is to be relieved from office under grounds (e) or (f), the circumstances of the case will be evaluated by the commission referred to in paragraph 1.3, which, inter alia, includes a member of Latvijas Banka's Council. The decision of this commission may be appealed to the administrative courts. In the absence of an appeal to an administrative court, or if an administrative court has ruled in favour of the commission's decision, the final decision on the removal from office on grounds (e) or (f) is drafted by *Ministru kabinets* and adopted by the Parliament. The decision of the Parliament is final and may not be appealed.
- 1.6 The draft law contains amendments relating to the composition and term of office of FCMC Council

⁶ Likums "Par valsts noslēpumu", available at www.likumi.lv.

⁷ See Article 11(2) of the Law of Official Secrets.

members. In particular, the FCMC Council will consist of three members instead of five members, as provided in the current Law on FCMC. The term of office of the Chair and FCMC Council members will be five years, rather than six years as provided in the current Law on FCMC, and a person may not serve more than two consecutive terms. In contrast to the current provisions, FCMC Council members may not simultaneously be FCMC Council members and hold positions as Directors of FCMC departments.

- 1.7 The draft law amends the objectives, functions and responsibilities of the FCMC regarding the prevention of money laundering, the financing of terrorism and proliferation, and compliance with sanctions. The current objectives of the FCMC are to foster the protection of investors, depositors and insured persons and to foster the development and stability of the financial and capital markets. The draft law will add an objective on the prevention of money laundering and financing of proliferation and terrorism. The current functions of the FCMC include the regulation of financial and capital markets and controlling the compliance of activities of their participants with laws, FCMC regulations and decisions. The draft law will add to these functions by requiring participants in the financial and capital markets to comply with Law on the Prevention of Money Laundering and Counter Terrorism Financing⁸ and Law on International and National Sanctions⁹ in relation to financial restrictions.

2. Observations

- 2.1 The ECB takes note of the changed role of Latvijas Banka in the appointment and removal from office of the Chair and FCMC Council members.
- 2.2 Pursuant to Article 127(6) of the Treaty and Articles 4 and 6 of Council Regulation (EU) No 1024/2013¹⁰, the ECB is responsible for the effective and consistent functioning of the Single Supervisory Mechanism, and the ECB and the national competent authorities (NCAs), including the FCMC, are each 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, the NCAs, including the FCMC, are responsible for providing assistance to the ECB, on the terms set out in Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17)¹¹, with the preparation and implementation of any acts relating to the tasks conferred on the ECB under Article 4 of Regulation (EU) No 1024/2013 related to credit institutions¹², including assistance in verification activities^{13 14}. The ECB understands that

⁸ Noziedzīgi iegūtu līdzekļu legalizācijas un terorisma finansēšanas novēršanas likums, available at www.likumi.lv.

⁹ Starptautisko un Latvijas Republikas nacionālo sankciju likums, available at www.likumi.lv.

¹⁰ 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).

¹¹ 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).

¹² See paragraph 2.1 of Opinion CON/2018/6.

¹³ 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 less significant credit institutions or financial holding companies. Wherever the ECB is assisted by NCAs for the purposes 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.

the FCMC's responsibilities in these respects will not be affected by the changes in the FCMC's governance under the draft law.

- 2.3 As noted in recitals 28 and 29 of Regulation (EU) No 1024/2013¹⁵, the supervisory tasks not conferred on the ECB, which remain with the national authorities, include the prevention of the use of the financial system for the purposes of money laundering (ML) and terrorist financing (TF). The ECB should cooperate as appropriate, fully with the national authorities, which are responsible for supervising the measures to combat money laundering¹⁶. While the task of supervising credit institutions in relation to the prevention of the use of the financial system for the purposes of ML or TF has not been conferred on the ECB, the outcomes of anti-money laundering and countering the financing of terrorism (AML/CFT) supervision are important to consider for the discharge of the ECB's tasks concerning the prudential supervision of credit institutions under Article 127(6) of the Treaty and Regulation (EU) No 1024/2013. In particular, the risk of the use of the financial system for ML or TF is relevant for ECB prudential supervisory decisions concerning acquisitions of qualifying holdings in supervised entities (including regarding the process of granting authorisations to credit institutions) and fit and proper assessments of existing or prospective managers of supervised entities, as well as for day-to-day supervision in the context of the supervisory review and evaluation process. Serious breaches of AML/CFT requirements can negatively affect the reputation of a credit institution and lead to significant administrative or criminal sanctions imposed on supervised entities or their staff, and can thus pose a risk for the viability of supervised entities. In certain cases, serious breaches of AML/CFT requirements can directly trigger a need for a credit institution's authorisation to be withdrawn¹⁷.
- 2.4 Taking account of the foregoing, the ECB notes that the objectives of the FCMC are to be expanded and its functions are to be set out more precisely with the intention of strengthening its existing mandate to conduct AML/CFT supervision¹⁸.

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

Done at Frankfurt am Main, 12 June 2019.

[signed]

The President of the ECB

Mario DRAGHI

14 According to the Basel Core Principles for Effective Banking Supervision, the head of a supervisory authority is also to be appointed for a minimum term and removed from office during that term only for reasons specified in law, or if not physically or mentally capable of carrying out the role, or if found guilty of misconduct. See Basel Committee on Banking Supervision, Core Principles for Effective Banking Supervision (September 2012), Principle 2, Effective Criteria 2 and 6, available on the website of the Bank for International Settlements at www.bis.org.

15 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).

16 See also Article 6(2) of Regulation (EU) No 1024/2013 pursuant to which the ECB and NCAs are subject to a duty of cooperation in good faith, and an obligation to exchange information.

17 See paragraph 1.2 of Opinion CON/2018/55.

18 See Articles 45(1), 46, 47 and 56 of the Law on Prevention of Money Laundering and Terrorism Financing.